

“RIGHTS OF SEX-WORKERS” CONCEPTUALIZED IN PERCEPTIONS OF TWITTER-SPACE

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Abstract

Women involved in sex-work have always been subject to sexual violence and harassment. They are generally not treated fairly and are forced to live in a state of helplessness and deprivation. This puts the responsibility of the government to adopt the ‘Rescue’ technique but also incorporate ‘Rehabilitation’ model for integrating these women in the mainstream society. It is unfortunate to note that the existing legal paraphernalia in India entailing Contagious Diseases Act, 1964 or Devadasi Abolition Act, 1947 or even the Immoral Trafficking (Prevention) Act, 1956 only aim at either recognizing the existence of sex-work in the country or ‘rescuing’ of women involved in sex-work or prostitution by force. The element of ‘Rehabilitation’ of such women and their children has never been the cause of concern for the legislators or the society. The present research aims to analyze the Sex Workers (Rehabilitation and Social Security) Bill, 2015 and look into the societal perceptions and the reason for it not being implemented for long.

I Introductory framework: Varied perspectives on sex-work

THE PITFALLS and anomalies under the earlier statutes were categorically identified by human rights activists and legal scholars across the country. Poonam Mahajan (Member Parliament from Maharashtra) was instrumental in bringing up the Sex Workers (Rehabilitation and Social Security) Bill in the year 2015. The Bill first time evolved the concept of ‘Rehabilitation’ but sadly it has not been implemented yet. The present paper also discusses the recent order of the Supreme Court pulling up the Central Government for not implementing the welfare legislation. The research aims to draw a comparison between the mindset of the legislators and public opinion and gauge their coherency.

The paper is divided into two major parts: Part I deals with the problems of sex-workers in India, legal paraphernalia, deficiencies in the same and order of the Supreme Court of India in a hearing on May 4, 2023. Part II analyzes the perception of general public in the *Twitter space* and also their reactions on the recent Supreme Court order. This study has been conducted through a detailed content analysis of the public reaction

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to the position of sex-workers and prostitution on the micro-blogging site Twitter with the help of the qualitative software tool *NVivo*.

The Feminist discourses across the globe have been ardently advocating for the emancipation of sex-workers and their assimilation in the mainstream of the society but these ideas lack coherence in protection and promotion of these women in domestic jurisdictions.¹ The present article does not delve into popular Feminist perspectives concerning Sex-work but only encapsulates two dominant ideas: first, advancing anti-sex work approach and the other focusing on the concretization of sex-work as a well-established profession.

The first approach has been practiced worldwide in tackling the issue of sex-work. This approach is “Rescue approach” and views sex workers as victims. The proponents of this viewpoint do not allow for legalization of sex-work.² These feminists consider men as perpetrators and women therefore, need to be rescued from this seemingly never-ending loop. The proponents of this theory focus more on governmental intervention in the rescue and rehabilitation of women involved in ‘sex-work’.

The second approach, however is marked by much more liberal ideas concerning the status of ‘sex-work’ as a full-fledged profession in the post-modern times. Many countries across the globe have legalized prostitution and sex-work like Brazil, Mexico, Ethiopia etc. The pro sex-work feminists support legalization of sex-work subject to governmental rules and surveillance.³ The researchers are in no position to deliver a value judgment on the two predominant perspectives but the Indian legal paraphernalia has been influenced by the former standpoint.

Based on the pilot study conducted by the researchers, following hypotheses have been constructed to be tested:

- i. The condition of women involved in sex-work is dismal in our country and they are constantly subjected to sexual violence and harassment in different forms.
- ii. The existing legal paraphernalia in India does focus on the ‘Rescue’ element but not on the ‘Rehabilitation’ of sex-workers in the country.
- iii. There is a direct relationship between contemporaneous reforms in law and public perception concerning the status of sex-workers in India.

