

Legislation on sex work in India: A Critical Analysis

*Jyoti Prasad Saikia, Professor, Dept. of Sociology, Dibrugarh University.
Alankrita Borthakur, Ph.D. Scholar, Dept. of Sociology, Dibrugarh University*

Abstract

Every society has its societal norms, customs, and taboos. Sex work is a social taboo. Despite being one of the oldest professions, the status of sex workers is not equal and is looked down on by society. However, as a part of society, sex workers also have their rights, freedoms, and power to carry out the profession. In a society, a section of individuals wants to earn their livelihood through sex work. Therefore, they raise the voices in support of the profession. By the time, throughout the globe, various legislations are used to regulate sex work. Some legislative measures prohibit sex work by considering it a criminal and offensive act. With time, due to the growing emphasis on the rights and freedom of individuals, sex workers also start raising their voices. As a pressure group, they begin to step up their voices. This has resulted in the implementation of legislation for their rights. This paper is an attempt to analyze the significance of such legislations to set the rights of sex workers.

Keywords: Sex work, legislation, sex workers.

Introduction- Legalising an act is always necessary for its healthy running. Every society has its moral and legal code of conduct. Any change in the custom, system, structure, or part of society is only supported if it is legitimized by a legal code of conduct. For the smooth running of a society, its equilibrium needs to be maintained in an appropriate legitimate way. Since time immemorial, our society has been changing with the change of time. Here the questions arise, does every change for the betterment of society? Is every change gain the support of the members of the society? Can everyone welcome the change wholeheartedly?

Such questions can also be applied in the case of the verdict made by the Supreme Court of India on legalizing sex work. Such change in the legal system of India has made a profound impact on its tradition and culture. Prostitution is an age-old profession. In Hindu society, the *devadasi* system is also seen as a kind of prostitution in ancient India. Even in contemporary society, sex work is regarded as an income-generating source by both men and women not only to fulfill their basic needs but also to maintain a luxurious life. Earlier sex work was claimed to be as sacred and a piece of art, but in today's contemporary world it is more seen as a taboo. This social class of people is humiliated, tortured, and victims of various cruelty in everyday life. They remained deprived of the basic human rights as a member of society. Due to their belongingness to degraded status in the eyes of society, everyone turns blind and deaf towards their ply (Bharadwaj, 2020).

Sex workers may be from diverse social, economic, educational, religious, and language groups. Nowadays, it is not only confined to poor or backward sections of society. Differentiation in the legal status of sex work is also seen in the diversities among the sex workers. Globally, variation is also observed in terms of its legal status. Governments, all over the world, have been dealing with sex work and sex workers with the instrument of law. The Prohibitionist system is in the United States except in Nevada. However, in many countries like England, and Switzerland, sex work is legalized in the closed house with compulsory registration and periodic health check-up (D'Cuhan, 1992). Until the 26th of May 2022, the Indian legal system has adopted the approach of abolitionist or tolerationist. It allows to work but without any legal protection. The tolerationist approach supports the sex workers but not its organizers (Bharadwaj, 2020). In India, since 1850, sex work is considered a criminal act

along with necessary evil during the British regime. They are gaining the status of disrespect that isolates the ethical instinct. With the mark of illegal status, sex work is considered detrimental to society and its moral conduct. The women and men involved in this profession are seen as dirty and impure. Due to the deviant character (as given by the society) of the profession, the sex workers are facing numerous discriminations ranging from deprivation of basic fundamental rights to varied forms of violence.

In our society, every individual must have an equal chance to access freedom, rights, resources, privileges, and pleasure. Irrespective of social and economic status, everyone has the right to live and earn independently. However, in many societies, every income-generating source is not equally accepted and found desirable. The differentiation in the profession is also the background of its hierarchical arrangement with different status-quo. Though the division of individuals is made based on the profession as functional and non-functional groups of society, sociologically every individual of the society has its place and function. The diversities in the economic aspect, social aspect, cultural aspect, political aspect, etc., are not the criteria of social gradation of people instead it represents a plural society where diversities are always welcomed.

Sex work is seen as a non-functional source of income in a society. The purchase of sex is viewed as morally and socially illegitimate (Ahmed, 2014). But, is it enough to label a group as non-functional? Is it reasonable to exclude a group of society because of their profession? If we see it from a sociological perspective (functionalism) each part is necessary to regulate society. The whole is maintained with the functions of parts. Sociology studies the relation of various elements of society be it the social structure, social process, relation of society-individual, individual-individual, society-society, etc., from different perspectives. To make a comprehensive analysis of a society these aspects are necessary to evaluate. Thus, the study of one group of individuals as a part of society, that is, the study of sex workers is sociologically significant. Their roles, social positions, rights, privileges, etc., are equally significant in the study of society as a whole. Keeping in view the sociological significance, an attempt is made to analyze the changes in the lives of sex workers after the historic verdict made by the Supreme Court of India on the profession. The study will be emphasized both the positive and negative implications on the part of sex workers as the outcome of the verdict of the Supreme Court of India that passed on the 26th of May, 2022.

