



ROLE OF HUMAN ACTIVISTS IN PROTECTING THE HUMAN RIGHTS OF SEX WORKERS POST COVID -19

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ABSTRACT

Even though India is a signatory to various international peace accords on the rights of women and has a constitution that prohibits discrimination and exploitation by gender or race, it has neglected to acceptably ensure the human rights of women, especially those of sex workers. During the Covid-19 pandemic, which has uprooted the lives of hundreds of thousands of daily wage workers, sex workers are also heavily affected by the wrath of Covid-19. With the sex work industry going almost completely standstill, sex workers have not been able to avail the basic monetary and medical assistance which is essential for survival in a lockdown. Through the course of last year and early 2021, establishing a solid plan for marginalized communities still has not seen the light of day. Petitions after petitions have been filed but anything concrete with a basis of trust and welfare has not come forward.

INTRODUCTION

In India being a sex worker is not explicitly laid down as an offense. There are notable

exceptions such as living off of the earnings of a sex worker, running a brothel, being a cause of public nuisance for sex work which has been criminalized by the government through The Immoral Traffic (Prevention) Act, 1956.

Even though our literature has depicted many prostitutes like Chandramukhi and Rajyalakshmi as women of very high character sex work as a vocation has always been looked down upon in our society. The basic human rights of one too many sex workers have been neglected due to this stigmatization of the profession. People in this particular field are subjected to series of injustices and inhuman behavior caused to them purely based on of generalized tainted reputation of the occupation even if it is chosen unwillingly. Unfortunately, the legal system can not be depended upon as historical rulings related to the rights of sex workers have showcased how the personal biases of judges impact their judgments. Furthermore, these judgments also affect the reputation of the workers.¹ The Indian law system is yet to break out of the patriarchal mould when giving judgments that involve sex workers.

However there have been categorized instances where judges have decided cases of right violation of sex workers with sound legal reasoning instead of analysing in terms of it being a supposed moral turpitude.

Covid - 19 is a reason of exponential growth in the economic vulnerability of those

¹ State of Maharashtra v. Madhukar N Mardikar (1990), stated that, "the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her

person against her wish. She is equally entitled to the protection of law. Therefore, merely because she is of easy virtue, her evidence cannot be thrown overboard."



involved in sex work despite it already being a cause of contention due to the stigma surrounding it of sex work demands physical contact, which is being strictly avoided in Covid-19 times.

Even though the government has come out with schemes to distribute ration amongst these poverty stricken workers the situation is still dire as many are left high and dry due to lack of mandatory documents like ration card , Adhaar card etc.

How much ever the law is vague on sex work as a vocation, the primary law dealing with the status of sex workers and the law which puts restrictions on prostitution is The Immoral Traffic (Prevention) Act, 1956.

DISREGARD OF THE RIGHTS OF SEX WORKERS DURING PANDEMIC

The pandemic has exposed the inequality of social support systems worldwide, revealing the gaps that further marginalize vulnerable people.

While sex work or sex workers are being pushed underground or out of society, the pandemic has resulted in ill-treatment, harassment, and violent behavior against sex workers. The emergency measures implemented to “flatten the curve” and lookout of communities during a context of COVID-19 have impacted the health and safety of sex workers, and also excluded sex workers from community aid.

- Right to freedom from hunger

Many Interviews with sex workers during the pandemic reveal how hunger has devastated them.

A woman in an interview mentions that she and her four-year-old son have not eaten properly for the last two months, and another complains of her son fainting out of weakness due to hunger. The obligation of the state to protect the right to freedom from hunger is protected by Article 11 of ICESCR² (The International Covenant on Economic, Social and Cultural Rights), multilateral treaty.

- Right to health / obligation to control and prevent the pandemic

Many sex workers also suffer due the the unavailability of masks, hand sanitizers and sanitary napkins and basic necessities. The unavailability and government’s inability to supply basic precautionary necessities during this pandemic may be a direct threat to the sex workers’ health. It also violates the government’s obligation to “control” and “prevent” the pandemic under Article 12(2)(c)³ of ICESCR in these areas where there is more risk, especially to women and children. Sex workers especially in South and East Africa experience systemic human rights violations and outright violence, discrimination, ill-treatment, harassment at the hands of the police at an alarming rate. For example, In Kenya, incidences of ill treatment or violence of the pandemic have

² . The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of

this right, recognizing to this effect the essential importance of international co-operation based on free consent.

³Article 11 (2) (c) - The prevention, treatment and control of epidemic, endemic, occupational and other diseases.



risen up to three times than before pandemic, consistent with the Kenya Sex Workers Alliance.

- As a result driven by the extreme financial need, sex workers are more likely to comply meet with clients even if they do not feel comfortable with or negotiate safety measures, like the use of condom. Sex workers have also reported that clients are more likely to bargain over prices or push the bounds for the services to be performed without protection since COVID-19 measures were adopted in their countries.

CONSEQUENTIAL THREATS TO THE LIVELIHOODS OF SEX WORKERS

Post pandemic sex workers have been categorized as the informal of the informal sector in the Economy. Being the marginalized informal sector one would expect it to fall back on the safety nets of social protection measures exercised by the government but in actuality, they have been neglected in every aspect.

