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Right to Equality, Dignity and Constitutional Morality: The Status of Sex Workers in India

Sarthak Mishra

*Law Student, 1st Year, LLB. (Hons.),
Jindal Global Law School, O.P Jindal Global University, Sonipat*

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Right to Equality, Dignity and Constitutional Morality: The Status of Sex Workers in India

ABSTRACT

The Indian Constitution¹ gives equal rights to all citizens under Article 14¹ and promises life and personal liberty under Article 21.² However, there is still a class of citizens being deprived of their basic right to dignity, The Sex workers of India. Sex workers face discrimination and exploitation in areas of special concern to them, such as health care, earnings for their services and obtaining financial credit.³ In India, sex workers are subjected to frequent harassment and police detention, even when, according to the Immoral Trafficking Prevention Act of 1986, sex work is in itself not illegal until practised independently and privately.⁴ Yet they are being subjected to outcast socio-legal treatment in a democratic nation. This situation has only become worse because of HIV/AIDS epidemic. For the general population, health care professionals recommend HIV tests in case of recurring fever, diarrhoea or an STD is present. For Sex Workers, however, HIV tests are recommended for every single episode of illness, which makes them feel stigmatised, marginalised and discriminated against based on the status of their health.⁵ A study conducted in the state of Andhra Pradesh indicated a significant association between custodial abuse of sex workers and increased risk of HIV transmission and inconsistent use of condoms.⁶ This paper revolves around the duty of the state towards sex workers of the country and it further dives into the violation of their basic human and fundamental rights, which are, although applicable as under Part III of the Indian Constitution, but on the ground, they are deprived of their basic rights, paper would also cover rights and conditions of Sex Workers in various nations and investigate the sustenance of constitutional morality in those countries. Furthermore, the paper argues for the rights of sex workers in India, backed by the Indian constitutional reasoning of why sex workers deserve equal rights like any human

¹ The Constitution of India.

¹ Constitution of India Art 14.

² Constitution of India Art 21.

³ Geetanjali Misra, Ajay Mahal, Rima Shah, Protecting The Rights of the Sex Workers : The Indian Experience, Vol 5 No 1, 93, 2000, <https://heinonline.org/HOL/Page?handle=hein.journals/harhrj5&id=94>.

⁴ Ibid.

⁵ Ibid.

⁶ Pragati Pawar, Need and Possible Consequences of Legalisation of Prostitution: An Indian and Global Perspective, 3 SUPREMO AMICUS 417 (2018).

in a society where constitutional morality prevails.

KEYWORDS

*Sex Workers, Equality, Constitution, Discrimination, Immoral
Trafficking Act*

LIVING CONDITIONS AND THE LIFE OF A PROSTITUTE ON DELHI'S GB ROAD

The Historic references of the act of prostitution could be found in the most ancient literary account, i.e., the Rigveda, where Jara and Jatini are portrayed as lovers of a married spouse. The regular payment of favours received either in cash or any other form, like a gift as a barter, distinguished the profession of prostitution from other relationships that are illegitimate⁷. There are references to prostitutes in several Hindu mythological tales known as "apsaras", and in ancient India, the devadasi system existed.⁸

GB Road is a stone's throw from New Delhi Railway Station. It is estimated to be a 10-minute walk to the red-light district if you take the station's Ajmeri Gate exit⁹. When a prospective sex worker enters Delhi, either voluntarily or it could be a "friend" duping her into the business of sex trade, alone or not, she heads to GB Road.¹⁰

It is not only a red-light district but also a busy wholesale market for sanitaryware, including washbasins, bathtubs, mirrors, and toilets. The area is lined with shops selling water pumps, generators, ATMs, a temple, a mosque and a primary school spreading across the locality.¹¹ In the late evening, the neon light makes it difficult to clearly see the *khotas*. Situated on the first and second floors.¹²

These kothas are typically around twenty feet wide and twelve feet high, with a length of about forty feet. While they generally follow a similar layout, minor variations exist depending on the preference of the Malik (owner who rented Khota)¹³ Each one usually includes a large sitting room, which serves as the first space the consumer enters. The kitchen

⁷ Ghosh, S. (2023). *Exploring Prostitution in Ancient India: A Subversion of Contraries*. [online] Dhaara. Available at: <https://dhaaramagazine.in/2023/01/15/exploring-prostitution-in-ancient-india-a-subversion-of-contraries/>.