1 S Ahuja, *People, Law and Justice: A casebook on Public Interest Litigation*, (Sage Publications, 2018).

2 M Khemchand, *Beyond Prostitution: Justice, Feminism and Social Change*, Canadian Women Studies Ltd, 2016.

3 CW Dugger, “Calcutta’s Prostitutes Leading the fight on AIDS”, *New York Gender Studies*, 2019.

II Legal and Social facets of sex-workers in India

Social facets

Sex work can be voluntary or involuntary in nature. However, around 80% of the women involved in sex-work across the globe are forced or coerced into it, they do not enter the same out of their own volition.⁴ Usually, sex workers enter the profession when they are minors, thereby depriving them of their wilful consent making them easy prey to sexual violence as well as economic exploitation. This can be authenticated by a survey conducted in 2017 among 300 brothel sex workers in and around Sangli district highlighted that more than 74% of the respondents entered the profession at an early age of 15 years or less and about 21% of the respondents entered at 10 years or less.⁵ Women and girls of an impressionable age are often duped into sex-work in lieu of money and face instances of sexual violence and exploitation.

Different researches that have been carried out reflect that young girls are forced into prostitution or sex-work by their own kith and kin, usually for monetary gains. This has also been substantiated by quite a few studies, including one which estimated that around 45% of sex workers (hailing from Nepal) in and around Mumbai’s brothels had been either abducted or sold by their own family members and or men from their village.⁶ Sometimes, children are forced into sex-work at an early age. In a study conducted by UNICEF India, it was estimated that around 21% of the sex-workers in our country are children and adolescents.⁷

Sex-workers are also subject to constant sexual violence and harassment and even detention by the police. The Immoral Trafficking Prevention Act of 1986 categorically states that sex work is not illegal per se if it is practiced privately and independently. The said activity becomes a criminal offence only when it is practised at a public place. Therefore, the police do not have the power to detain sex-workers until and unless, they are indulging in sex-work at a public place. Still the studies conducted show that every year more than 30,000 women are arrested on account of sex-work and prostitution.⁸ These women are usually released after sometime in exchange for money and other obscene favours.

Sex workers are also stigmatized in availing medical facilities or other healthcare consultancy services and even obtaining loans from banks and other financial institutions. In a recent interview conducted during the COVID pandemic, several

4 Khalid and M Chand, *Women in Prostitution: Comparative analysis between Developing and Developed countries*, Amnesty International, 2017.

5 A Sen, *India: Economic Development and Social Opportunity*, (Oxford University Press), 2018.

6 K Mukherjee, *Flesh Trade*, Darbar Mahila Samanwaya Committee, 2019.

7 John Dan, *Sex-workers in India: Data speaks for itself*, UNICEF India, 2018.

8 Ajay Darbar, “Sex Work and Arrests”, National Crime Records Bureau, 2019.

respondents at GB Road area discussed the inhuman treatment meted out to them while availing healthcare facilities, breaching their right to privacy and security.⁹

Sex-workers are also exploited by usurping their money. The panderers usually end up appropriating the earnings of the sex-workers leading them into abject poverty a state of depravation. One of the surveys conducted in and around Sangli region of Maharashtra, it was estimated that about 25% of the women living in brothels are forced to turn over more than half of their earnings to the brother owners or other intermediaries and other panderers.¹⁰

It is highly unfortunate that sex-workers do not find adequate access to formal banks and credit institutions, due to lack of awareness and, the social stigma associated with sex-work. More than 75% of sex-workers are illiterate, as highlighted in a study conducted in Calcutta's Sonagachi district in the year 2018.¹¹ Low-literacy levels also contribute to their harassment and lack of inclusivity. Taken together, the poor financial conditions, the high levels of illiteracy, slavery-type conditions of work (especially among child sex workers), discriminatory practices of medical professionals, and potential harassment by law enforcement agencies all play a role in the present condition of sex workers in India.¹²

Legal facets

Indian legal regime has partially recognized sex work in our country, if not legalizing the same. The proponents of this approach (majorly post-modern feminists) believe that civil liberties and political rights of the sex workers can only be protected when the same is legalized and this, in turn would lower down exploitation as well¹³. However, the legislature cannot ignore the moral perceptions of the Indian society and they are aiming to maintain an equilibrium between Immorality and Right-based approach.

