

## PROSTITUTION: LAWS AND RIGHTS IN INDIA

\*Shivani

### ABSTRACT

*Prostitution considered as the oldest profession in the world. In India many times debates were made regarding legalization of prostitution as it is not completely legal in the country. This paper talks about the laws related to it, which we have in our country and the rights of prostitutes which are given and secured by different judicial precedents. As a whole paper mainly focus on the current situation of prostitution in India. And the paper concludes with that it is the duty of the state to secure and protect the rights of each individual.*

### INTRODUCTION

Prostitution in the most general way can be defined as lewdness of women for profit; the act or practice of women who allows any man who will to pay her price to have sexual intercourse with her. Prostitution was defined as, the act or practice of a female of offering her body to an indiscriminate intercourse with men in exchange of money or its equivalent.<sup>911</sup> In the case of *Carpenter v. People*<sup>912</sup>, it was held that, the word prostitute in its most general sense means the act of **setting one's self to sale, or of devoting to infamous purposes; it also means, what is in one's power that is:** the prostitution of talents or abilities; the prostitution of the press. In the case of *State v. Stoyell*<sup>913</sup>, it was held that, a prostitute is a woman who indiscriminately consorts with men for hire; similarly in the case of *Wilson v. State*<sup>914</sup> a prostitute was defined as a woman who has given herself put to indiscriminate lewdness; also in the case *Trent v. Commonwealth*<sup>915</sup>, a prostitution was defined as a woman submitting to indiscriminate sexual intercourse, which she solicits.

The Immoral Traffic (Prevention) Act 1956 in its section 2(f) when read with section 372 of Indian Penal Code 1860 says that prostitution is the act of the woman offering herself for indiscriminate sexual intercourse for hire whether in the return of money or in kind. In the

---

\* ICFAI University, Dehradun

<sup>911</sup> *People v. RICE*, 277 Ill. 521 N.E. 631,632.

<sup>912</sup> 8 Barb., N.Y., 610.

<sup>913</sup> 54 ME. 24, 1866.

<sup>914</sup> 17 Ala. App. 307,84So. 783.

<sup>915</sup> 181 Va. 338, 25 S.E. 2d 350,352.

case of *In re: Deva Kumar*<sup>916</sup>, it was held that prostitution requires indiscriminate employment of woman's body for hire.

According to the common law brothel is defined as a place where people of opposite sexes are permitted to spot for illegal sex, it does not matter whether the woman is prostitute or not; and keeping such a place is a nuisance at common law. According to section 2(a) of the Immoral Traffic (Prevention) Act, 1956, "**brothel**" includes any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.<sup>917</sup> It is important to note that, in the case of, *Sushila v. State of Tamil Nadu*<sup>918</sup> it was held that, a desolate instance of prostitution in a place does not make the place "brothel"; a similar view was given in the case of, *In re: John*<sup>919</sup>, in this case it was held that, prostitution of the woman should be for the gain of another person, to called that place as "brothel". Later in the case of *Krishnamurthy v. Public Prosecutor*<sup>920</sup>, the Supreme Court held a place used only for once for the purposes of prostitution may not be a "brothel". Any person who keeps or maintains or acts or assists in the keeping and management of a brothel in India is punishable under the provisions of the Immoral Traffic (Prevention) Act, 1956.

A woman is not a prostitute if she engages in illegal sexual intercourse with only one person; thus, a man cannot be guilty of inducing a female away from her house for the purposes of prostitution, where the proof shows that he induced her away for the purpose of having intercourse with her and not to lure her to have sexual intercourse with other men. The most usual goal for indiscriminate sexual intercourse is the money paid for it, prostitution sometimes defined as "**Indiscriminate Sexual Commerce for Gain**". If a woman voluntarily allow herself to subject for indiscriminate sex and which she invites through words or by acts or using any device but without any gain, even then she is prostitute as much the one which does so for profit. **The word prostitution is not confined to acts of natural sexual intercourse**, but includes any obscene act. It means surrender of a girl's chastity for money<sup>921</sup>. In India there is no exactly law to look and regulate the practice of prostitution; no

---

<sup>916</sup> 1972 MLJ (Cr.) 150.

