

## *Chapter 13*

# *Human Rights: Rights of Sexual Workers.*

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### *Abstract*

In a country like India where the Constitution aims at removing the patriarchal mindset of people and empowering women and giving them the access to the rights that they deserve, we feel that not much is done for the women who are involved in the industry of sexual work. A lot of women involved in sex work are living in pitiable conditions and there are no strong laws that aim to provide safety and security to the women who are prone to a lot of hazards related to health, education, sanitation, etc.

Usually, there are two types of perspectives related to sex work. The first perspective is that, according to some people sex work is always forced upon on women who do not have any other source of employment and do it out of utter helplessness and unwillingness and it is considered as illegitimate and hence people belonging to this category usually do not respect the women involved in the industry. The second perspective is that some people consider sex work as legitimate work and they usually do not have any disrespect for the work and for the women involved in the industry.

In this research paper we are going to discuss about the shortcomings of ‘The Immoral Traffic (Suppression) Act (SITA)’ and other legal drawbacks that prevail in our society. Apart from discussing about the SITA and other legal frameworks that exist in relation to the rights of sex workers, we are going to suggest ways for the development of women involved in this industry with or without their will. In conclusion we would like to state that this issue is a very sensitive and untamed issue and deserves some limelight as it would result in the improvement of the condition of women involved in the industry. Moreover, ‘justice delayed is justice denied’ and denial of justice in this case would lead to an epitome

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of unjustness towards the women who crave freedom from the clutches of this patriarchal society.

## *Introduction*

In a democratic country like India where the Constitution talks about providing equality to the people irrespective of their sex, gender, caste, place of birth etc. The authors of this paper feel that not much is done for the development of the 3 million prostitutes who form a major part of the population of this country. The prevailing laws have failed to ensure that the sex workers get their share of rights and are prevented from living in any brutal conditions. This failure of the legislation to legislate laws for one of the most economically and socially underprivileged population of this country is highly condemnable and hence needs the attention of the hour in order to improvise the conditions of the sex workers who are devoid of education, health care facilities and respect in the society. There are many human rights issues faced by India at this point of time but the issue that has always failed to gain the limelight is the rights of the sexual workers who live in the most pitiable conditions. The criminalization of prostitution has only added up to the problems of the sex workers instead of reducing them. The authors of this paper believe that decriminalizing or legalizing prostitution would definitely lead to legislation of new laws related to the rights of the sex workers and would also help in empowering them. Once prostitution will be legalized or decriminalized then it would also lead to decrease in human trafficking, reduce violence against women and also contribute towards the economy of this country. Hence, this research paper is going to scrutinize the prevailing laws and suggest as to whether prostitution should be legalized or not and as to how the situation of the sex workers can be improved.

## *Rights Of Sexual Workers In India: A Milestone To Be Achieved*

1. What is the definition of prostitution as per the Immoral Traffic Suppression Act, 1956 (presently known as the Immoral Traffic Prevention Act, 1986 i.e. the ITPA)? What is the history of prostitution in India and the types of prostitution that prevail?

India being the largest democracy in the world has achieved several milestones in the past few years after independence which is well appreciated by the world. But, when it comes to human rights, the authors of this paper believe that not much has been done towards the

betterment of the underprivileged population of the country. Here, the authors would like to bring to the notice of the readers that the word underprivileged is not only applicable to the population that is economically backward but also applies to the population that is socially backward and prevented from getting their share of rights. According to the authors of this research paper, the most socially backward and underprivileged population of this country is the population consisting of prostitutes and other sex workers. In India, prostitutes are seen as mere objects and not human beings. This happens due to the fact that prostitutes are usually associated with loose character and lack of morality in the society and people often tend to forget that they face a lot of issues in their daily life, due to lack of rights and facilities available to them which worsens their condition in the society. Issues concerning women's bodily integrity and autonomy, such as abortion, rape, and sterilization, are subject to strong opinions that give rise to equally charged political policies.<sup>1</sup> Especially, the issues concerning women's bodily rights and rights of the sex workers and prostitutes needs to be in the limelight and deserves the attention of the hour. As with other issues pertaining to women's bodies, prostitution<sup>2</sup> discourse is largely concerned with determining whether this social practice