The Indian legal system dealing with sex-work entails three major statutes: The Contagious Diseases Act, 1864, Devadasi Abolition Act, 1947 and the Immoral Trafficking (Prevention) Act, 1986. The statutes are explained below:

The Contagious Diseases Act, 1864

The Act was brought by the British administrators at the time when more than 17% of the people in pre-independent India either fell prey to syphilis or other venereal disease. This statute provided for a 'Contagious Prevention Scheme'. This scheme

9 H Jamil, *Plight of women in GB Road area*, (Kat Katha Publications, 2019).

10 Renuka Singh, *The ignored ones: Sex-workers in Maharashtra*, UNICEF India, 2018.

11 Nirmal Roy, *Women in Sonagachi: Beyond help and prayer*, (Ghor Publications, 2017).

12 N Dutta, *STD/HIV intervention with sex workers in West Bengal*, National AIDS Control Organization, 2018.

13 R Adhikari, *Rehabilitation of victims of sex-work*, Women Rehabilitation Centre, Delhi (2019)

empowered the medical officers to curate a detailed list of women involved in sex-work around the vicinity of government established hospitals in order to ensure that all the sex-workers in the vicinity get tested for venereal diseases and their movement could be restricted, in case of need.¹⁴ Sex-work was recognized though there was no explicit legal sanctity attributed to the same.

Devadasi Abolition Act, 1947

Devadasi system practiced in Southern India married young girls to a ‘deity’ and the same was considered sacrosanct. After marriage, these girls submitted themselves completely to the functioning of the temple. However, after the beginning of 19th century the condition of Devadasis changed completely. The reasons were two-fold: Invasion of temples by Mughals and others; changing contours of social morality. The Devadasi culture was despised and two specific measures were brought by:

- i. The Hindu Religious and Charitable Endowments Act, 1927 made the practice of dedicating girls to temples punishable.
- ii. Devadasi Abolition Act, 1947 prohibited women from dancing in temples or religious occasions. This legislation also provided platforms for rehabilitation of such girls and women and even allowed them to marry. This legislation had limited operation and applicability. It did not restrict brothel owners or trafficking in any manner.

Immoral Trafficking (Prevention) Act, 1986

This was the first comprehensive statute to explicitly talk about immoral trafficking of women and their rescue thereof. The statute does not declare ‘sex-work’ as illegal, instead makes brothel operation and public solicitation a punishable offence. (Section 3 of the Act that imposes a penalty) The statute penalizes people who utilize the earnings of women involved in sex-work (section 4). Prostitution, being carried out at a public place and has been made punishable. (section 7) This Act implicitly allows sex-work in private or indoor places. The Act discusses the ‘rescue’ part of the women involved in sex-work but there is very little mention of rehabilitation of such women. The Act has a provision for Advisory Body and empowers Special police officers in rescuing women and minors from sex-work. (section 13). There is a provision of Protective Homes (section 21) but no provisions to take steps for assimilation of sex-workers in the social mainstream.

Contemporary developments

The government has followed the ‘rescue’ oriented approach and the surveys conducted in various parts of our country ranging from Sonagachi in West Bengal to Sangli

14 S Deakin, National Archives, *available at* : Sex%20worker/Contagious%20act.pdf. (last visited on July 30, 2023).

district in Maharashtra and even GB road area in the capital city, Delhi reflects ineffectiveness and inefficiency.¹⁵

As reflected in the table above under the Immoral Traffic (Prevention) Act, 1956 prostitution *per se* is not an offence, instead practising sex-work within 200 metres of any public place is deemed punishable. This is believed to be one of the biggest anomalies. If sex-workers are to be integrated in the mainstream society, this assimilation requires stronger commitment of the government agencies and a new statute. This view was echoed in *Budhadev Karmaskar v. Government of West Bengal*¹⁶ which recognized life of dignity for women involved in sex-work and their children under the cannons of article 21 of the Indian Constitution. The court set up a panel in 2011 to discuss “conditions conducive for sex-workers to live with dignity in accordance with the provisions of Article 21 of the Constitution”.