Application of methods- The study is based on secondary source where a qualitative approach is adopted. The study is made to critically analyze the recent verdict of the Supreme Court of India on sex workers. It emphasizes how the changes in the legal system will impact the lives of the sex workers and also how it protects the rights of the sex workers.

Sex work in the Indian context- The reference to sex work as an organized and established institution was also there in the earliest Indian literature, the Vedas. Even in the Indian mythology high-class prostitution in the form of heavenly deity act referred to Menaka, Rambha, Urvashi, and Thilothamma as prostitutes (Bala, 2016). In the Medieval period flourished the profession under royal patronage. Since the 1850s the practice of sex work has been changed to criminalization. Simultaneously, it has become a necessary evil during the period of the British to satisfy the sexual desire and to make Indian women available for soldiers (Kotiswaran, 2001). In the modern era, sex work exists in every state of India, and Kamatipura which is located in Mumbai is considered the largest red-light area in Asia. There are about 3million prostitutes in different places in India (Bhardwaj, 2000). Girls from Japan, Arab, Russia, Sri Lanka, Bangladesh, and many places work in India as prostitutes (Bala, 2016).

In India, with the implementation of legalized status to the profession of sex work, the lives of sex workers will change. Their place in the society will be recognized not as a discriminated or excluded group but rather as a professional group of legitimized sources of income. Earlier, being invisible in the society they were deprived of the basic human rights provided by the Constitution of India. As a citizen of India or as a legitimate professional group, they can enjoy the rights and privileges of the Indian Constitution. Before the verdict of the Supreme Court of India on 26th May 2022 India's legislation, The Immoral Traffic (Prevention) Act, "defines prostitution as the sexual exploitation or abuse of persons for commercial purposes". There was no legislation in India to treat women disappropriately in Indian society or the sex industry. Sex for money or others was not legal in India but carrying prostitutes within 200metres of a public place is considered illegal (Gothoskar and Kaiwar, 2014).

In India, sex work is always viewed as a serious social issue that needs to be eradicated though it can be traced from the Brahminical period of 1500 BC (Kotiswaran, 2001). Indian society views sex work as a type of social problem which breaks down the norms and customs of society. The Indian Government doesn't categorize this industry as a part of labor statistics (Menon,1999). However, instead of focusing on the eradication of sex work as a social problem, emphasis should be given to mitigating the problems of sex workers in India. And for this the role of the Indian Constitution and its judicial system is prominent.

Legislation of sex work and the lives of sex workers- The legal protections for sex workers will make their personal and professional lives easy and calm. The recent verdict of the Supreme Court of India will bring progressive changes to their social, economic, psychological, and physical health. It will help the sex workers to access basic human rights as a part of society. The international community also emphasis on human rights after the Second World War to develop and secure human personality by humanity. These universal declarations of human rights are available to every human being. Sex workers, being a naturalized group of individuals can also pursue basic human rights through the recent verdict of the Supreme Court of India. As human beings, their social and civil human rights, political human rights, economic human rights, and cultural human rights are made available to them.

Social and civil rights: Under Article 21 of the Constitution of India, every person in this country has the right to lead a dignified life. To all the States and Union Territories, with the provisions of Article 21, directions are issued for promoting conditions for the sex workers to live with dignity. This right will recognize the sex workers with equal respect and help to lead a meaningful, complete, and dignified life in society. The verdict also made urged on the consent and age of being involved in sex work. With these conditions, women trafficking and forced sex work can be controlled. Many instances have seen women and young girls being trafficked for sex work. Women trafficking is also noticed for export from India to various destinated countries. Now, if any woman is forcefully involved in sex work can be detected and released, under Article 23 of Prohibition of traffic in human beings and forced labor, with the help of the State Government as per the order from the Supreme Court of India. This initiative will help many girls to escape from this web and lead a life of their own. In the case of minor girls, it is seen that young girls easily become prey to the traffickers. For the export of sex workers, the girls used from 12 years of age and mostly 15 years which is a minor (Ahmed, 2014). The average age of the girls is fourteen and many are brought at pre-menstruation (Kotiswaran, 2001). Thus, this verdict also helps to rescue minor girls from this veil. In short, child prostitution can be stopped. The State Governments are also directed to survey all the protective homes under the Immoral Traffic Prevention Act, and if any adult woman is detained against her will can be processed for release within a time-bound (Kumar, 2022).