⁸ Shazia Yousuf, *Legalization of Prostitution in India*, 4 INDIAN J.L. & LEGAL RSCH. 1(2022).

⁹ Austin Soofi, M. (n.d.). *Nobody Can Love You More - Life In Delhi's Red Light District*. Penguin Random House India, pp.36-53.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

and bathroom are located outside, while the balcony is the only open space that faces the road. Women often stand there to attract customers, alongside the balcony runs a narrow gallery lined with small, cell-like chambers with shuttered doors, where women entertain clients.¹⁴

The women do not have private rooms of their own. At night, the singing room is converted into a dormitory with the floor cleared and mattresses laid out for them to sleep when they are not working. Their personal belongings, money, saris, jewellery, make-up kits, family photographs and magazines are usually packed into luggage and stored in an attic space built into the false roof, known as *tekhana*.¹⁵

The attic also serves as a place of hiding. A woman may hide there to escape a violent or angry customer or during a police raid if she wishes to avoid being caught. In some cases, when a woman has been brought against her will or is a minor, the malik may force her to remain hidden in the *tekhana* during inspections, often under threat to prevent her from calling out for help.¹⁶

The men often appear loud and aggressive, while women come across as persistent in their attempt to attract attention.¹⁷ The street is coarse, filled with harsh abuses. Drunk individuals can frequently be seen lying in the corridors, while a group of customers gather near the staircases of the *kothas*, watching as the women gesture and call out, inviting them inside.¹⁸

This place is not just about the skin trade, but a trade of every essence of humanity boiled down to a human-depreciated circus of misogyny.

CONSTITUTIONAL & LEGAL ASPECTS OF PROSTITUTION IN INDIA

In Indian Constitution, there is no explicit mention of the rights of sex workers or, for that matter, loosely inferred under the seventh schedule of Article 246 of the Indian Constitution – List – II (State) and List – III (Concurrent) under Entry – 1 (Public order in aid of civil power), Entry – 6 (Public health and sanitation) of State list and Entry – 1 (Criminal law including all matter including IPC), Entry – 2 (Criminal Procedure, including all matters included CrPC).¹⁹

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Constitution of India Art 246.

These entries collectively indicate that while criminal aspects of prostitution fall within the concurrent list, local regulation and enforcement remain substantially within the domain of states.

Even if we broadly interpret these entries to attribute responsibility for safeguarding sex workers, the position becomes clear when we refer to Section 23 of the Immoral Traffic (Prevention) Act, 1956, which empowers the state government to make rules to carry out the purpose of the act. However, if we have to look at the example of GB Road in New Delhi, it reflects a lack of effective implementation at the state level, even though the legislation is enacted by the Union and the subject matter falls within both the state and Concurrent lists, thereby a shared responsibility between the Centre and State to ensure proper safeguarding.

Under Part III of the Indian Constitution, there are fundamental rights for all citizens, rights that no one can deprive them of, subject to reasonable restrictions. A few are key fundamental rights that *Sex workers* are still deprived of. Article 21²⁰ of the Indian Constitution – Right to life and Personal Liberty and Article 23 Prohibition of traffic in human beings and forced labour.²¹

In the case of *Budhadev Vs the State of West Bengal*,²² The court itself observed and affirmed that sex work is not a matter of privilege but a means of survival for many. The court duly observed that the problem of sex workers cannot be resolved in a very short time and will require long, patient effort. Their initial aim was to create awareness in the public that sex workers are not bad girls, but they are in this profession due to poverty. *No girl would ordinarily enjoy this kind of work, but she is compelled to do it for sheer survival.*²³

Most sex workers come from poor families, they are subjected to ill treatment by the owners of the brothels, they are often beaten, not given proper food or medical treatment, and made to do this degrading work. Probably, much of the money paid by their customers is taken away by others.²⁴

The above judgment only focused on an aspect of prostitution that is out of unwillingness, but it was a populist way of seeing sex workers as those who are wilfully in the practise of prostitution are being tabooed.