<sup>917</sup> The Immoral Traffic (Prevention) Act, 1956, § 2(a), Acts of Parliament, 1860, (India).

<sup>918</sup> 1982 Cr.LJ 702 (Mad.).

<sup>919</sup> AIR 1966 Mad. 167.

<sup>920</sup> 1967 Cr LJ 544 (SC).

<sup>921</sup> Ratanlal & Dhirajlal, The Indian Penal Code, Chapter XVI, Wadhwa & Company (Nagpur), 30<sup>th</sup> Edition (2006), p.675.

doubt the Immoral Traffic (Prevention) Act, 1956 read with the Indian Penal Code, 1860 tries to solve the problem of prostitution. Although much is known about prostitution and sex trade in India but the focus is only confined to the female sex worker and their clients, no research and study is done on the matter related to who sell sex.<sup>922</sup>

Prostitution in India is estimated to be an \$8.4 billion industry<sup>923</sup>. The biggest red-light areas across the India are: Sonagachi in Kolkata occupying more than 11,000 sex-workers, Kamathipura in Mumbai, Budhwar Peth in Pune, occupying around 5,000 sex-workers, Meergunj in Allahabad, G.B. Road in Delhi, Chaturbhujasthan in Muzaffarpur, Itwari in Nagpur, and Shivdaspur in Varanasi.

According to the Crime Report, 1,74,021 cases in 2016, 1,88,382 in 2017 and 2,23,621 in 2018 have been registered as 'missing' in India.

### Top 10 State/UT with highest number of missing women in year 2018<sup>924</sup>

Maharashtra	33964
West Bengal	31299
Madhya Pradesh	29761
Delhi UT	13272
Rajasthan	12525
Tamil Nadu	10403
Odisha	10193
Karnataka	9567
Chhattisgarh	9412
Gujarat	9246

### LAWS RELATED TO PROSTITUTION IN INDIA

Article 23 of The Constitution of India, prohibits the trafficking in every form including commercial sexual exploitation of women and girls.<sup>925</sup> We have special laws like Immoral Traffic Prevention Act (ITPA) and local legislation like Goa Children's Act etc. in addition to the provisions given in the IPC (Indian Penal Code).

<sup>922</sup> Gagandeep Kaur, "Law and Changing private Mortality in India", *Journal of Law Teachers of India*, Volume II, Issue 1-2, p.126.

<sup>923</sup> Palash Krishna Mehrotra, "Legislation of Prostitution will help protect vulnerable women in India", *Daily Mail*, 19 Oct. 2014.

<sup>924</sup> Crime Report, 2018.

<sup>925</sup> INDIAN CONST. art. 23.

## *Immoral Traffic (Prevention) Act, 1956*

The Immoral Trafficking Act, 1956 (ITPA); the main statute dealing with sex work in India. The act does not criminalize prostitution it usually punishes the act of the third parties who facilitates prostitution by brothel keeping, living on earnings of prostitutes even when she is not forced to do so.

Any person who keeps or manages, or acts or assists in the keeping or management of , a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent to conviction with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.<sup>926</sup>

Any person who-

Being the tenant, lease, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

Being the owner, lesser or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,-

A copy of the list of all the things found during the search referred to in clause (a) is given to such person.<sup>927</sup>

Any person who-

Procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or Induces a person to go from any place, with the intent that he/she

<sup>926</sup> The Immoral Trafficking (Prevention) Act, 1956, § 3, Act of Parliament (India).

<sup>927</sup> *ibid.*

may for the purpose of prostitution become the inmate of, or frequent, a brothel; or takes or attempts to take a person or causes a person to be taken from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; causes or induces a person to carry on prostitution shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under sub-section (d)-

- (i) Is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
- (ii) Is a minor, the punishment provided under this sub section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.<sup>928</sup>

Hence, it can be clearly seen that both the sections 3 and 5 of Indian Penal Code punishes only the acts of the 3<sup>rd</sup> party.

