
NAVIGATING THE EVOLUTION OF SOCIO-LEGAL RIGHTS OF PROSTITUTES IN INDIA: A JURISPRUDENTIAL ANALYSIS

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ABSTRACT

Considered one of the oldest professions in the world, prostitution often spurs heated controversy surrounding the battle between a woman's sexual freedom and protecting her from commodification. Different legal philosophies and diverse schools of thought within feminism hold distinct view points on sex work. Owing to the changing notions on modesty and sexual morality with time, the discourse around prostitution has experienced transformation in different eras in India. This paper explores the different debates surrounding prostitution and how the legal paradigm has experienced a shift from viewing sex workers as immoral subjects to conferring them with equal rights.

History of Prostitution in India

Prostitution is one of the oldest professions of the world practiced since the birth of organized society. In India, the history of sex work is complex, often integrated with socioeconomic factors and cultural norms. Prostitution is attributed as an organized and established institution in the Vedas, the earliest of the known Indian literature¹. Attitudes towards sex work became increasingly stigmatized owing to the advent of colonial rule and the imposition of Victorian morality in India. This act was initially enacted to contain the spread of venereal diseases amongst European soldiers, the source of which was believed to be the common prostitutes. Post Independence, India inherited a legal framework that continued to criminalize aspects of sex work under laws like the Immoral Traffic (Prevention) Act, 1956 (ITPA)². While the

¹ 'PROSTITUTION IN INDIA' SCHOLARLY RESEARCH JOURNAL FOR INTERDISCIPLINARY STUDIES.

² Prathap Suhaas, 'THE EVOLUTION OF SEX WORKER RIGHTS IN INDIA: STRENGTHENING AND AWARENESS WITHIN CONSTITUTIONAL FRAMEWORKS' VI(II) Indian Journal of Law and Legal Research.

legislative intent was to combat trafficking and exploitation, these laws often blurred the distinction between voluntary sex work and trafficking, leading to the further marginalization of sex workers and the perpetuation of stigma. The origin of this act can be traced to the UN convention for the Suppression of Traffic in 1953. The primary drawback of the act is that it assumes the sole cause for all prostitution to be trafficking. The Indian legal paradigm has witnessed a shift from viewing sex workers as immoral subjects to conferring upon them legal rights for integration into the society.

Schools of Thought

The question of prostitution often gives rise to debates between guaranteeing women their sexual autonomy and protecting them from sexual objectification. The polarisation of thought is clearly highlighted by Nivedita Menon in her work 'Seeing Like A Feminist'. The author states that Feminism in itself has many diverging ideologies so it would be wrong to perceive it as uniform in all aspects. Aligned with Amartya Sen's notion, Menon acknowledges that choices are made within boundaries in the social and political sphere. The agency/victimhood dilemma has been played in a complicated fashion in the domain of sex work for feminists. Since long, feminists have critiqued the representation of female bodies as objects of male desire through the term commodification³. Advertising scantily-clad women for luxury items due to the assumption that the consumer is male, highly-commercialized beauty contests and women who 'sell their bodies' for money all these are instances of commodification. The theory that prostitution reduces women to sexual objects and commodities was argued by the Radical Feminist Sheila Jeffries. However, applying the concept of commodification to women indulged in sex work can be problematic since it presumes that women participating in this work are commodities of men, who are real parties to the contract. Feminism has for long viewed prostitution as violence against women, and many feminists still do. However, with the gradual politicization of people who engage in prostitution, a new conception of the practice has emerged, and their voice becoming more public. One of the key transformations that has come about because of this, is the emergence of the term sex work to replace 'prostitution'. As per Menon, patriarchal discourses and feminists have mystified sex and that has made sex work appear to be 'a fate worse than death'. The author highlights that is unreasonable to view sex work as an unusual and isolated activity since a significant number of females move quite fluidly between other occupations and sex work. Circumstances such as poverty and limited

³ Nivedita Menon, *Seeing Like A Feminist* (ZUBAAN-PENGUIN 2012).

education push women into earning their means through sex work, while reasons such as low pay, insufficient salary and no profit in other forms of labour also contributed towards this decision. Menon compels us to recognize that 'choice' is severely constrained in the labour market as a whole, hence it is not implausible to acknowledge that many women indulging in sex work do so out of their free choice since sex work is economically an attractive option. Nivedita Menon however points out to a very pertinent issue, which is regarding rape and physical abuse that sex workers face at the hands of their clients. Decriminalizing sex work would enable such women to these matters to court just like any other raped woman. It is also important to note that Radical Feminism associates prostitution with moral degradation since it represents sexual dominance of women by men. Catherine MacKinnon argues that it is next to impossible for prostitutes and sex workers to exercise agency in a system of male subordination of women⁴. However, John Stuart Mill argues that prohibiting and overly-regulating prostitution violates a woman's right to sexual autonomy. According to Mill, society should accept prostitution since it is an alternative lifestyle even if it is deemed immoral. Conventional sexual morality arises from natural law theory which is often attributed to Saint Thomas Aquinas and upheld by the Catholic Church⁵. Aquinas upholds that the purpose of sexual intercourse is reproduction and indulging in sexual intercourse for any purpose other than reproduction is 'unnatural'. Aquinas considered all sexual acts outside the confines of marriage and heterosexuality as immoral. Jean-Jacques Rousseau emphasized that in no circumstances should the will of the individual be prioritized over the general will of the community, hence if the community deems prostitution to be immoral, every individual shall subordinate himself to it and thus prostitution should be outlawed⁶. John Stuart Mill's notion of law not having the function in denying the right to choose or practise the lifestyle of prostitution is supported by the liberal view of feminism. Liberal feminists perpetuate that every woman has autonomy and is free to choose the occupation she desires. Camille Pagila counters the radical feminist idea of viewing prostitutes as damsels in distress that need to be rescued since she considers prostitutes as empowered women who use their sexuality to gain power⁷.