In the above-stated case, the court acknowledged that right to live with dignity extends to every individual in the country including sex-workers. They have always been subject to harassment and discrimination by the society. The court felt that reform is needed to uplift sex-workers in the Indian society. In the present case, the petitioner approached the court seeking protection and promotion of human rights of such women. The petitioner contended that the existing statute only focuses on the ‘rescue’ of women from sex-work but does not talk about their rehabilitation in the mainstream society. The court acknowledged the gravity of the situation and constituted a Panel for delving into three major areas:

- i. Conducive working conditions of women involved in sex-work
- ii. Effectiveness of measures against trafficking of women and minors for sex-work.
- iii. Rehabilitation of women who are rescued from forced sex-work and their integration into mainstream society.

The court also recommended the government to come up with a comprehensive legislation to overcome the hurdles faced by sex-workers in the Indian society. Following the mandate of the Supreme Court of India, Sex Workers (Rehabilitation and Social Security) Bill, 2015 was tabled in the Parliament.

Sex Workers (Rehabilitation and Social Security) Bill, 2015

The new bill was introduced in order to remove the difficulties posed by the existing legal system. The new Bill focuses on the integration and assimilation of sex-workers in the society. The constant discrimination and harassment need to be curbed and the new bill aims to achieve the same.

15 C. Higgins, Prostitution, Legalization and Decriminalization, UNICEF India.

16 Criminal Appeal no. 135 of 2010.

The salient features of the Bill are:

- i. No discrimination against women involved in sex-work or their children.
- ii. Healthcare facilities for sex-workers.
- iii. Legal aid services to be provided to women involved in sex-work.
- iv. Adult Literacy Programs to be started to educate such women.
- v. Provision for Rehabilitation of women involved in sex-work to be curated
- vi. Financial security to be ensured to some extent by the government

Some changes suggested by the new bill are explained below:

- i. Comprehensive Interpretation Clause:* The new bill proposes a comprehensive interpretation/definition clause. Section 2 includes terms like ‘Abuse’, ‘Discrimination’ and ‘Skill development’. This is an acknowledgement or recognition of discriminatory practices and the Bill aims to curb them.
- ii. Quality Healthcare:* The Bill has an important aspect that obligates requisite authorities to ensure quality health services to the sex-workers. Owing to indignity and humiliation, they have been denied basic medical treatment. Section 13 of the proposed bill mandates establishment of special centers to run various tests like HIV and ensure that sex-workers receive basic medical facilities at all times. Section 14 provides for Health Insurance schemes for all the sex-workers so that barrier free healthcare is available to sex-workers.
- iii. Access to justice:* Section 15 of the Bill provides for free-legal aid and accessibility of the legal system to the sex-workers.
- iv. Constitution of Central and State Boards:* The Bill discusses the constitution of Central as well as State Boards to protect and promote the rights of sex-workers in our country. The Boards have been entrusted the following functions:
 - i. Identification of sex-workers newly recruited in brothels
 - ii. Interaction with sex-workers regularly so as to frame welfare measures for them.
 - iii. Implementation of the Rehabilitation Plan in case of rescued sex-workers.
 - iv. Inquiry into any complaints filed by aggrieved sex-workers encountering sexual violence, harassment or discrimination.
- v. Comprehensive Education Program:* The Boards, so constituted are also given the responsibility to ensure education for sex-workers. They are expected to facilitate and further the Comprehensive Education program. The Boards are expected to provide vocational training to the sex-workers for better assimilation in the mainstream society.

vi. Financial Security: The Bill also proposes to grant small term loans to sex-workers so that they can further their entrepreneurial skills, if any. Ensuring financial security is one of the most important aspects involved under the proposed Bill.

Major anomalies

- i. Ambiguous process of Rehabilitation:* The new Bill proposes to introduce a process for Rehabilitation of sex-workers by integrating or assimilating them in the mainstream society. However, no systematic process of Rehabilitation has been laid down under making the concept hazy and obscure. This ambiguity may also lead to inaction on the part of governmental authorities, once the bill is implemented.
- ii. Replacement of Protective Homes:* Protectives and Corrective Homes under the earlier Act have been done away with. However, the new bill does not talk about the constitution or creation of any new homes for sex-workers which can be regarded as a retrograde step in the empowerment of such women.
- iii. Hazy Education Plan:* The provisions for education have not been detailed making the idea weak. No levels of education have been described or laid down in the proposed bill.
- iv. Discrimination in medical clinics:* Constitution of special clinics for sex-workers may pave a way for discrimination and ostracization. The clinics are mandated to focus on testing which hurts the sentiments of sex-workers by undue stress on HIV.