COVID-19 seemed to have exhausted the livelihood options for a majority of sex workers as many claims it to be the only vocation they are competent of and many resist change. Post pandemic sex work as a whole industry collapsed thus leaving sex workers in a penniless state.

While the pandemic has proven to be a double-edged sword for most of the middle-class population, for sex workers their profession is the only source of sustenance for themselves and sometimes their whole family.

During the lockdown, the demand for sex work went down, compelling sex workers to take loans. As per the data, more than 85% of the sex workers have taken advances and more than 98% of them have taken it from their brothel proprietors, supervisors, and moneylenders, exposing themselves to additional double-dealing. It's seriously disturbing that 87% of laborers expressed that even before the pandemic struck, their livelihoods were not adequate to help themselves or their families. Key components like the absence of schooling and employable abilities force them to rely upon one type of revenue; i.e., acquiring through sex work and they stay caught in the endless loop.

PIL FILED TO SAFEGUARD THE RIGHTS OF SEX WORKERS

- In May 2020, a PIL was recorded in Delhi High Court looking for directions to the Center and the AAP government to make strides for insurance, social security, and welfare assistance measures, including food, convenience and medications, for sex workers and the LGBT community during the lockdown. The petition looks for compelling measures to give a monetary guide, food, sanctuary, and medication to sex workers and LGBT community individuals in Delhi to guarantee their survival during the lockdown implemented to contain the spread of COVID-19 and to comprise a committee for the safeguard of sex workers. Petitioner and Advocate Anurag Chauhan said the PIL was petitioned for the government welfare schemes of sex workers and individuals from the LGBT community who don't have access to financial aid during the lockdown. The request additionally looks to seek the experts to find ways to exclude them from paying



rent and to set up a different helpline to advise them and address their issues during the time of the pandemic. The applicant said he had given a representation to the Delhi CM and the lieutenant governor on May 2, featuring the complaints of the sex workers and the individuals from the LGBTQ++ community, however, no actions were taken. and there are no points of interest or subtleties found in regards to give off any monetary aid and plan to sex workers and LGBTQ++ community individuals by the Delhi government, despite the exercise of due diligence by the petitioner and other people in the society & the plea said. Delhi High Court dismissed this petition on the grounds of poor research and “no thought”

OTHER SCHEMES FORMULATED TO AID THE PLIGHTFUL CONDITION OF SEX WORKERS

- In October 2020, the National Human Rights Commission released a set of guidelines⁴ that helped in alleviating the status of sex workers so that they can experience financial relief. The guidelines are as below⁵:
- ★ Sex workers may be recognised as informal workers and be registered so that they are able to get worker benefits.
- ★ Temporary documents may be issued that enable sex workers to access welfare measures such as PDS as many do not possess ration cards or other citizenry documents.
- ★ Recognize that sex workers in non-traditional living arrangements are prone to domestic

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https://nhrc.nic.in/sites/default/files/Advisory%20on%20Rights%20of%20Women_0.pdf

violence from partners and family members. Encourage Protection Officers to act on reports of violence against women.

- ★ Ensure access to free testing and treatment for Covid-19 and also provide soaps, sanitizers, and appropriate masks to all sex workers at different localities.
- ★ Ensure access to health care services, especially for the prevention of HIV and other sexually transmitted infections and their treatment.
- In September 2020, the Supreme Court gave a week's time to all the states to respond on providing sex workers with free ration and asked the Centre if something could be immediately provided to them in the exercise of its powers under the National Disaster Management Act.

- An application submitted by Durbar Mahila Samanwaya Committee under the Supreme Court said, "After the cross-country lockdown was declared on March 24, 2020, there was no work and no pay. During April and May, sex workers rationed through their small investment funds or took advances at excessive loan fees to endure. Most were reliant upon the foundation given by people and philanthropic associations." The Committee addressed by senior advocate Anand Grover said, "Food is the most basic need of sex workers as an assessment led in five states of Andhra Pradesh, Karnataka, Maharashtra, Telangana, and Tamil Nadu shows that just 52% of 1.2 lakh sex workers are getting proportion through the public distribution system (PDS). The circumstance

⁵ <http://naco.gov.in/>



is different urban communities is surprisingly more dreadful." according to the National AIDS Control Organization (NACO) of the Ministry of Health and Family Welfare, there are over 8.68 lakh female sex workers in the nation and 62,137 Hijra/transsexual people in 17 states, of which, 62% are engaged with sex work.

CONCLUSION

Sex workers in India have never been considered Class I citizens. The mere basic ask for representation was denied to them during the Covid-19 pandemic and in a world with the “new normal”, their means to an end i.e. sex work as a profession, is compromised. Thousands of women, transgender women, adolescent girls, adolescent mothers, etc are struggling to cope in the world of “new normal” and the failure of our administrative system has forced them to pay the price of it. In the home of an average sex worker, the woman is a breadwinner. However, the pandemic made an average sex worker come face to face with the reality of their profession, that reality says that without physical contact, their profession ceases to exist. We have seen multiple welfare schemes and programs being launched the past year for the marginalized farming communities, daily wage workers, etc, but none of those initiatives directly addressed the plight of sex workers. It’s an administrative and political failure that the biggest democracy has failed to ensure basic facilities to its marginalized communities.
