



## UNIONIZATION OF SEX WORK IN INDIA

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### ABSTRACT

*This paper will be addressing the importance of unionizing sex workers in India. Moreover, the study will look into the sex industries of foreign countries that have policies to ensure the rights of the sex workers, the injunction of abuse against sex workers and ultimately creating a “healthy” sex industry. Further, this study will address the critical need to Decriminalize sex work, remove prostitution as an offense from the (Indian) Criminal Code, the need to establish that sex work is, after all, work and these workers are laborers who have the rights promised to every other laborer.*

### INTRODUCTION

Prostitution, the word itself leads to raised eyebrows, is ostracized in the daylight, and is considered illegal by night. The Indian society disassociates with the prevalence of prostitution by stating that it goes against the “culture” of India; prostitution was not underground or stigmatized in ancient India, as it can be inferred through the *Vedas* and the *Arthashastra*. The “Ministry of Women and Child Development” put forward a report which estimated a noticeable number of 3

million sex workers in India as of 2007; 35.4% of the sex workers were recorded to be under the age of majority, i.e., 18 years of age<sup>1</sup>. Contrary to popular belief, not all sex workers are trafficked or are forced by another person to perform sexual favors for potential clients. Many women are born into sex work and find no way out of the ostracized community; a sample of 3000 female sex workers found that 60% of them chose sex work out of extensive poverty and to support themselves<sup>2</sup>. While it is easy to form an opinion about them choosing this way of life, it is never possible for one to understand the reasoning without really being in their shoes.

The first legal provision given to sex work was SITA or “Immoral Trafficking (Suppression) Act, 1956” which allowed for the practice of sex work in private and not solicit her services in public spaces; the Act declares organized prostitution, such as brothels to be illegal<sup>3</sup>; and a woman can use her body for an exchange of consideration as long as she is doing it voluntarily. As a result of India signing the “United Nations Declaration of Suppression of Trafficking, 1950”, the “Prevention of Immoral Trafficking Act, 1986”, legislation was passed. This Act aims at limiting and eventually abolishing sex work in India. Though this might sound like an easy feat to perform in theory, practically the possibility of this would result in sour consequences. Due to the fear of prosecution, brothel owners create harsher work environments for

<sup>1</sup> The Immoral Traffic (Prevention) Act, No. 104 of 1956, § 2 (aa), INDIA CODE (1956)

<sup>2</sup> Jessie Walker, *The First Pan India Survey of Sex Workers* (April 2011)

<https://web.archive.org/web/20141129020343/http://jessiewalker.com/wp-content/uploads/2014/11/Pan-India-Survey-of-Sex-workers.pdf>

<sup>3</sup> *The State of Rajasthan v. Mst. Wahida, Rajasthan, (1981) RCC 42 (India)*



the sex workers, which goes against the Constitutional provision of the *Right to Live with Dignity* and the right to have a clean and safe workplace.

Sex work has been an ongoing debate for a very long period in India and around the world. It is a rocky subject dealing with multiple perspectives- human rights, feminism, exploitation, etc.- this paper will be addressing the subject of sex work between consenting adults and their rights under the perspective of labor laws and the importance of legal sex work contracts, while acknowledging and empathizing with the trafficked and abused. While sex is not the first preference of work for many, it is an unfortunate reality of many women in India. Just because it is considered as a “vice”, it cannot be forgotten that it is an ever-prevailing part of the Indian society. Decriminalizing prostitution can be the first step towards lesser incidents of violence aimed at sex workers. Considering India’s stance on sex work, sex workers are more prone to exploitation and abuse by law enforcement, more vulnerable to rapes, assaults, and murders; providing these women with an organized structure of work with legal contracts which state the number of work hours, health security and insurance can ensure that their basic rights are not being tarnished.

