



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Unionisation of Sex Workers: The Rights of Stigmatised and Marginalised Group

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Received 18 April 2022; *Accepted* 03 May 2022; *Published* 09 May 2022

The work of sex workers has always been attached to moral opprobrium and will ruffle the beau monde for as long as it continues. While this conundrum is yet to be resolved, the need of the hour is to understand the myriad of issues faced by sex workers. The elementary problem is the legal standing of sex workers in India. While the law prima facie does not constitute prostitution to be illegal, the ancillary aspects of the law make it inevitable to carry out the work without breaching the law. Moreover, the work of sex workers does not fall under the ambit of unionization and acts as a hindrance to avail basic health facilities putting their lives at risk. This paper seeks to analyze the requisite changes that are needed to be made in the legislation regarding prostitution, the unionisation of sex workers, and the conducive manner in which it needs to be done to have an impact in reality.

Keywords: *sex workers, unionisation, decriminalisation.*

INTRODUCTION

An archetypal perspective is that the work of concubines is against the cultural dictum of a civilized society; the idea of selling one's body in exchange for commercial gain is unscrupulous. Prostitution objectifies a woman's body and is exploitative in nature. This

Nordic perspective is opposed by stating that a woman is not selling her body but merely a service. It is remuneration for the economically disadvantaged. The legal perspective is precarious as well. According to the Immoral Trafficking (Prevention) Act, while the Act of prostitution is not punishable per se, soliciting and obtaining any commercial gain and consideration for the Act is prohibited and punishable.¹ Therefore it creates a de facto prohibition even though prima facia there is none. The legitimacy of people engaged in professional work allows them to avail the benefits of the same in the forms of a safe working environment, legitimate wages, safety from violence, and remedy in circumstances of exploitation. Since the work of sex workers lacks this legitimate recognition, they are deplored from the same benefits, though they are more vulnerable and susceptible to such issues. Consequently, unionisation of sex workers will aid in voicing out their grievances and go beyond social norms to fight for their interests and demand representation through reformations in the law.

DECRIMINALISATION: REFORMATIONS REQUIRED

Decriminalization can be defined as the process through which a particular activity would cease to be deemed as criminal or illegal. Though the law states that the Act of prostitution is decriminalized in India, they are more impediment than advantageous in nature. Decriminalization in the true sense would amount to legislation that is absent of any penalties in respect to the work of sex workers and the decriminalization of the activities auxiliary to prostitution such as soliciting, earning, brothel-keeping, etc. that would be substantially beneficial to the sex workers. Transformative laws that ensure safety and health facilities, wages and employment rights, access to labor and reproductive rights most importantly, rights against violence and exploitation are a necessity. This kind of regulatory rights and targeted legislation will ensure that sex workers can be entitled to dignity and protection.

The New Zealand laws on sex workers can be studied in the same regard and incorporated into the Indian legislation. New Zealand passed the Prostitution Reform Act (PRA) in

¹ Immoral Trafficking (Prevention) Act, 1956, ss 3,4

2003.²The law has not only decriminalized the penalties imposed on sex workers but also all the activities pertaining to the same. The legitimacy of the legislation may not have dispelled the social stigma and discrimination faced by sex workers but considerably improved the standard of life of these women since the passing of the PRA (2003). Evidence suggested that most sex workers felt safer and were more likely to report violence to the police.³ Moreover, the legislation helped in reaching out to women who worked in such an industry and educating them about safe sex, and creating awareness to reduce sexually transmitted diseases. Whether the stigma was felt by the general community, individuals, or institutions, it remained the most salient issue for sex workers. However, this sense of stigma was mitigated by legislation that recognized sex work as work, was bounded by the same laws as other occupations, and gave sex workers pathways to justice.⁴ Under decriminalization, sex workers can openly organize and support each other.⁵ Implementation of such kind of legislation will prove to be productive and progressive in delivering justice to those who are succumbed to economic instability and stigma.