²⁰ Constitution of India Art 21.

²¹ Constitution of India Art 23.

²² *Budhadev Karmaskar Vs. State of West Bengal* (15.09.2011 – SC): MANU/SC/1093/2011.

²³ *Ibid.*

²⁴ *Ibid.*

It is pertinent to note that the right to life also includes the right to live a dignified life and not to be stigmatised by society, even when there is no explicit mention of *sex workers* under Article 15 of the Constitution, which prohibits discrimination on grounds of religion, race, cast, sex or place of birth.²⁵ In a broad horizon, they are still unprotected and stigmatised.

There is a social question that arises. Why is stigmatising only sex workers / Women and not their customers, alongside? Is it not possible for women to have bodily autonomy and have rights if their right to autonomy is being violated?

In the landmark case of *State (Govt. of NCT of Delhi) Vs. Pankaj Chaudhary*²⁶ where the Delhi High Court's Judgement was overturned by the Supreme Court of India and upheld the right of a sex worker who was raped by 4 men. It was further held by the Honourable Court that, "Even assuming that, prosecutrix was of easy virtue, she had a right of refuse to submit herself to sexual intercourse to anyone"²⁷

It was clearly stated in the judgment that every woman, even if she is engaged in prostitution, has the right to bodily autonomy and can refuse to engage in sexual intercourse.

Further, in the case of *Lawrence ET AL V.s Texas*²⁸ The US Supreme Court has observed that the question is whether the government must give formal recognition to any relationship that homosexual persons seek to enter.²⁹

The Court further observed that the issue related to two adults who, with full and mutual consent of each other, engaged in sexual practices common to a homosexual lifestyle. The Court declared that the Petitioners were entitled to respect for their private lives and that the State could not demean their existence or control their destiny by making their private sexual conduct a crime, for their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without the intervention of the State.³⁰

It is important to note that bodily autonomy has been recognised by various courts around the globe, in the case of *Lawrence v. Texas*, though focused on the right of a homosexual couple, the underlying statement

²⁵ Constitution of India Art 15.

²⁶ *State (Govt. of NCT of Delhi) Vs. Pankaj Chaudhary and Ors.* (30.10.2018 – SC) – MANU/SC/1236/2018.

²⁷ *Ibid.*

²⁸ *Lawrence Et Al Vs Texas* (06.26.2003 – USSC) – MANU/USSC/007.

²⁹ *Ibid.*

³⁰ *Ibid.*

in the judgement was “*Two adults with mutual consent*”, the situation where there are two adults and the presence of consent, the state shall not intervene in the life of such consenting adults even if it is a homosexual relationship.

In the case of *Gaurav Jain Vs Union of India*,³¹ the Court refused to discriminate against the children of prostitutes any differently and further accommodated them to make them closer to society.

Part IV of the Indian Constitution lays down the directive principles of state policy. However, as per Article 37, the provisions contained in this part are not enforceable by courts but are fundamental principles in the governance of the country³². As under Article 39(f), children are given opportunities and facilities to develop in a healthy manner and in conditions of both freedom and dignity and childhood and youth are being protected against exploitation³³. In the unorganised brothels of India, there is already an established taboo and environment that is unhealthy as a workplace, as Mayank A Soofi states in his Non-fiction book “*Nobody Can Love You More -Life in Delhi Red Light District*”³⁴ A mother (Sex Worker) tells her daughter, ‘*Ek din tu bhi randi banegi*’ (One day you, too, will become a whore) was “*Randi, tujhe main jhaapad mar doongi*” (You whore, I’ll slap you).³⁵ The family dynamic of a prostitute’s home is simply contrary to the provision of the directive principle of state policy, which further empowers the argument for the state’s control and regulated brothels, where rights, accountability and consent prevail.