National Human Rights Commission in its research during 2002-2004 tells that important issues in the prevailing law are:

- **Lack of priority:** The law enforcement and justice delivery agencies give lowest or nil priority to HT issues.
- **Insensitivity:** Lack of insensitivity is a major challenge in response to human trafficking.
- **Victimization of the Victim:** Very often trafficked women have been arrested and penalized as 'soliciting persons'; The NHRC shows that around 85 to 90 per cent of the arrested persons are females and are being trafficked.
- **Improper Investigation:** Whereas a trafficking crime extends across a large canvas as the scene of crime, starting from the source point and extending to the transits places as well as the destination areas, the investigation is mere often unheard and unrepresented.
- **Database:** One of the major disadvantages in law implementation is the fact that there is no database of traffickers and other exploiters. Since no sharing of

---

<sup>928</sup> The Immoral Traffic (Prevention) Act, 1956, § 5, Act of Parliament, (India).

intelligence among the stake holders and hence, the offenders undeniably do act with freedom.

The data of National Crime Record Bureau (NCRB) shows the magnitude of the problem of prostitution in India. The bureau is collecting data under the following heads of crime which are connected to prostitution and Human Trafficking.

- Procurement of minor girls (section 366-A IPC)
- Importation of Girls (section 366-B IPC)
- Selling of Girls for prostitution (section 372 IPC)
- Buying of girls for prostitution (section-373 IPC)
- Immoral Trafficking (Prevention) Act 1956
- Child Marriage Retrain Act, 1929.

### ***Procurement of Minor Girls (Sec. 366 IPC)***

253 were stated in the year 2007 as compared to 231 cases in 2006, an increase of 9.5% over 2006. West Bengal has reported 54 such cases indicate a share of 21.3% at National level followed by Andhra Pradesh (37) and Bihar (36). Cases are increasing during last three years.

### ***Selling of Girls for Prostitution (Sec.372 IPC)***

During 2007 69 cases of selling of Girls for the purpose of Prostitutions were reported in the country while in 2006 123 cases were reported, hence decline can be seen of 43.9% over 2006. West Bengal has accounted for the maximum number of cases i.e. 79.7% (55 cases out of 69 cases) of the total cases of 'Selling of Girls for Prostitution' reported in the country. 32 cases of 'Buying of Girls' and 57 cases of 'Selling of Girls' for prostitution were reported in the country during 2009 against 30 and 49 such cases respectively in 2008.

In 2012 the reported cases of sex trafficking across the nation was 22%. The lowest numbers of cases were reported in Assam with the conviction rate of 1%. West Bengal and Maharashtra also have very low conviction rates 4% & 5%, respectively. North East India has appeared as a high source area for trafficking of women and children.<sup>929</sup>

---

<sup>929</sup> Trafficking in Persons Report, 2013

***Crimes related to Prostitution in the Country and % variation in 2009 over 2008***

Sl. No.	Crime head	2007	2008	2009	% Variation in 2009 over 2008
(1)	(2)	(3)	(4)	(5)	(6)
1.	Procuration of Minor Girls	253	224	237	5.8
2.	Buying of girls for Prostitution	40	30	32	6.7
3.	Selling of Girls for Prostitution	69	49	57	16.3
	Total				

***Crimes under Human Trafficking Towards Total IPC Crimes***

Sl. No.	Year	Total IPC Crimes	Cases under Human Trafficking	Percentage to Total IPC Crimes
1.	2003	17,16,120	5,850	0.34
2.	2004	18,32,015	6,135	0.34
3.	2005	18,22,602	6,402	0.35
4.	2006	18,78,293	5,096	0.27
5.	2007	19,89,673	4,087	0.21

## **RIGHTS OF PROSTITUTES IN INDIA**

The constitution of India ensures to secure socio-economic justice to all its citizens with given liberties, equality of status and opportunity, assuring dignity and fraternity to individuals in a united and integrated nation. Since the prostitutes are also the part of the Indian citizens, they to deserve all those rights and opportunities which are given to any other citizen of India. They too have the right to live their life with dignity. These prostitutes are usually the poor, the illiterate and the ignorant sections of the society. They have always been

treated as an object which is used to satisfy sexual needs; and never as human beings with dignity of person and self-determination.