Further if a minor is found in a brothel or with sex workers, it should not be presumed that the minor has been trafficked. In such a case, if a sex worker claims that the minor is her child, appropriate tests should be done to determine her claim. If she is found correct, the minor should not be forcibly separated from his/her mother (Kumar, 2022). The Supreme Court verdict that no child should be separated from his/her mother on the ground of being in the sex trade. The mother-child relation is also taken as an important element for the proper up-bringing of a child. As per the verdict, no child is allowed to take forcefully from her/his mother because of her profession. This would help in the proper caring for better growth and development of the child. The mother-child relationship will become strong which can be seen as psychological support for both the mother and the child.

The Supreme Court of India has ordered the media houses not to reveal any images or identities of the sex workers. Emphasis is given to maintaining their dignity to develop their self-respect. The Supreme Court of India urged to issue appropriate guidelines to the Press Council of India. The Council must provide guidelines to the media to maintain the privacy of the sex workers. At the time of raid, arrest, or rescue operation, care should be given not to reveal any identity of the sex workers. Whether victims or accused, no media should publish or telecast any photos which disclose their identities. Under Section 345C, IPC Voyeurism is a criminal offense, which will be enforced against any electronic media for revealing any photographs of sex workers with their clients during rescue operations (Kumar, 2022). One of the most significant implications of the verdict is to unveil the privacy of the sex workers in case of any raid by police or other legal authorities. This would be helpful for them to focus on self-growth and self-esteem. In such a way they can have a respectful and worth living lifestyle.

The usage of safety measures for the health of sex workers such as the use of condoms should not be considered as a commission of any offense or seen as evidence of the same (Kumar, 2022). Because of this, they can access regular medical check-ups without any hesitation or without keeping their identity aside. As sex workers, they need proper medical attention for their as well as their clients' health. It helps them to prevent various sexually transmitted diseases as well as various communicable diseases. As a means of safety measure, they can carry contraceptive tools which are essential in their profession. Through these regulations, their social and civil rights are protected ranging from the right to life, security, privacy, family, freedom from slavery, inhumane torture, treatment or punishment, etc.

Political human rights: Sex workers are entitled to equal protection of the law under Article 14 and criminal law (Kumar, 2022). Sex workers will receive equal treatment in equal circumstances without any special privileges by the state. If the sex worker is an adult and engaged with consent, the police must not interfere and take any criminal action. As voluntary sex is not illegal only running a brothel is unlawful, the police should not arrest, penalized, harassed, or victimised any sex worker in any raid of a brothel. The legalization of the profession will reduce the rates of crime and violence on the part of sex workers. Earlier, as an excluded group, they are allowed to work in an outskirts area without any protection from the police which resulted in more violence in the hands of clients, pimps, or even the police. Now, with the legalization, they can seek protection from police and other law enforcement authorities. If they face any violence they can report and avail the of Article 14 of legal protection from the Indian criminal law. They will seek equal legal protection as the citizen of India within the territory. In case of any sexual assault faced by sex workers, every facility should be provided to the victims under the 'Act Criminal Law Amendment to Rape, 2013'. In addition, the police should not abuse them verbally or physically and must not coerce them to involve in sexual activity. If any complaint is made by sex workers of any criminal, sexual, or any other offense, the police should take it seriously and act under the act (Kumar, 2022). In such cases, the sex workers,

like other citizens of India will be offered emergency medico-legal care from any government or private medical facility. In case of reporting violence in the police station or any raid by police, sex workers used to face brutal behavior, violence, or even rape from the police and other officers. Without legal status, earlier, they became helpless which forced them to engage in sexual activities without their consent or became the victims of rape. This deteriorated condition of the sex workers will be changed with proper legal protection on them. Under Section 357C, Code of Criminal procedure, medico-legal care must be provided to victims or survivors of sexual violence (Kumar, 2022).

Through the National Legal Services Authority, the State Legal Services Authority, and the District Legal Services Authority, the State Governments, and the Central Government should facilitate workshops for educating the sex workers about their rights and legality of the sex work, and the rights, and obligations of the police (Kumar, 2022). Sex workers should be informed about the availability of the judicial system, how they can access and what are their rights to prevent harassment at the hand of traffickers or police. Here, the focus is also given to the awareness of the sex workers regarding their rights. The legal services authorities are advised to arrange workshops to make the sex workers aware of the obligations of the police as well as the rights of sex workers. By this, they can make use of the judicial system for their human rights relating to financial assistance, regular medical check-ups, education, and other benefits. It will also reduce the rates of crime and violence on them and help to lead a peaceful life.

On the part of the decision-making process on the issues of sex work, the State Governments and the Central Governments must include a representative of sex workers. In the planning, designing, and implementing of any policy on sex work or on reforming existing laws related to sex work or any law affecting them, their views must be included by the authorities or panel (Kumar, 2022). As a respectable professional group of society, the voices of the representative of the sex workers will be counted. Their problems in both working and non-working environments can be solved because of their existence in the decision-making process regarding the implementation of laws related to them. It will be helpful for them to take a stand on their own and seek help for their problems as sex workers. Through this, the problems of sex workers can be mitigated.