On 8th November 2014, a proposal was put before the Supreme Court’s constituted panel. It was a PIL filed by Bachpan Bachao Andolan in 2010 seeking a curb on child trafficking.³⁶ A two-judge Supreme Court bench consisting of Justice Dalveer Bhandari and Justice AK Patnaik asked Solicitor General, “When you say it is the world’s oldest profession and when you are not able to curb it by law, why don’t you legalise it?”³⁷

It was one of those key incidents when the Judiciary recognised the fact that the law is not able to perform its function. It was further added that, nowhere in the world, legislation has successfully managed to stop the sex trade and legalising it would allow authorities to “monitor the trade,

³¹ *Gaurav Jain vs. Union of India & Ors.* 1990 Supp. SCC 709.

³² Constitution of India Art 37.

³³ *Ibid.*

³⁴ Austin Soofi, M. (n.d.). *Nobody Can Love You More - Life In Delhi’s Red Light District*. Penguin Random House India, pp.96.

³⁵ *Ibid.*

³⁶ Pragati Pawar, *Need and Possible Consequences of Legalisation of Prostitution: An Indian and Global Perspective*, 3 SUPREMO AMICUS 417 (2018).

³⁷ *Ibid.*

rehabilitate and provide medical aid to those involved".³⁸

The latest 2026 judgement in the case of *Prajwala v. Union of India & Ors.*³⁹ The Supreme Court significantly re-enforces the constitutional rights of sex workers and clarified earlier legal complexities. The court laid down dos and don'ts for the enforcement authorities, along with establishing that voluntary sex work among consenting adults is not illegal; further, police cannot mandate forced rehabilitation.

The judgement is a progressive step towards recognition of sex work and establishing rights of sex workers; this endeavours towards the ideology of the Supreme Court bench consisting of Justice Dalveer Bhandari and Justice AK Patnaik's comment about legalisation of sex work during the hearing of a PIL filed by *Bachpan Bachao Andolan* in 2010.

INTERNATIONAL PERSPECTIVE ON PROSTITUTION

The ideology dominant within the United Nations (UN) is that prostitution is a form of exploitation, which should be abolished.⁴⁰ In the context of Japan, during a law round table discussion, it was said that prostitution is more narrowly discussed than we do in our discussion of prostitution; it is said that "It is bad to sell sex for money", but sex buying sex for money is not just sexual intercourse but stripping for money and offering sexual services, then why is only selling sexual intercourse illegal?⁴¹ The Prostitution Prevention Law was passed in 1956. In 1956, Japan ratified the *Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution for others*⁴² The factor involved here is that they needed the prostitution prevention law to pave the way domestically to ratify the convention.⁴³

Japan's licensed prostitution had received criticism at every international conference and Japan abolished the licensed system. In the case of Dominica Republic and Colombia, approximately 500 women travel to the island to work in government-regulated brothels.⁴⁴ Their presence on

³⁸ Ibid.

³⁹ *Prajwala v. Union of India & Ors.* MANU/SC/0603/2026.

⁴⁰ Doezema, J. and Kempadoo, K. (1998). *Global sex workers : rights, resistance, and redefinition.* New York, N.Y. ; London: Routledge., Chapter 2, Alison Murray, Debt-Bondage and Trafficking : Don't believe the hype, (pp 51-64).

⁴¹ Doezema, J. and Kempadoo, K. (1998). *Global sex workers : rights, resistance, and redefinition.* New York, N.Y. ; London: Routledge., Chapter 6, Junko Kuninobu, Rie Okamura, Natsumi Takeuchi, Mari Yamamoto, Masumi Yoneda, Midori Wada, Prostitution, Stigma and law in Japan, Pg (87-103).

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Doezema, J. and Kempadoo, K. (1998). *Global sex workers : rights, resistance, and redefinition.* New York, N.Y. ; London: Routledge., Chapter – 9, Kamala Kempadoo,

the island is regulated by the Immigration, Health and Police departments.⁴⁵ In Japan, we can see a shift because of global influence as a factor for countries and for Cuba, immigrants are the sex workers regulated by the state. In France, the state-controlled brothels were closed in 1946⁴⁶. The state of France acted the same as Japan, getting its license system abolished to ratify the UN Convention of 1949⁴⁷.