UNIONISATION OF SEX WORKERS

The relationship between labour movements and sex workers has always been strained by the axe of the partially criminalised laws for sex workers. The taboos associated with sex workers are exceptional; the problems of organizing a union for sex workers are the same as that of informal sector workers, firstly pertaining to the fact that prostitution does not fall under the ambit of industry under the Industrial Dispute Act and there exists no well-defined employer-employee relationship.⁶ Moreover, the work of prostitution operates in secrecy in what is

² New Zealand Prostitution Reform Act, 2003

³ Gillian Abel, Lisa Fitzgerald, & Cheryl Brunton, *The impact of the Prostitution Reform Act on the health and safety practices of sex workers: Report to the Prostitution Law Review Committee* (Department of Public Health and General Practice, University of Otago, 2007) <<https://www.almendron.com/tribuna/wp-content/uploads/2018/08/the-impact-of-the-prostitution-reform-act-on-the-health-and-safety-practices-of-sex-workers.pdf>> accessed 13 April 2022

⁴ 'How Sex Work Laws are Implemented on the Ground and Their Impact on Sex Workers: Aotearoa New Zealand Case Study' (NSWP: *Global Network of Sex Work Projects*) <https://www.nswp.org/sites/nswp.org/files/sex_work_legal_case_study_-_aotearoa_new_zealand.pdf> accessed 13 April 2022

⁵ *Ibid*

⁶ Industrial Dispute Act, 1947, s 2(j)

infamously known as the red-light areas of India. The workers of these industries are predominately women, a group that is physiologically susceptible to exploitation. Therefore, sex workers in general not only face a social but even legal disadvantage. Sex workers also face a uniquely contradictory relationship with the state; sex workers are both partially criminalized and involved in large-scale state-led HIV prevention programs that rely on them to prevent an epidemic in the 'general population.'⁷ Though the formal organization of labourers is not permitted, a successful informal organisation of sex workers can be the Karnataka Sex Workers Union. The formation of the union took place when four women have arrested under the Immoral Trafficking (Prevention) Act, and the indiscreet exposure of the women in the media led to outrage. The Karnataka Sex Workers Union had a two-fold effect; it increased the organisational effort of the informal sector and created a cooperative relationship between NGOs and sex workers. The other was a more narrowed-down version of an organisation focused on a particular community of workers and responding to the grievances of that community alone, for instance, organising the HIV prevention programs, etc. For example, many sex workers do not possess ration cards or voter's identity cards because of difficulties in providing proof of address or harassment by government agencies.

Government health facilities, too, often discriminate against sex workers; KSWU, therefore, seeks to address some of these immediate concerns of its members and has provided over 500 sex workers, 88 with voter identification cards and 100 with ration cards, as well as supported sex workers in settling property and land issues, and helped them access old age and widow pensions.⁸ Some other areas where sex workers need protection would be labor and reproductive facilities, education, and childcare for the children of such workers. Very successful achievement of the KSWU is the 24/7 helpline number which assists women not only who are abused by police or customers but also provides immediate legal aid in these circumstances and provides timely solutions. The Karnataka Sex Workers Union is the epitome of how a community-driven union can make a difference in the lives of sex workers.

⁷ Gowri Vijayakumar, Shubha Chacko, & Subadra Panchanadeswaran 'As human beings and as workers: Sex worker unionisation in Karnataka' (2015) 6 (1) Global Labour Journal
<<https://mulpress.mcmaster.ca/globallabour/article/view/2297>> accessed 13 April 2022

⁸ *Ibid*

But such unions lack legal recognition and are not entitled to certain benefits such as the Employee Provident Fund or the Employees' State Insurance Act, 1948. Moreover, they lack the legitimacy to be able to partake in policymaking decisions and processes. In 2008, KSWU applied to the Trade Union Registrar (Karnataka) to be registered as a trade union. However, the application was rejected because sex work is illegal, and sex workers have no 'employer'. Such obstacles hinder the growth of organizations working to bring in change. A reformation in the legislation in order to legitimacy such unions will help fight the abhorrent abuse faced by such women.