On May 4, 2023 the Supreme Court of India passed an order directing the Central government to speedily implement the Sex Workers (Rehabilitation and Social Security) Bill, 2015 which is pending for more than eight years. It is time that the government should take concrete steps in order to not only ensure 'rescue' of sex-workers in our country but also their rehabilitation and integration in the mainstream society¹⁷

II Social media on women involved in sex work

Twitter generated responses and reactions

This part of the paper essentially focuses on the public opinion generated on a microblogging site called "Twitter". The researchers analysed the public opinion on this site. The researchers adopted the Qualitative research software known as NVivo (QSR International 2022) which helps in analysing qualitative data involving words, documents and even images. After the Supreme Court's order passed on May 4, 2023, the researchers analysed the Tweets registered from May 5, 2023 to June 5, 2023 about opinion of people about women involved in sex-work.

¹⁷ J Durjoy, STD/HIV Intervention Program Calcutta, NACO Publications, 2020.

Qualitative analysis: Detailed procedure

The tweets were captured with the help of NCapture, a feature of the NVivo software. A total of 229 tweets were downloaded (within the pre-determined time frame) and imported into NVivo for the purpose of analysis. The tweets retrieved from the Twitter space were maintained in an excel sheet. The tweets were replaced with the name, email ID and other details of the tweeters.

Thematic analysis- findings

The second step was the creation of well-defined themes through Auto-Coding method. An entire table of themes and sub-themes was constructed and became a part of the meta-data. Thematic analysis was then carried out and the following themes were recorded:

- i. Labour which appeared under 59 tweets of the metadata and sub-themes included labour rights, labour exploitation, informal labour and big labour.
- ii. Rights which appeared under 46 tweets of the metadata and sub-themes included labour rights, migrants rights, indigenous rights and sex-workers’ rights.
- iii. Labour Rights appeared under 39 tweets of the metadata.
- iv. Sex-workers which appeared under 34 tweets of the metadata including sex-workers rights, sex-workers access and sex-workers sufferings etc.
- v. Raise Visibility appeared under 29 tweets of the metadata.
- vi. Systematic Factors appeared under 14 tweets of the metadata.
- vii. Labour Exploitation appeared under 14 tweets of the metadata.
- viii. Challenges which appeared under 13 tweets of the metadata included legal challenges and social challenges.

Findings of thematic analysis indicate that words like ‘Labour’ and ‘Rights’ appeared 59 times and 46 times respectively in the tweet meta-data indicating that the public in the Twitter space have advocated for labour rights of the women involved in sex-work and prostitution. It can therefore, be inferred that the society is taking a step forward and the law needs to be changed so as to equip sex-workers with labour rights which would require legalizing sex-work in our country.

The term, ‘sex workers’ included sub-themes like ‘supporting sex-workers’, ‘sex-workers rights’ and ‘sex-workers sufferings’ highlighting that the public perceives that sex-workers are constantly subjected to harassment and sexual violence. It also reflects that the society is aware of the sufferings of these women and somewhere ready to at least talk about their rights. It can therefore, be safely inferred that the society should follow rights-based approach. Lastly, the term ‘Challenges’ appears for 13 times across the meta-data. The challenges that people talk are generally legal challenges which

proves the second hypothesis of the researchers. It reflects that the legal system is inadequate. The government, therefore needs to come up with an effective legislation so that rehabilitation of sex-workers and their assimilation in the mainstream society can be ensured.

The present study indicated that sex-workers are devoid of labor rights and therefore, it is the first and foremost responsibility of the government to ensure that their labor rights are not violated, in any manner whatsoever. To take an example, the word 'Visibility' implied that the women involved in sex-work are not visible part of the society and need to be integrated or assimilated.

Furthermore, words like 'Support' and 'Allies' indicated that the society needs to accept them wholeheartedly and should raise our voices against the injustice meted out to them on a daily basis. The support can be provided by various non-state actors like non-government organizations, who specifically should work for the betterment of the sex-workers and their rehabilitation in the society.