### *Debran Rowland, The Boundaries Of Her Body: A History Of Women's Rights In America Xxiii–Xxv (2004).*

<sup>2</sup> Prostitution is herein defined as a social practice by which men gain sexual access to the bodies of predominantly women, children, and sometimes other men, through the exchange of money, goods, or housing. Prostitution, as a social construct, arises from "men's dominance and women's subordination." SHEILA JEFFREYS, THE IDEA OF PROSTITUTION <sup>3</sup> (Janet Mackenzie ed., 1997). Pornography is included in this definition as a subset of

is exploitative, empowering, or a consequence of immorality.<sup>3</sup> Hence, before we terming the practice of prostitution as uncivilized and immoral, we first need to know whether the practice is exploitative, empowering or a consequence of immorality. In our country, there are not enough laws that deal with the rights of sexual workers. The Immoral Traffic Suppression Act, 1956 deals with prostitution and criminalizes every kind of sexual activity without taking into consideration the fact that at times prostitution may be consensual and not forcible. The aforesaid act only gives the definition of the terms related to sex work and punishment on being caught in any kind of illegal sexual activity. It does not talk about the rights that should be given to the sexual workers for their economic as well as social development. Hence it lacks the effect that it should tend to achieve.

Before we go any further into the topic, we need to know the emergence of the concept of prostitution in our country and also the types of prostitution that prevail. So, let's take a look at the history of prostitution in India and also the different types of prostitution.

Goa was set up in Portuguese I nidi in the early 16th century and it became flooded with the slave population of the Portuguese community. The Portuguese traders also traded in Japanese slaves and these Japanese slaves were brought to Goa and these slaves were kept as sex slaves for the Portuguese traders. The women were usually young Japanese women who were captured and brought to Goa for the purpose of sex slavery.

During the Mughal era, there were tawafs in the courts of the Mughal emperors who excelled in the field of art, dance and Urdu literary tradition. They were considered as an epitome of etiquette during the Mughal era. The tawafs worked for entertaining the Mughal emperors and the tawafs usually hailed from Northern India during the 16th century. The tawafs became even more prominent during the mid-18th century when the Mughal empire had almost come to an end. The contribution of the tawafs towards the Indian cinema, art and music has been immense and inevitable.

Then there was the emergence of the nautch during the period of the British East India Company rule. The nautch was actually an alluring form of dance. It was during the British rule that brothels were established for the British troops to fulfill their sexual desires. The women and girls who were involved in this profession usually belonged to poor and uneducated families and their families were paid for the prostitution work rendered by the women and girls. It was during this time that the establishment of the brothels and the red-light areas took place. The British rulers considered prostitution as a "necessary evil" and even enacted the Cantonment Act that made prostitution legal and there were girls appointed as prostitutes by the British Government who were allowed to provide services only to the troops. The girls involved in this used to stay in brothels which were known as chaklis during that time and the girls were usually captured from Continental Europe and Japan.

With the emerging times, there was increase in the business of prostitution and this increase has led to the emergence of different types of prostitution. Following are the types of prostitution that prevails on the basis of operation: -

- i. Street prostitution: The prostitute tries luring customers on the streets and then takes them to a private place to render service.
- ii. Call girl prostitution: The prostitute works independently and the customer needs to contact the prostitute for sex. This involves middle-men for bringing in customers for the prostitute.
- iii. Brothel prostitution: The prostitutes work in brothels and the customer goes to the brothels and the prostitute is paid as per the service rendered by her.

The types of prostitution based on profession are tawaf, nautch, Randi, kanjira, kalbi and noshi.

Hence, this is how prostitution emerged in India and the types of prostitution that prevail in this country.

2. What is the legal status of prostitution in India? Is it decriminalized? If not, then whether it should be decriminalized or not?