### I. SEX IS WORK PARADIGM

The concept of labor organizations for sex work arises from, the “sex is work” paradigm. The idea of treating sexual services has been debated and deliberated

upon for as long as the tension around the subject has been around. Certain groups of individuals, especially the sex work researchers, and the active participants of the movement of sex work internationally have noticed a critical need to be vocal in conceptualizing that sex work, after all, is a type of labor though it is not entirely understood in the mainstream and popular discourse. The position of sex work in the popular discourse, such as the public policy and policy debate has been entirely obscured by the inherent risks and exploitations occurring in this stream of work. These debates have been noticed to be especially popular in the feminist movements were feminists have shown their displeasure in prostitution and pushed towards anti-decriminalization of sex work. Here it becomes crucial to question the “feminist” movement itself as they do not comprise the entire demographic of feminists but rather those who put forward arguments about global sexual exploitation and the normalization of subordination of women ultimately encouraging violence channeled from the opposite sex. This analysis has been based on a minority of the street trade which comprises only 5 to 20 percent of a city’s sex industry.<sup>4</sup> This simplified approach in the analysis of the eradication of sex work and the industry does a poor job in advocating the multifaceted and complex institution of labor with diverse experiences. Though the recent research and publications have given sex work, the title of productive labor, most labor theorists depend on the not very recent analogy of Karl Marx on prostitution and

<sup>4</sup> John Lowman, Submission to Subcommittee on Solicitation Laws of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. SSLR, 38<sup>th</sup> Parliament, Monday, 21 February, 2005; Maloney, *The Challenge of Change*;

Frances Shaver, “Prostitution: A Female Crime?” in Ellen Adelberg and Claudia Currie, eds., *In Conflict with the Law: Women and the Canadian Criminal Justice System* (Vanacouver 1993), 153-173.



labor. Marx considered emotional labors such as prostitution as problematic and was noted to have commented: “*prostitution is only a ‘specific’ expression of the ‘general’ prostitution of the ‘laborer’*”<sup>5</sup>. His derogating comment and stigmatization lead to the creation of the “sex is work” paradigm primarily by the feminist labor theorists. Theorists such as Arlie Russell Hochschild have put forward an analysis based on emotional work to be incorporated as labor. Further, Wendy Chapkis argued that sex work is more than emotional work as Marx stated as it is just like any other work requiring satisfaction, control, and emotional labor- these observations have played a critical role in the progress of the rights for sex workers and elevating their status as labors. Though the dark side of the sex industry is very much prevalent, this study is focused on the shift in the societal perspective from sexual exploitation to sexual labor. The society must conceptualize the concept of “sex is work” to establish, maintain, and protect the rights of individuals in the sex work industry. Social acceptance plays a major role in creating legislation related to the organization and regulation for sex work.

## II. VIOLENCE AND VIOLATIONS AGAINST SEX WORKERS

Sex workers are exposed forays such as health and medical care, safety and violence, and inequality under the law. These issues require more attention than any moral objection against sex work. The abuse is not only limited to indecent clients but also extends to the authorities such as the

policemen. The violence against sex works is observed in many avenues, but the majority of it arises due to discrimination owing to the decriminalized nature and the conglomeration of sex work with exploitation or trafficking. There are over one million two hundred thousand (12,00,000) sex workers in India<sup>6</sup> and most of them face violence due to the negative perception that they are criminals and thus are not citizens. These sex workers are not only degraded, dehumanized, and stripped out of their identity but are also disowned by the nation due to their vulnerability and disadvantage. This has often been noticed to have led systematic violations of their human rights, majorly that is the right to live with dignity and the right to life<sup>7</sup>. By not protecting the extremely vulnerable, their right to equal protection and due process under the law has also been snatched away. Further, the stigma around sex work makes them even more vulnerable to violence by their families; the violence here is used as a tool to assert sexual control and normalize punishment for providing sexual favours for other men.

The stigmatization and the myths surrounding sex work has also led to the lack of acknowledgment by the police authorities. They have been noted to ignore the pleas of desperation by the sex workers when they are being subjected to commercial violence or family violence. These workers are not recognized and are suppressed to the point of invisibility. Sex workers have been noted to consider law enforcement as the most threatening institution. Police officers have been recorded to sexually assault, illegally

<sup>5</sup> Karl Marx, Economic and Philosophic manuscripts of 1884, trans. M. Mulligan (Moscow 1959)

<sup>6</sup> UNAIDS (2002) Technical Update Sex Work and HIV/AIDS, p.3.; UNAIDS (2009) Guidance note on HIV and sex work, p. 15.



detain and torture these sex workers; further, they are continuously subjected to sexual demands and verbal abuse and innuendos by the people in the position of authority to have access to speedy redress and other entitlements after arresting them under the provisions of IPC for 'public nuisance' and 'obscene conduct'.