Sentiment analysis- findings

Sentiment Analysis was carried out to gauge the perception of the target audience on the issue of sex-workers and classified them into four major genres:

- i. Positive indicating affirmation of the people towards the rights of sex-workers
- ii. Negative meaning rejection of an issue altogether
- iii. Neutral standpoint indicating state of indifference towards the rights of sex-workers
- iv. Mixed standpoint indicating partial acceptance and partial rejection of issue of sex-workers

People who were affirmative of the rights of sex-workers in our country, wanted to raise their voices against the injustice meted out to them. They even highlighted the problems in the existing legal system concerning sex-workers. Few people outrightly rejected the discussion on integrating sex-workers in the mainstream society. Some people are in a state of indifference when it comes to rights of women involved in sex-work and prostitution. They do not explicitly agree to their assimilation and integration, and they do not even reject such an idea straightaway. There is a certain group of individuals who are in support of rights for sex-workers in our country but are hesitant to raise their voices explicitly after labeling it as a taboo. They usually prefer to discuss these matters in a superficial manner without concretizing anything owing to social pressures and obligations.

It was quite saddening to note that only 25% of the people (in the Twitter space) vociferously advocate for the rights of women involved in sex-work and prostitution. This represented the callous behavior of the society and no state of enterprise among

the people. Whereas, around 28% of the people outrightly rejected the proposition concerning the integration of sex-workers in the mainstream society. 40% of the population was completely indifferent to the solutions of this issue thereby distancing themselves from the same. Lastly, 7% of the people had ‘mixed reactions’ on the issue in question.

III Conclusion and findings

It is a well-established fact that situation of all the sex-workers living in various parts of the country is dismal. Even though, many NGOs have been working in this direction but without government support they are not able to achieve desired results. The passing of Sex Workers (Rehabilitation and Social Security) Bill, 2015 has also become quintessential in the contemporary times due to the ineffectiveness of the previous statutes as already discussed in the present research. The legal set-up needs to look beyond the traditional perspective of the society following ‘Rescue’ approach of sex-workers and needs to incorporate ‘Rehabilitation’.

The findings of the research regarding three hypothesis is discussed below:

In the present paper the pitiable condition of sex-workers in the country gets proved theoretically by discussions about legal and social facets in Part I. Innumerable surveys conducted by state and non-state actors indicate the perils of sex workers in the country starting from discrimination and harassment to health issues. Part II also identified themes like sex-workers support and sex-workers suffering highlighting their dismal state in the Indian society.

The second hypothesis discussing the inclusion of rehabilitation of sex-workers in the Indian society is also proved by both theoretical discussion and qualitative analysis. The Sex Workers (Rehabilitation and Social Security) Bill, 2015 explicitly talks about the Rehabilitation of sex-workers. Even though no concrete steps have been identified under the same, still it overcomes the anomalies of the previous statutes. The analysis of Twitter space found various themes revolving around legal challenges showing that there has been a disjunct between rescue and rehabilitation of sex-workers in the country, thereby proving our second hypothesis.

With respect to the third hypothesis, there was not enough evidence to show whether there is a direct relationship between actions taken up by the governmental authorities and perceptions prevalent in the Twitter space. This is so because the legislature has taken no steps to bring about a robust legal framework. This indifference has percolated down into the society. Even if society is indifferent the government needs to be proactive to take care of marginalized communities. The Twitter space advocated the labour rights of sex-workers in the country thereby, recognizing sex-work as a full-fledged profession. This reflects that society is ahead in providing social space to the sex-workers. The authorities are hiding behind the so-called morality that seems to be long abandoned. Therefore, it is proved that Sex-workers are subject to sexual violence and

harassment across the country. The legal structure cannot effectively deal with the problems of sex-workers and needs to be revamped. It is not substantiated whether there is a direct relationship between government action and public-perceptions. Recently, Supreme Court published a Handbook on Combating Gender Stereotypes which replaced incorrect language by preferred terminology. Under it, prostitute is to be replaced by 'Sex-worker' and Child-Prostitute is to be replaced by 'Child who has been trafficked'. This handbook aims at sensitizing the people relating to many gender stereotypes prevalent in the society and need revamping.