By becoming a part of the larger society, sex workers can access numerous social opportunities and resources. With active social membership and legal professional group identity, their social visibility will be increasing. As a citizen of India, they can also avail of all the legal and social privileges ranging from protection, legal-medico care as victim or violence survivor, and all the necessary capitals which are needed to maintain a dignified life.

Economic human rights: With the recognition of sex work as a profession, the Supreme Court of India entitled the fundamental freedom to occupation, and profession under Article 19 (1) to sex workers. Apart from these the verdict of the Supreme Court also helps them to develop their living condition. With legal recognition of the profession, they can charge a good amount for rendering service. The legal protection would be beneficial to raise their living as well as working conditions. They can expose to society, seek help in their time of need and make use of the services like education, health care, housing, etc., which are needed for improving living and working conditions.

Cultural human rights: The sex workers can also participate in the cultural life of the society. With the decline of social stigma, their social belongingness will also increase. The legalization will help to feel them as a part of the larger society. As a socially recognized group, they can take part in various social activities with a less social stigma. At any exposure to social functions be it a marriage reception or religious function, they would not feel socially discriminated group with

their legal identity or acceptability. Nevertheless, sex work is often stigmatized and seen as a social taboo in our society. Without moral and legal support of the profession, the sex workers are seen as a socially harmful community. They are regarded as a social evil and polluted group. However, this legal status would help them to get rid of the stigma in society. Support from the legal bodies makes them visible in mainstream society with the less social stigma. They can expose themselves in public places without any legal and social insecurity. As one of the professional groups, they can also avail the of social support through legal as well as social agencies.

From the privileges of the Constitution of India, the sex workers will be helpful enough to change their social, economic, psychological, and physical health progressively. It will increase their positive outlook on themselves and their lives. The indiscriminate attitude in the eyes of law and society toward the sex workers will be enough to empower, uplift, and enhance their lives with all their potential. The social visibility of the sex worker with the legal status of the profession also helps them to lead a life of delightful. They can enrich all the available opportunities and privileges

On the contrary, the legalization of sex work can also lead to social disorganization. Due to its legal status and social acceptability, anyone can adopt the profession. A girl or woman can easily involve in the profession for easy earning where skill or qualifications are not essential. Sometimes, this work may also become a harmful practice for society. It might hamper social institutions like family, marriage, etc. Involvement in sex work without the consent of family members may break the whole family. If women or girls are fonder of earning through sex work rather than any other skill-based profession the pace of development of the nation will be slow down. It impacts the whole nation as well as the society. The lack of educated or skilled people hampers the path of progressive change. Besides, multiple sex partners may affect their health along with their husbands. The affection in their marital relations may negatively impact the profession.

Conclusion- Every individual has the right to live freely. No one can discard a group of people from society just because of the profession they adopt. The restrictions on accessing various social privileges and services cannot be denied. The rights of sex workers should be protected as citizens. No one can exclude them from any development plans and programs or decision-making procedures. However, it is seen that legislations have been made by keeping in view the needs and protection of the sex workers where the emphasis is given to the protection of various human rights of the sex workers. It can bring a breath of fresh air to the sex workers. Being a social animal, a life of dignity is worth living. A sex worker could live her life with equal dignity and protection which would bring her confidence to expose themselves to society. By legalizing the profession of sex workers, the social status of the profession has been raised.

The social stigma attached to their profession and their children in society's eyes will erase by the verdict. Spreading awareness about their rights, the availability of the judicial system, and the obligations of the police will minimize the rate of crimes or violence faced by sex workers. Positively, equal attention from the legal authorities at the time of need will help them to lead a life just like the rest of the citizens of India. Being active members in the decision-making process, they can seek all the opportunities and provisions from the legal authorities of the country. They can raise their voices against any discriminating behaviors like unequal treatment, violence, humiliation, insecurity in both public and private places, and so on and seek social-legal support and protection by becoming a part of the decision-making process. It will also help them to normalize their profession in a healthy environment and also bring social security to their lives along with social support at the time of need. The compulsion of equal treatment by the legally enforced authorities will encourage them to take a stand against any abusive and violent behavior upon them.

In a nutshell, this change will be a progressive one for the sex workers. Now, our society must welcome this change and protect the rights of the sex workers rather than labeling the profession as taboo and identifying the sex workers with the social stigma. Without the support of society, the sex workers will not be able to come out from the darkness and assimilate into mainstream society. It is necessary to enlighten them about their problems. To make them inclusive members of society, we must communicate with them about their importance in society.

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