The process of raid, rescue, and rehabilitation notice the most widespread human rights violation among the sex workers. Brothels are raided by police and NGOs to "rescue" the women and are put in rehabilitation institutions. Most of these rescues are highly abusive and violent in nature as these rescuers do not have any respect for the rights of the sex workers or the others just residing on the brothel premises. A research conducted by SANGRAM, an NGO, found that non-sex workers (family or neighbors residing in the place of activity) were also bundled up undressed in a van after a raid. The authorities have been recorded to abuse and torture the sex workers without any form of human considerations and degrading them to the status of mere objects. Sex workers have been humiliated by police officers by frightening them by verbal abuse and torturing them by putting chili powder on their genitals. Due to their already established title of criminals, their complaints against the legal enforcement have been forced to revoke.

## THE ROLE OF ORGANISATIONS AND UNIONS

The "Special Rapporteur on Violence Against Women" (SR-VAW) reported the poor job done by the way of rehabilitation and also gross human rights violations, accordingly, the Supreme Court stated that sex workers should not be forced to stay in corrective homes: "rehabilitation of sex workers who wish to leave sex work of their own volition and to provide conducive conditions for sex workers who wish to continue working as sex workers"<sup>8</sup> concerning article 21<sup>9</sup> of the Indian Constitution.

The role of unions and organizations becomes crucial while protecting the rights of these individuals. The SR-VAW and the UN Resolutions have come forward to notice the major concerns of abuse, violence, and medical issues such as HIV/AIDS.<sup>10</sup> The International Labour Organization (ILO) has highlighted the absolute need to make legal aid and medical aid easily accessible along with setting standards for workplace health and safety.<sup>11</sup> CEDAW Article 6, General Recommendation 19<sup>12</sup> states the vulnerability and the need for protection against any form of violence, including rape. Further, the committee has suggested methods to stop: "discrimination against sex workers and ensure that legislation on their

<sup>8</sup> Budhadev Karmaskar v. State of West Bengal (2011) 11 SCC 538

<sup>9</sup> INDIAN CONST. art. 21

<sup>10</sup> 6 Rasheeda Manjoo, Report of the Special Rapporteur on Violence Against Women its causes and consequences, Human Rights Council, (p. 6. Para 20) Twenty sixth session, A/HRC/26/38/Add. 1 and UN Economic and Social Commission for Asia Pacific (ESCAP) Resolution 66-10, Regional call for action to achieve universal access to HIV prevention,

treatment, care and support in Asia and the Pacific, 2010

<sup>11</sup> ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200), Geneva: ILO.

<sup>12</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19, Article 6. Adopted at the Eleventh Session, 1992, available at: <http://www.refworld.org/docid/453882a422.html> [accessed 14 December 2013]



right to safe working conditions is guaranteed".<sup>13</sup>

### INTERNATIONAL ACCOUNT

The Argentinian union "Asociación de Mujeres Meretrices de Argentina" (AMMAR) was created in 1994 to defend to protect the rights of the sex workers. The main focus of this union was fighting back against the oppression and abuse by the police authorities. AMMAR was held by the stigmatization and the imposition of the idea of sex workers having no rights but soon the union was affiliated by the "Central de Trabajadores Argentinos" (CTA) which is the "Argentine Workers' Central Union". With this affiliation, the union was able to fight back against violence and demand for acceptance, recognition, and legal equality. The affiliation also allowed the workers to have employment contracts, pensions, guarantees against exploitation, right to pay taxes, and also fringe benefits.<sup>14</sup>