The Hon'ble Supreme Court of India in a series of Judgment has categorically laid down that, the immodesty of the woman does not make her available to any one and every individual to exploit her as when he desires. The mere fact that the prosecutrix was of loose character and was addicted to sex and might have gone to the accused herself is no ground to disbelieve her statement. In the case of *Mohan v. State of M.P.*<sup>930</sup>, it was held that, it is no defense as against the crime of rape that the girl so raped was of easy virtue and was addicted to sex.

In the case of *Shushila v. State of U.P.*<sup>931</sup>, the Allahabad High Court observed that, even the prostitutes have the fundamental right as well as moral and social rights and she is at liberty to allow or not allow a person for sexual intercourse. Nobody can permit sexual intercourse even with the prostitutes under force or compulsion.

After this judgment of Allahabad high court, further the Supreme Court in the case of *State of Maharashtra v. Madhukar Narayan Mardikar*<sup>932</sup>, here, Apex Court stated as follows:

*“...even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when she likes. So also, it is not open to any and every person to violate her person as when she wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.”*

Right to autonomy albeit prostitutes, is dynamically grounded in India, much in view of the rulings of the supreme court, but none the less, a caveat to this premise of law remained on the statute books, much in the form of section 155(4) of the Indian Evidence Act, 1872; while usually, Section 155 of 'impeaching credit of witness'; Section 155(4) states that, when a person accused for rape or an attempt to assault, it might be made known that the prosecutrix was of usually depraved character. Later, Clause (4) of Section 155 of Evidence Act was deleted, to meet the ends of the justice, by Act 4 of 2003, vide section 3 (which effects from: 31-12-2002). Sale and/or purchase of minors for unethical purposes, is a penal offence in India. Section 372 of the Indian Penal Code, 1860, states selling of minor for purposes of prostitution an offence punishable with imprisonment of 10 years and fine. Section 373 of the

---

<sup>930</sup> 2001 Cr LJ 3046 (M.P.).

<sup>931</sup> Criminal Appeal No. 422 & 425, 1994, The Allahabad High Court, Order dated 13.05.2016.

<sup>932</sup> AIR 1991 SC 207.

Indian Penal Code, 1860, states that buying of minor girls for purposes of prostitution is a crime punishable with imprisonment for 10 years and fine.

As per the section 372 of Indian Penal Code when a female is sold which is below 18 years of age to any prostitute or to any person who owns a brothel, the person selling such woman is shall considered to disposed of that girl with the intention to involve her in the prostitution until or unless the contrary is not proved.

*Dowlat Bee v. Saikh Ali*, in this case the question before the court of law was that, if a person had to contract with a minor girl, aged 17 years for prostitution; weather it would be 'buying' or; hiring' within the meaning of section 373 of the Indian Penal Code, 1860? Scotland, CJ was of the view that the terms of section 373 are satisfactory to punish such anguish; however, Holloway, J contrasted, saying that section 373 could not be interpreted to incline a hiring by minor. Herself, all such cases will be covered by provisions relating to kidnapping and abduction.<sup>933</sup>

In case of *Vishal Jeet v. Union of India*<sup>934</sup>, The Supreme Court while hitting on record that shows growing mistreatment of young women and children for prostitution and trafficking reported that in spite of the severe and rehabilitative provisions of law under various Acts, and it cannot be said that the wanted result has been attained. The Supreme Court for an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking. It stated that this problem is not only social but also a socio-economic problem and, therefore, the measures to be taken in that raged should be more preventive rather than punitive. The court was at the opinion that this harsh situation can be controlled and removed only when the law executing authorities in this matter take very strict and fast legal actions against all the stumbling persons such as pimps, brokers and brothel keepers. Apart from legal action, both the central and the state governments shall have a duty to safeguard the interest and welfare of the children and girls of third country and shall assess various measures and to device them in the right path. The court after giving away deep and anxious consideration on this matter laid down guidelines for the formation of Advisory Committee in all States and Central Government to look and prepare program to fight against trafficking.