The laws relating to prostitution in India is dealt by the Immoral Traffic Suppression Act, 1956 also known as the Immoral Traffic Prevention Act. As per Section 3 of the Act, 3rd parties are punished if they are found to be involved in prostitution in any way. Section 3 of the aforesaid Act criminalizes prostitution. Section 5 of the aforesaid act states that any person found guilty of carrying on prostitution shall be punished with not less than 3 years of imprisonment and not more than 7 years of imprisonment and may even be bound to pay a fine of two thousand rupees. In cases where it is found that the girl or woman was forced into prostitution in that those cases the term of imprisonment will be not less than 7 years and not exceeding 14 years. The authors of this paper feel that in a country like India where there are about 3 million people involved in the sexual activity industry criminalizing prostitution only adds up to the miseries of the prostitution population. According to the authors of this paper, instead of criminalizing prostitution, it should be decriminalized because it's not every time that there are victims of prostitution. Sometimes the prostitutes are victimized because of the assault that the customers commit towards the prostitutes. If prostitution is legalized then it would result in the following: -

I. Human trafficking reduction: Criminalizing prostitution would only punish the trafficker but it would lead to loss of employment by the prostitute even when the prostitution work that she had taken up was consensual. If prostitution is decriminalized then the prostitutes would not lose their livelihood and even trafficking would be reduced because strong laws can be framed for the protection of women from involuntary prostitution which would lead to decrease in human trafficking.

II. Improvement in working condition of women: The present law only criminalizes prostitution and does not grant any special rights to the prostitutes. If we want the conditions of the socially underprivileged women to improve then we must provide them with medical and educational facilities. If prostitution is legalized then medical centers can be set up near brothels in order to prevent sexually transmitted diseases. The setting up of medical center would lead to better health of the prostitutes and if they are detected with any sexually transmitted disease then they can be treated and preventive measures can be taken. Similarly, it is very important that the sex workers are provided with education so that they know about their rights and they can't be exploited easily at the hands of the illegal human traffickers. Likewise, the children born to prostitutes should be given a chance to avail educational facility so that they get to decide what they actually want to do in future.

III. Provide identity to the commercial sex workers in the society: If prostitution is decriminalized then the commercial sex workers would be prevented from the wrath of the society and would be given some respect in the society because their profession will be no more an illegal one. When prostitution is criminalized then apart from losing their livelihood the prostitutes also lose their dignity and are viewed as sex objects in the society. Moreover, they are deemed unfit for any other profession that suits their skills.

Legalization is closely related to complete decriminalization in theory and in practice, hence the concepts will be dealt with by the authors simultaneously in this paper. Proponents of legalization and decriminalization often proceed from the standpoint that prostitution arises from personal choice, is an indication of women's empowerment, and is a business agreement made between consenting adults with equal power.<sup>5</sup> In this context, the authors of this would suggest that decriminalizing prostitution would remove the legal barriers on the development of prostitutes. Legalization generally refers to the regulation of prostitution through labor laws that legalize the majority of the following: pimping, buying, brothel ownership, and the sale of prostitution sex.<sup>6</sup> In legalization regimes, the government takes an active role in regulating prostitution, as is the case in Victoria, Australia, the Netherlands, and Germany. Once prostitution is legalized the local and national governments may also take steps for the promotion of the sex industry. There is an advertisement in the Hamburg city's official website which states "a varied assortment of entertainment, including Reeperbahn's famous strip clubs and brothels." It also states "Just around the corner from the Reeperbahn is Herbert Street, the principal red-light area. Both ends of the street are blocked by barriers and it is inaccessible to women and minors." In the Netherlands, the "Official portal website of the City of Amsterdam" provides an information page on the red-light district. The page cautions tourists about "sex trafficking, forced prostitution," and "seedier characters" in the red-light district, but still promises "plenty of sex shops, peep shows, brothels, an elaborate condom shop, a sex museum and prostitutes in red-lit windows." The government acknowledges these dangers and also takes care of the potential safety and ethical concerns of the sex tourists and states "Sex-workers here have their own union, plenty of police protection, an information center . . . frequent monitoring and testing and professional standards." Legalization regimes embed a prostitution economy into a country's market structure enabling the country to derive major tax and tourism revenue from the industry. Legalization regimes, by situating prostitution within a labor model framework, advance profit goals. Those who identify prostitution as simply another form of labor seeks to legalize or decriminalize prostitution sex and to incorporate it into the labor market as "sex work." The theory of neoliberalism in economics fosters this endeavor because it "seeks to bring all human action into the domain of the market." Within a neoliberal framework, everything, including sex and the human body, is commodifiable and potentially saleable in a market. Neoliberalism also asserts that the best interests of the individual are advanced by unfettered market laws. Liberal discourses of empowerment, agency, and sex positivity advance the notion that sex can be labor and hence exchanged on a market. Neoliberal theory advances the concept of

