

# Chapter 100

## Can Sex Workers Claim Human Rights in India?

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### ABSTRACT

*Human Rights by its origin and nature only advocate the welfare and well-being of all persons with equal treatment everywhere, it never discriminate towards any individual, class or group of people in any society. But Indian Governments at all level have failed to protect, the human rights even civil rights of sex workers. It covers problems of the sex workers and their children or child sex workers entered in sex trade by force & fraud but rescued from sex trade and advocates only claim of sex workers to live with dignity as they are also human being and have human rights. It shall focus on responsibility of government to make effective policy and for its good governance to provide justice to the sex workers and their children under the mandate of judicial directions. But this paper does not advocate demand of sex workers to encourage sex trade by any way.*

### INTRODUCTION

Supreme Court in *Budhadev Karmaskar v/s State of West Bengal* (2011), observed that:

*A person becomes a prostitute not because she enjoys it but because of poverty. A sex worker who has to surrender her body to a man for money obviously is not leading a life of dignity. A sex worker is surrendering her body to a man not because she loves it and respects him, but just for sheer survival. As Nancy says in Charles Dicken's novel *Oliwer Twist*, "you adopt or you die. Apart from that, sex workers are always in danger of*

*getting sexually transmitted diseases and they are often abused and beaten by the proprietors of the brothel and others.... Since they are entitled to live with dignity under article 21 of the Constitution of India, we are of the opinion that sex workers obviously cannot lead a life of dignity as long as they remain sex workers and their problems also need to be addressed.*

In generic term, human rights embraces civil rights, liberties, social, economic and cultural rights, but the idea of human rights is bound up with the idea of human dignity (Agrawal, 2010). "Human dignity" is the soul of human rights"

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(Verma, 2002). Dignity accords with justice and good society (Forsythe, 1991). Dignity can no longer survive where human beings are humiliated<sup>1</sup>. Human Rights being immunities indicate that there is a minimum guarantee that certain things can't or ought not to be done to a person against his/her will. Therefore human being by virtue of humanity ought to be protected against unjust and degrading treatment<sup>2</sup>.

Sex worker is popular term used for prostitute across the world<sup>3</sup>. In India different name have been used since ancient time like Ganika (their rights were protected by State during Maurya dynasty)<sup>4</sup>, Devdasi (Minor girls given, as a gift by their parents, to the temple to serve God as temple servant)<sup>5</sup>, Tawaif (Singing and dancing Girls during Medieval India)<sup>6</sup>. In this paper sex worker means the following sex workers:

- The sex workers who are in sex trade because of poverty but want to leave sex trade;
- The sex workers who are aged and want to leave sex trade to support their children;
- The sex workers entered in sex trade by force & fraud or sold by parents but rescued from sex trade;
- Child sex workers, rescued from such trade.

## **PROBLEMS OF SEX WORKERS**

### **Problem of Rehabilitation<sup>7</sup>**

Main problem of sex workers is of standard rehabilitation policy. Rehabilitation of rescued sex workers and their children is synonymous with detention in State run homes for indefinite periods. Viable economic alternatives are either non-existent or unavailable to sex workers on account of social stigma. In the name of rehabilitation the state is coming further atrocities against sex

workers. It is found in some cases, sex workers who were rescued by the police were locked up in one room without any food and water. They were so frustrated that they broke open the windows and escaped<sup>8</sup>. In Gujarat, in 2003 Bazaar<sup>9</sup> of sex workers were close down and evicted them overnight but no welfare policy/scheme was made to rehab them. Their children face discrimination at every sphere of society like in school for education, sports, cultural etc. Shri J.D. Seelam (2012), Member of Parliament and secretary general, forum of parliamentarians on HIV and AIDS lent support<sup>10</sup> to the idea that sex workers “must live with dignity, health and security, free of stigma, disease and any kind of violence.

### **Problem of Health and Medical Examination**

Studies show<sup>11</sup> that the most vulnerable sex workers are at high risk for suffering sexually transmitted infections, including HIV/AIDS. Due to social stigma, it is very difficult for them to reach with information and tools for protecting themselves and others. Law mandates<sup>12</sup> for medical examination of the persons, removed from brothels, for detection of sexually transmitted diseases, but Sex workers are forcibly tested for HIV and their results disclosed in open court. This is contrary to national policy, which requires consent, confidentiality and counselling for HIV test. As long as sex workers are not treated with dignity, there will not be improvement in preventing HIV. It is supported by the Universal Declaration on Human Rights document, which holds that “the highest attainable physical and mental health standards” are *basic Human Rights*. It is important to note that sex workers need access to comprehensive health care, including reproductive care. Shri Oscar Fernandes (2012)<sup>13</sup> said that sex workers health closely affects the health of nation. He stated that a decision must be taken to ensure that everyone is protected and assured safety.

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