---

<sup>933</sup> PSA Pillai, Criminal Law, Chapter 40, Lexis Nexis, 9<sup>th</sup> Edition, 2006, p.714, 715.

<sup>934</sup> (1990) 3 SCC 318.

It stated that “*all the State Governments and the Governments of Union territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws...*”

In the case of *Gaurav Jain v. Union of India*<sup>935</sup>, while clearly stating the violation of Right to Life of trafficked victims the Supreme Court ordered the Union Government to form a Committee to frame the National Plan of Action and to instrument it in mission style.

The Supreme Court well-ordered to constitute a Committee, to make a profound study into these problems and to bring appropriate schemes for restoration of trafficked women and children. To review the progress of the execution on yearly basis a permanent committee was formed and it take such other steps as may be convenient in the effective execution of the schemes. The court taking a forward opinion believed and hoped that the directions would mitigate this problem by rehabilitation of the unfortunate women caught in the trap of the prostitution; and their children would also be brought into the mainstream of the society; these directions would ensure them to avail the equality of the opportunity and of status, with dignity of person which are provided by the Constitution.

The court in this case, observed that, prostitutes are victims of situations and so, should be treated equally as human beings like others, and to bring them back to the mainstream of the society order without any stigma attached to them. The prostitutes and their children need to be treated with humanity and compassion so that their integration in to the social mainstream is plan-sailing. Victims of sex trade need care and support from the society. The Convention on the Rights of the Child; the Fundamental Rights, contained in Part III of the Constitution of India; the Universal Declaration of Human Rights; the Directives Principles of State Policy, apply with equal vigor and force to enhance the socio-economic, educational and cultural conditions of the fallen women and their children.

The apex court recommended that, so far as the Constitution of India is concerned, Article 14 of the Constitution of India, 1950 provides for equality in general; Article 21 states every citizen has right to life and personal liberty; Article 15 forbids discrimination on the grounds of religion, race, caste, sex or place of birth, or any of them. Article 15(3) states that nothing shall prevent the state from making special laws for the benefits of women and children; Article 16(1) provides for equality of opportunity in matters of public employment; Article

---

<sup>935</sup> (1997) 8 SCC.

23 prohibits human trafficking and forced labour, making it punishable under the supervision of Immoral Traffic in Women and Girls Act, 1956 (which was renamed in 1990 as the Immoral Traffic (Prevention) Act); Article 30(f) states that children shall be given opportunities and amenities to develop in a healthy manner and in conditions which do not compromise their dignity and freedom, also children and young population should be protected against exploitation; Article 46 directs the State to promote the educational and economic interests of women and people of weaker sections of society, to protect them from social injustice and all other forms of exploitation; Article 51-A claims duty on every citizen of the country to grow scientist temper, humanity and spirit of question and reform and to move on the way to brilliance in all spheres of individual and collective action so that the country continually rises to higher levels of exertion and achievement. Thus, the court stated that, social justice and economic empowerment is rooted in the framework of Indian constitution, holding it basic to the life and liberty of every citizen.

The court stated that Article 1 of the Universal Declaration of Human Rights provides that everyone is born free; equal in dignity and rights. Article 2 states that everyone i.e. prostitutes with their children included are privileged to all the rights and freedoms given in the universal declaration of human rights without any discrimination of any kind such as that: race, sex, color, language, religion, political or any other view, national or social originated, property, birth or other status. Article 3 states that each one has the right to life, liberty and security of person. Article 4 enjoins that that no one shall be held in servitude; slave trade and sex-trade are prohibited in all forms. The victims of sex trade are not less than sufferer of slave trade. Article 6 says that everyone has the right to account everywhere as a person before the law, and thus the identification of the victims of sex trade cannot disappear in thin air; their presence needs to be acknowledged and sufficient efforts are required to made, both at executive and administrative side and judicial side to rehabilitate them and to ensure their welfare. India being signatory to the UDHR is required to work towards the aspiration and that declaration contemplates.