⁴ Aditya Dalal and Khushi Parekh, 'PROSTITUTION: PERSPECTIVES FROM VARIOUS SCHOOLS OF JURISPRUDENCE' 24 SUPREMO AMICUS.

⁵ DrSKrishnan, 'Prostitution Legally Justifiable?: A Legal and Moral Analysis' 10(1) Journal of Research in Humanities and Social Science.

⁶ Aditya Dalal and Khushi Parekh, 'PROSTITUTION: PERSPECTIVES FROM VARIOUS SCHOOLS OF JURISPRUDENCE' 24 SUPREMO AMICUS.

⁷ Aditya Dalal and Khushi Parekh, 'PROSTITUTION: PERSPECTIVES FROM VARIOUS SCHOOLS OF

Indian Constitutional Culture and Prostitution

The Indian Constitution has imbibed a constitutional culture through its commitment to universal principles of liberty, equality, and fraternity. If India has to preserve these universal principles it would be irrational to exclude prostitutes from welfare schemes and not give them equal rights. The Indian Constitution can be described as depicting a blend of many sources and traditions. For instance, it was majorly shaped by the system of English Common Law that had effectively been institutionalised in India. This was a result of the Government of India Act 1935. It bore an imprint of Directive Principles of State Policy from the Irish Constitution, and was influenced by American debates over due process— all made to serve distinctly Indian political challenges⁸. One can argue that if we are receptive towards accepting legal traditions across the world, there should not be an issue in inheriting the colonial legislation regulating prostitution, especially if the Indian legal system is based on the UK common law. However, overly regulating prostitution in colonial India stemmed from imposition of Victorian Christian morality which is distinct from the post enlightenment universal principles that Western countries follow in the contemporary era. The Indian courts however have taken a much liberal and humanitarian approach to the interpretation of statutes while delivering its judgments, thus changing the legal landscape and general perceptions on the issue. The Supreme Court of India gave a landmark judgment in the case of *Budhadev Karmaskar v. State of West Bengal* which held that the protection under Article 21 of the Indian Constitution extends to prostitutes who also have a right to live with dignity as they too are human beings⁹. It recognized the right of women forced into prostitution to engage in vocational training and lead dignified lives; and secondly, the right of those who wish to continue the practice voluntarily. This shift in the legal paradigm acknowledged the rights of sex workers as citizens entitled to constitutional protections. The drafting of the Indian constitution, according to Granville Austin, entailed the amalgamation of ‘national’ and ‘social’ revolutions respectively. While the national revolution focused on democracy and liberty, the social revolution focused on emancipation and equality, which tradition and scriptures had withheld from the lower castes and women¹⁰. It would be implausible to say that the drafters of the constitution excluded

JURISPRUDENCE’ 24 SUPREMO AMICUS.

⁸ Sujit Choudhary, Madhav Khosla and Pratap Mehta, *The Oxford Handbook of THE INDIAN CONSTITUTION* (Oxford University Press 2016).

⁹ Prathap Suhaas, ‘THE EVOLUTION OF SEX WORKER RIGHTS IN INDIA: STRENGTHENING AND AWARENESS WITHIN CONSTITUTIONAL FRAMEWORKS’ VI(II) Indian Journal of Law and Legal Research.

¹⁰ Ramchandra Guha, *INDIA AFTER GANDHI* (10th edn).

sex workers from its ambit because from looking at the issue from the perspective of intersectionality, it is usually the women from the marginalized classes and castes forced into prostitution and the Constitution was meant to steer progressive social change in India.

Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)

Prostitution became a constitutional issue because of the significant presence of female members in the assembly, many of whom had more than two decades of experience in organizing. The female members seized the initiative to present a comprehensive plan for women in the Indian republic well before the proceedings of the Constituent Assembly began. In December 1945 All India Women's Conference (AIWC) President Hansa Mehta reminded the members that for Indian women, postwar reconstruction was a question not just of mere adjustments here and there but of the reconstruction of "our entire national life"¹¹. The AIWC charter argued for complete civil and political equality, sought to expand the welfare functions of the state, and promoted the economic rights of women. Article 15 which prohibited discrimination on the grounds of sex, race, caste, religion or place of birth, promoted the idea of state making special provisions for women and children since for women in the Constituent Assembly freedom was not limited to formal equality between men and women but would also include the active duty of the state to intervene to bring about substantive equality. Campaigns by women's association and reformers eventually lead to the passing of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) by the Indian Parliament in 1956 in response to rising concerns pertaining to prostitution and exploitation.¹² This act was inspired by the 1949 UN Convention for the Suppression of the Traffic in Persons. The aims of the legislation focused on suppressing and controlling the immoral traffic in women and girls, providing legal measures for prevention and punishment, and reintegrating victims into the society through rehabilitation. SITA marked the beginning of formal anti-trafficking legislation in independent India. Although the objective was to combat trafficking, the strict regulations on sex work according to some critics of the act negatively impacted the livelihood of the prostitutes. On May 1, 1958, Husna Bai petitioned against the Suppression of Immoral Traffic in Women and Girls Act, 1956 in the Allahabad High Court because she and many women categorized as prostitutes thought that the act infringed on their right to livelihood guaranteed

¹¹ Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton University Press 2018).

¹² Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton University Press 2018).

by Article 19 of the constitution. As per Rameshwari Nehru and authors of Suppression of Immoral Traffic in Women and Girls Act, 1956, the legislation produced unintended consequences as the heavy surveillance by the police compelled the prostitutes to vacate their homes in Red Light districts thereby penetrating respectable neighbourhoods, defeating the moral objective of the act¹³. There was also risk of increase in unregulated sex work as the recorded number of prostitutes dropped since the prostitutes went into hiding to evade the attention of the state.

Legal Precedents

Importantly, the Supreme Court of India highlighted in *Rashmi Behl v. State of Uttar Pradesh* that it is often the women from lower economic strata who are ignorant of their rights coerced into prostitution. This highlights the attitude of the courts in viewing prostitution as a profession always imposed on women and it can never be a choice. Moreover, in the case of *The State of Uttar Pradesh Vs. Kaushalya and others*, 1963, the City Magistrate issued notices to the respondents, who are alleged to be prostitutes carrying trade in Kanupur, under s.20(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Supreme Court in this case upheld that the 'freedom of movement' of prostitutes may be restricted to preserve public health and morality and section 20 of the act is constitutionally valid¹⁴. This was despite contentions being raised that restricting the movement of prostitutes violated Article 14 and 'Freedom of Movement' which is a right guaranteed under Article 19 of the constitution. The Supreme Court in the case of *Budhadev Karmaskar Vs. State of West Bengal*, 2010 made it clear that extending the right to live with dignity, enshrined under Article 21 of the constitution, should not be misconceived as encouraging sex trade since the focus should be on rehabilitating women by providing an alternative forum for employment. Justice Gyan Sudha Mishra acknowledged that sex workers are coerced into this profession since they do not have any alternative means of livelihood and described the profession as 'heinous'. The rehabilitation aspect of the judgment is perfectly aligned with the objective of Article 15 of the Indian Constitution, since Article 15 empowers the state to make special provisions for women and children. The drafters of the constitution kept in mind in redressing historical injustices and to protect minorities. Owing to the marginalization of prostitutes in the society and their

¹³ Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (Princeton University Press 2018).

¹⁴ 'The State Of Uttar Pradesh vs Kaushaliya And Others on 1 October, 1963' (*Indian Kanoon*).

intersectional identity it is rational to categorize them as minority. While these court judgments may be considered progressive in some dimensions, they highlight the patriarchal attitude of the judges in attributing a woman's dignity to her sexuality and demonizing female promiscuity. A prostitute, often referred to as the 'Fallen Woman' has since a long time been objectified and not viewed as a complete human being. Whenever she has tried to resist prostitution she has faced violence at the hands of brothel managers, while experiencing other issues such as discrimination and social ostracization. There is an attempt however on the part of the enlightened section of the society to solve this problem through legal activism. It is imperative to note that the court in *Gaurav Jain Vs Union of India* acknowledged that The Preamble, an integral part of the Constitution, guarantees 'socio-economic justice' to all its citizens with stated liberties, 'equality of status and of opportunity', assuring 'fraternity' and 'dignity' of the individual in a united and integrated Bharat. The case also recognized the importance of considering the 'fallen women' as victims of socioeconomic circumstances rather than offenders of the society¹⁵. Ideally the courts should always try to reach a middle ground of the spectrum rather than taking a purely abolitionist stance or legalizing prostitution since both ends of the spectrum can be detrimental to society. Completely criminalizing the practice will not guarantee abolition of the perceived social evil and legalizing it may make women prone to sexual exploitation hence the state should provide avenues for women to engage in vocational training if they voluntarily choose to leave the profession, along with strengthening literacy, sex education and rehabilitation.

¹⁵ *Gaurav Jain Vs Union of India (UOI) and ors*, SUPREME COURT, 9 July 2026 (India).