### III. REGULATIONS AND LEGAL FRAMEWORKS

The "Immoral Traffic Prevention Act", in recognition with by the Section 370-373 of the "Indian Penal Code", is the main legislation addressing trafficking. However, the same framework and the provision of IPC criminalize sex work. Sex workers are greatly impacted by the laws relating to the soliciting of sex work in private and in public places. The ITPA not only places the solicitation of sex work in public places as an offense, but also gives the complete authority to the police officers and NGO's to raid and "rescue" the sex workers. This framework gives the magistrates to close and expel persons from

brothels, even if it is at their place of residence. The current legal frameworks in India conflate trafficking and sex work. Though there is a group of sex workers who are deceived and forced into sex work, there is a larger group who are in this industry just to make ends meet. Due to the extreme focus on the former group, the other groups' human rights and labor rights have been denied. It is not acknowledged that some women are in this industry in search of a better life and a better quality of livelihood. By denying to acknowledge sex work as labor and legally criminalizing it, there is absolutely no scope for creating regulations for their benefit. This means that there has been an utter denial of the right to safe environment and labor protection. Thus, in India, the first step is acceptance and change in legal frameworks to create a healthy sex industry with appropriate regulations.

### REASONING FOR REGULATIONS IN THE NETHERLANDS

In 1999, the legal frameworks on prostitution changed in the Netherlands. Prostitution was not illegal but organized prostitution such as brothels was considered illegal. The Dutch government gave the reasoning that the change in the legislation was required to exercise better control over the sex industry with strict regulations and licensing to ensure the abolition of trafficking of minors, immigrants, and the coerced in the industry. Another reason for this change was to improve the condition of work, bring in safety, and ensure the health of the workers. "Stichting De Rode Draad", a Dutch sex worker's organization commented about the importance of the change in the legislation.

<sup>13</sup> Ibid.

<sup>14</sup> Elena Reynaga, Violence against sex workers and the role of unions, 12(4) International Trade Union Rights, 3, 2005



This organization highlighted the improvements in acceptance, rights, freedom from abuse, freedom from discrimination, empowerment, and emancipation arising from this legislation and further benefiting the social relations, working conditions, labor relations, and lowering the stigma around sex work. This also meant that the legislation recognized and addressed the issue of occupational hazards such as transmitted infections like HIV, maternity benefits in case of a pregnancy, and providing social insurance. The Legislation put upon responsibility and accountability upon the sex workers and the brothel owners by making them liable if they fail to pay taxes, file for licensing, etc. By creating a standard of financial responsibility the Dutch government has ensured in not alienating a part of their population and rather has ensured in creating a healthy environment of inclusiveness. Ultimately, legislation means making the vulnerable minority visible, allowing them to voice their problems, needs, and concerns. With the change brought about in the legislation, sex workers in the Netherlands no longer live anonymously and have a “secret life”. This excludes them from stigma and social discrimination. Another Dutch Union for Sex works, Vakwerk, used the legislations to partner with trade unions to protect the rights of the workers and ensure the active participation of the policymakers in administrating the activity of the industry. FNV is s a large trade union which administers the labor issues in Varwerk and assists them in negotiations and creating contracts.<sup>15</sup>

<sup>15</sup> Marianne Jonker, Unionising sex workers in the context of regulation 12(4) International Trade Union Rights,5,2005

### **EMPLOYMENT CONTRACTS WITH SPECIAL REFERENCE TO CANADA**

A study conducted in Canada about the benefits of decriminalization of sex work, most of the answers, suggestion, and recommendations were based on basic labor rights, protections, and employment contracts. The majority of the suggestions were based on the need for employment contracts and gaining workers’ compensation from authorized organizations such as the “Workplace Safety and Insurance Board. Employment contracts were noted to be the most viable option to attain workplace rights. The only thing stopping sex workers to enter into employment contracts was the criminalized nature of sexual services. Canada took upon the example of New Zealand which decriminalized sex work in 2003. This revolutionary move of New Zealand established policies to protect the workers from health, safety, and occupational hazards. The main objective was to protect human rights and create employment contracts that detailed the working hours, wages, benefits, etc., while also having the complete freedom to restrain from providing any commercial sexual services when they choose to.<sup>16</sup>

Taking upon this example, Canada related the situation of the sex industry before the decriminalization; it was noted that even limited employment contracts were better than no contracts at all, an employment contract meant that the sex worker had protection from the employer as well as the client. The sex workers would not be compelled to meet unreasonable demands. A contract also meant that they would be able

<sup>16</sup> Van der Meulen, Emily. “When Sex Is Work: Organizing for Labour Rights and Protections.” Labour / Le Travail, vol. 69, 2012, pp. 147–167.



to attain loans, housing, and employment opportunities without any stigma, all while being open to negotiations.