A STEP FORWARD

The perception of sex workers as criminals, especially through peephole morality, has led to a systematic violation of fundamental rights. Non-adherence to the conventional stereotypical norms of a woman's chastity is not reason enough to deprive one of a life of liberty and dignity. A cohesive and comprehensive approach to realizing the human rights of sex workers is important. While there has to be a revision in legislation, as stated above in this article, certain measures can be implemented to bring in changes and ensure accountability on the end of the state and form unions.

OCCUPATIONAL FORM OF LABOUR UNIONISM

Sex workers are more often than not victims of arbitrary arrest and harassment. An individualistic approach to detain or resist such actions will provide only a temporary remedy. Instead of obtaining collective bargaining rights of a segment of the sex workers of a particular establishment, the practical solution would be to form a union at a national level with representatives from every area to form a great impact on such movements. An occupational form of labor unionism would indicate regulations within the industry by the employees of such an industry. While there are various instances wherein the problems faced by sex workers have come out to the forefront, they have often stalled and dwindled over time which is attributed to the few people who cannot create the same pressure of that large group.

Therefore, bringing the creation of a sense of identity and unity would be arduous in the long run, as it would bring in actual changes by these large pressure groups.

COLLABORATIVE GOVERNANCE

Collaborative governance is defined as a "governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus-oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets."⁹In the instances wherein there has been a failure in the reformation of laws, such kind of governance can be implemented. Collaborative governance in co-relation to sex workers and prostitution would be to involve them in the policymaking decisions that would directly affect them. A collaboration between sex workers, NGOs, and the government would bring the sensitivity and meaningful consultation required in policymaking. This could enable sex worker's rights organizations and their allies to expand their role beyond defending decriminalization and alleviating morality politics to an approach that involves the elaboration of design and aims to "clarify the kinds of measures that would be most effective in alleviating the problems facing the sector, such as stigma, violence, and exploitation."¹⁰

4 -POINT EVALUATION

New Zealand is considered to have progressive legislation that took place in four evaluation frameworks; while the socio-economic and the cultural dictum may defer from that of India, an outline of the framework could be implemented. Post decriminalization, the evaluation of the Act was also assessed, thereby creating a sense of accountability on the side of the state. The first task was to study how successfully the Act had impacted the lives of the sex workers and to what extent. This was done by conducting surveys on the number of sex workers, the

⁹ Chris Ansell & Alison Gash, 'Collaborative Governance in Theory and Practice' (2008) 18 (4) Journal of Public Administration Research and Theory, 543-571 <<https://academic.oup.com/jpart/article/18/4/543/1090370>> accessed 14 April 2022

¹⁰ Petra Östergren, 'From zero-tolerance to full integration: Rethinking prostitution policies' (*Demand AT*, 30 June 2017) <<https://www.demandat.eu/publications/zero-tolerance-full-integration-rethinking-prostitution-policies>> accessed 11 April 2022

impact of the Act, and a comparative revaluation of such reports in different areas. The second is a rehabilitation system for women who wish to pursue careers outside of the sex industry. In India, trafficking remains a persistent issue; while curbing the women being forced into the industry may be a herculean task, providing a way out for women who are forced could be achievable. A system of rehabilitation wherein not only are the women brought out of this system but also assisting them in a new beginning could be a way forward. Identification of locations where the business of prostitution is conducted and providing a certificate after all the criteria of legislation are up to standards is the third step. Lastly, to review the above process, complete the revaluation system. This type of balance and check system builds faith between the sex workers and the legislature and judiciary.

CONCLUSION

The relationship between sex workers and the legislature has always been on edge. The unionisation of sex workers can be a means to bridge the gap between the two. Through unionisation, sex workers have the freedom to go beyond the moral stigma and social norms and demand for representation that they are entitled to. The lack of empirical research and targeted legislation has led to the deplored state of sex workers. Through certain amendments and implementation of programs such as collaborative governance etc., substantive support could be provided, especially to a class of people who are downgraded by society and their financial circumstances. It is paramount to understand and differentiate that while women who are trafficked require rehabilitation, women who fully consent to work require representation. It is the duty of the state to ensure transformative justice that goes beyond the social stigma and safeguards the human rights of every individual.