In the year 2019, Australia's Northern Territory became the world's third, after the State of New South Wales and New Zealand, to decriminalise sex work by passing the Sex Industry Act.⁴⁸ This led to protection of sex work and sex workers under the Anti-Discrimination Act, making the Northern Territory first in the world to provide such protection.⁴⁹ Many international bodies like the Joint United Nations Programme on HIV/AIDS (UNAIDS), the World Health Organisation (WHO), Human Rights Watch (HRW) and Amnesty International (Amnesty) have stated that sex work criminalisation contributes to violations of sex workers' human rights.⁵⁰

The question arises whether the issue post-implementation of the law removed the taboo around sex work and sex workers? Despite making alterations in the legal provisions, remarkable similarities still exist in the techniques used to isolate women involved in prostitution from the rest of the community.⁵¹ In Nevada, legalised prostitution operates in large towns outside town limits. Country ordinances generally exclude them from certain buildings and place a town visit curfew, even preventing them from having children or other family members nearby and prohibiting them from association (romantically – not only sexual transaction) with local residents.⁵²

The global sex workers' movement opposed the criminalisation of sex work; they argued criminalisation increases violence, stigma and discrimination against sex workers while decreasing their access to justice, health care and ability to work with dignity and without fear of

The Migrant Tightrope – Experiences from Caribbean, pg (124-138).

⁴⁵ Ibid.

⁴⁶ Doezema, J. and Kempadoo, K. (1998). *Global sex workers : rights, resistance, and redefinition*. New York, N.Y. ; London: Routledge., Chapter – 4, The Construct of Prostitutes and Clients in French Policy Debate, pg (67-81).

⁴⁷ Ibid.

⁴⁸ Chi Adanna Mgbako et al, A Roadmap for Sex Workers' Rights Reform: Lessons Learned

from Recent Legal Advancements, 29 BERKELEY J. CRIM. L. 103 (2024). pg. (106).

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Marcia Neave, The Failure of Prostitution Law Reform, 21 AUST. & N.Z. J. CRIMINOLOGY

202 (1988). Pg (6).

⁵² Ibid.

legal repercussions.⁵³ When we look at the issue from a bird's-eye view and take the example of Australia, the legislation served the purpose of decriminalising sex work but stigmatisation, which is non-enforceable but a sociological part of society, somehow remains unchanged.

CONCLUSION

In India and around the globe, it is a complicated yet symmetrical preview of how sex workers are treated across the world. There is always a question about women's choice, but it always overlooks the male domination when it comes to prostitution, when men are the primary customers.

In many countries, either there are no regulations, or if there are regulations, due to external geopolitical pressure, they have reverted to the license system of operating a legalised brothel. There is always resistance to questioning manhood, but always at the forefront to taboo the female sex workers. Many judgements have, from time to time, backed the need for legalisation of prostitution and even prescribed the guidelines protecting the rights of the sex workers; however, in countries like Australia where sex work is being regulated, the taboo of looking at sex workers as not a part of a normal Australian civic society remains pertinent.

It is crystal clear that having regulations would back the sex workers of India more than guidelines under judgments, but the taboo attached to sex work shall also need to be addressed. As quoted by Saadat Hasan Manto - "*Har Aurat Vaishya Nahi Hoti, lakin Har Vaishya aurat hoti hai, is baat ko hamesha yaad rakhna chahiye*"⁵⁴ (Every woman is not a sex worker, but every sex worker is a woman; we shall never forget it) This has a deeper meaning that suggests society looks at a prostitute as just a sex worker, but forgets the fact that she is a woman first, a human with rights and dignity.

⁵³ Chi Adanna Mgbako et al, A Roadmap for Sex Workers' Rights Reform: Lessons Learned

from Recent Legal Advancements, 29 BERKELEY J. CRIM. L. 103 (2024). pg. (114).

⁵⁴ Rekhta. (2026). *Powerful Quotes by Manto About the Lives of Sex Workers* | Rekhta. [online] Available at: <https://www.rekhta.org/prose/powerful-quotes-by-manto-about-the-lives-of-sex-workers> [Accessed 20 Apr. 2026].