In conclusion, labour organizations and employment contracts help in elevating the status of the utterly stigmatized when compared to envisioning a perfect utopian society free from sex work as it does more damage than good to a lot of sexual service providers around the world.

#### IV. INDIA'S STANCE ON PROTECTION OF THE SEX WORKERS RIGHTS

##### **ANCIENT AND COLONIAL INDIA**

Prostitution was a legalized profession in ancient India. The ancient accounts give evidence of the sex workers in India having agency and basic rights. To say the least, the ancient Indian society was tolerant of prostitution as even the epics, *Ramayana* and *Mahabharata* give examples of not only the existence of prostitutes but also the basic rights given. Later texts record the regulations surrounding sex work which detailed a hierarchy of prostitutes in ancient India. The lowest class of prostitutes were known as *Kumbhadasi*, followed by *Rupajiva* and the *Ganikas*.<sup>17</sup> The *Ganikas* were known for their beauty and intellect; they were educated and were respected by the King. A *Ganika* was treated like a government servant and she received fixed salaries from the King. The clients were held liable for the ill-treatment of the prostitutes and for not paying them for their services. With the introduction of British rule, toleration towards prostitution also began to decline. This was the beginning of the degradation of rights and the

dehumanizing of sex workers in India. During the Colonial rule, prostitution was institutionalized and brothels known as *chaklas* were introduced. *Chaklas* is the origin of the stigma surrounding prostitution, to say the least, the women in *chaklas* were ill-treated, abused, starved, and tortured by the soldiers. This soon led to the “Contagious Diseases Act, 1868”, this Act was the first to introduce the absolute denial of human rights among the prostitutes. The Act created wrong notions about the profession and portrayed a negative impression about prostitution in the society. The final nail in the coffin was the criminalization of sex work. Gradually, after independence, these colonial ideas were incorporated into the debates of the Constituent Assembly.

##### **MODERN INDIA**

After independence, India signed the United Nations “International Convention for the suppression of traffic in Persons and of the Exploitation of Women”, in 1950. Soon, India introduced its legislation, SITA, or the “Suppression of Immoral Traffic in Women and Girls Act, 1956”. SITA was tolerant of sex work, but this was a period of international debates about the social evil, that is prostitution. To accommodate the new scenario, SITA underwent amendments and was titled: “Immoral Traffic in Persons Prevention Act, 1986” (ITPA). The major changes in the amendment were the replacement of ‘suppress’ with ‘prevent’ and the scope going beyond ‘women and girls’ to ‘persons’. The Act still criminalized sexual services and specifically prohibited maintaining brothels<sup>18</sup>, detaining a woman for prostitution, and living off of the earning

<sup>17</sup> Yugank Goyal and Padmanabha Ramanujam, Ill-Conceived Laws and Exploitative State: Toward Decriminalizing Prostitution in India, 1077 (2015)

<sup>18</sup> Immoral Traffic (Prevention) Act, No.104 of 1956, sec. 3, INDIA CODE (1956)



of a prostitute.<sup>19</sup> The Act further provided geographical restrictions in soliciting the services. The ITPA is an anti-trafficking legislation it handles the issues of forced prostitution and remains silent upon prostitution by choice. It is not only a vague law but also used as a mechanism that empowers the police to implement these vague laws to exploit and abuse the sex workers.

## **VIOLATIONS**

### ***BY AUTHORITIES***

As per the ITPA, a major part of rescue is “rehabilitation”, but in the name of rehabilitation, these sex workers are relocated to homes that have inhuman conditions, lack of sanitation facilities, no proper food, and total confinement from their family and the outside world. An instance in Kerala was recorded where the sex workers were incarcerated in mental hospitals<sup>20</sup>, another instance was the Dombarwada raid in Maharashtra evicted over 250 sex workers from their residences and were prevented from entering their own homes.<sup>21</sup> By giving total power to arrest and evict the sex workers the State has failed to do its duty to protect and respect the life of the vulnerable and the stigmatized.