“individualism” arguing that the interests of the individual take precedence over those of the state and society and that the individual should be freed from the constraints of either of these institutions to make rational decisions and contracts in the marketplace that will best serve her or his interests. Within this framework, it is argued that the practice of exchanging money for sexual access is legitimate and should be legalized or decriminalized.

3. Analysis of the ITPA and changes that can be brought about in the Act. The authors of this paper upon analyzing the ITPA Act, get to know that, Section 25 of ITPA emphasizes on prostitution and denies prostitution in the houses of ill-repute, for business reason. Initially, the Act was passed by the Parliament as Suppression of Immoral Traffic in Women and Children, 1956, later on the Act was revised twice first in the year 1978, in which discipline for specific offenses has been improved and second in the year 1986, which renamed the Act as the Immoral Traffic (Prevention) Act, 1986. The revision additionally changed the meaning of the "prostitution" and above all made the law sexually unbiased and incorporates and perceived the male prostitution. Under section 2(f) of the Act, prostitution is characterized as the sexual misuse or maltreatment of people for business reason, and the articulation "prostitute" will be translated likewise. Prior under SITA, the meaning of 'prostitution' has been characterized as-'demonstration of a female who offers her body for sexual intercourse upon any monetary promise or contract, regardless of whether in cash or in kind, and whether offered quickly or something else, and the articulation of the term prostitute will be understood likewise.

Seducer, child of prostitutes, person who allows to be used in these works, brothel keepers, and people earning by this means as profession, are mainly concerned throughout the Act. But the authors of this paper notices that there is lacking a proper sense of laws and an ailment of rights, to protect such person's rights. There is a need for the government to give focus on such people, despite them being recognized in the society as filthy class people. In order to curb out these occurrences, there is need of categorizing the situation into certain aspects, in order to get the solution. First and foremost is the spotting of reasons as to why there is increase in the number of people opting sex work as their profession. Despite their choice being out of compulsion or not, their rights have to be protected and a proper and separate framework with amended laws shall be made for them. Secondly, upon spotting their reasons, their requirement has to be filled as to which factors when not fulfilled lead to them to go in such a profession. For many there is need of money and source of employment is a huge reason as to why they choose it. so, the exact reason of people choosing it also necessary. Thirdly, the authors of this paper would like to bring immense focus on the point of establishing laws to guard it and to really take serious steps in order to curb this. There shall be a protocol or any kind of stringent laws made, for protection of rights of the trafficked victims. Need of proper counselling is one of the major ways to deal with such a sensitive issue. Most of the people are not aware of their rights, so making them aware of their rights is most important. For this to happen there has to be awareness drive for this to be conducted by the government directing to do to their subordinates. The

subordinates can be the NGO, school or college students or any particular governmental committee. There is a dire need of the government to look after the trafficking of victims during disasters, a remedy for which is amending laws in keeping in minds the issue of trafficking while onset of disasters. By giving importance on it along with linking or inter-relating the Disaster management act,2005 along with ITPA, there would be a solution to this. ITPA lacks in many ways, and it has to suffice in every possible way. It is so because ensuring of rights of every citizen is mandatory, regardless of the profession they practice.