### ***BY MEDICAL PROFESSIONALS***

The stigma and discrimination around sex work have deep-rooted influence as even the medical professionals, who take an oath to not discriminate and provide their services whenever they can, refuse to do so accounting to the nature of work of these

women. Sex workers are shamed and humiliated due to which they refuse to disclose their occupation while seeking treatment. To avoid the burden of humiliation, they deter from seeking medical treatments, making their conditions worse. They are discriminated, overcharged and in situations, are sexually exploited by the medical professionals.

### ***BY MEDIA***

The right to privacy is unfortunately a major violation being faced by the sex workers. The medical health facilities violate the confidentiality clause and the media captures the women after the raid in their detention facilities to glorify the story of the raid while essentially humiliating and violating their rights. These images and videos that the media captures, puts the sex workers at a greater risk by the family and also by those in the position of power, who can threaten the sex workers into providing favors for them.

### ***DOCUMENTATION***

An immediate issue of concern is identifying and documenting the sex workers. The stigma related to their profession stops sex workers from procuring documents to access entitlements. A survey conducted in Delhi in 2009 observed that only 20 percent of the five thousand sex workers were registered to have a voters’ card. The lack of documentation means that there is a lack of housing, ration cards and are excluded from the Public Distribution Systems. SR-VAW observed that the lack of identity leads to increased chances of violence against the sex workers.

<sup>19</sup> Immoral Traffic (Prevention) Act, No.104 of 1956, sec. 4, INDIA CODE (1956)

<sup>20</sup> Immoral Traffic (Prevention) Act, No.104 of 1956, sec. 6, INDIA CODE (1956)

<sup>21</sup> Violations faced by sex workers in India, Joint Stakeholders Submission (9.20.2016)

[https://www.upr-info.org/sites/default/files/document/india/session\\_27\\_-\\_may\\_2017/js9\\_upr27\\_ind\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/js9_upr27_ind_e_main.pdf)



The Supreme Court had recommended the Central and State governments to record and provide identity cards to the sex workers but the critical barriers attached to the stigma make the implementation more difficult.

#### V. SUGGESTIONS AND CONCLUSION

The major issue of concern in India affecting the rights of sex workers is the conflation of sex work with trafficking while drafting laws. It is critical to ensure that the anti-trafficking laws do not encroach upon the human rights of the sex workers. There must be a clear differentiation in legislations while addressing consenting adults, non-consenting adults and children to ensure equity while administering justice. Rather than violent approaches, organizations and collectives must ensure to use alternative methods of fighting against trafficking while ensuring not to disrupt the daily profession of those who are consenting to it.

The next step would be decriminalizing sex work intending to create a more accepting community. It is critical to repeal laws that impose restrictions on consenting adult sex workers. Further, sex workers must be incorporated in labor organizations and employment contracts to ensure safe working conditions and to protect themselves from any kind of violence.

To fully acknowledge violations against sex workers, it is of grave importance to shut down the system of compulsory detention and rehabilitation. A major way to bring about change is by referring to the experiences of sex workers while making policies affecting their rights along with providing access to the justice system.

As noticed in the case of New Zealand, Argentina, Canada, and the Netherlands,

unionization, and employment contracts are possibly the only best ways to tackle the major issues surrounding the problems faced by sex workers.

In conclusion, sex work is real work that requires recognition as labor. To ensure basic workplace safety, it is of the utmost necessity to associate sex workers to labor organizations. Further, it must be acknowledged that the sex industry is diverse and has multiple experiences, this makes it even more crucial to implement careful distinctive legislations. Due to the extreme diversity, it is only appropriate to begin at the grass-root level and build up with activism, unions, and employment contracts for sex work. With these implementations, it will become easier to identify the concerns and the needs of sex workers while protecting them and the rights guaranteed to them.

Large scale participation to advocate for the rights of the sex workers is essential to fight against the age-old stigma surrounding the profession. While it might be years or even decades for the Indian Penal Code to remove sex-related services as an offense, it becomes the duty of the community as a whole to acknowledge the basic rights of another individual to influence social attitudes and policymakers.

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