The court further stated that, the Declaration of Right of Child, to which India is also a signatory, by virtue of Article 3(1) that, all the acts of the public or private social organizations and institutions, law making bodies, courts or administrative authorities related to children shall be according to the best interest of the child. Further, the court clarified that, the Convention on the Elimination of All Forms of Discrimination against Women, 1979 by

virtue of Article 1, forbids discrimination against women; Article 5 demands to change social conduct of men and women with an opinion to reduce prejudices and all other ritual practices which are based on the idea of the inferiority/superiority of the sexes or on stereotyped roles of men and women; Article 12 states that discrimination against women should be end in the field of health in order to provide better health services, including those related to family planning. Article 13 directs the State Parties to work towards elimination of discrimination against women in all social and economic areas of life, providing them to all benefits of family life, marital status and right to nourish their children in best possible way.

The court was of the view that, prostitutes have universal moral and social rights which authorize them and their children to live a life like any other person with dignity. However, this case vigor on a rather curious-note, when D.P. Wadhwa, J. of the bench comprising of K. Ramaswamy and D.P. Wadhwa, J. of the bench comprising of, K. Ramaswamy and D.P. Wadhwa, JJ., expressed his disharmony against the directions issued by K. Ramaswamy, J. on the question of prostitution and its eradication and scope of article 142 and 145(5) of the Constitution of India, 1950. Whilst D.P. Wadhwa, J. consented with K. Ramaswamy, J. on directions issued on social rehabilitation of the children of the prostitutes and establishment of juvenile homes.

Later in the case of *Gaurav Jain and v. Union of India & Ors*<sup>936</sup>, the Supreme Court of India elucidating on the scope of its power under article 142 held that, article 142 cannot override article 145(5). The apex court observed as follows:

- i. Even in non-adversarial public interest litigation if the two judges comprising the Division Bench differ, matter has to be referred to the Chief Justice of India for constituting a larger bench for decision, and it would not be competent for one of them to issue directions for compliance by invoking article 142 on the plea that the same has been done to avoid delay involved in reference to a larger bench.
- ii. The directions issued under Article 142 by K. Ramaswamy, J. in *Gaurav Jain v. Union of India*<sup>937</sup>, regarding prostitution, its increase and eradication to which D.P. Wadhwa, J., the other member of the Division Bench disagreed, cannot stand in law.

---

<sup>936</sup> (1998) 4 SCC 270.

<sup>937</sup> (1997) 8S SCC 114.

Thus, this case takes precedence, *Gaurav Jain v. Union of India*; but the guidelines delivered in the case, with respect to social-rejoining of the children of the prostitutes and institution of juvenile homes were upheld.

In the case of *Prerna v. State of Maharashtra*<sup>938</sup>, court laid down the process for care and protection of Trafficked Children and rules that Advocate cannot appear before the Child Welfare Committee to take custody of trafficked child.

*Geeta Kanchs Tamang v. State of Maharashtra*<sup>939</sup>, while not allowing the release of a women trafficker, on mercy grounds, who had served 14 months imprisonment, the court stated that the first thing that the court has to look for such a heinous crime is that trafficking of persons is prohibited under Article 23 of the Constitution of India. Since it is a violation of fundamental rights hence the violator of this right cannot be spare. Such act also constitutes the violence of the human rights of the child of victim.

*Budhadev karmasakar v. State of West Bengal*<sup>940</sup>, in this case the Supreme Court while dismissing an appeal by the accused in a case of murder of a sex worker. The apex court stated that both at the central and state levels through social welfare boards, schemes should be made for rehabilitation of physically and sexually abused women commonly known as “prostitutes” across the country since prostitutes do have a right to live their life with dignity provided by Article 21 of the Indian Constitution since they are also the human beings and their problems also need to be addressed. The court observed that the woman compelled to involve in prostitution not for pleasure but because of their financial problems. If such women are given opportunity to avail some technical and vocational training, she would be able to earn her livelihood through this instead of by selling her body. The court ordered the Central and the State governments to make schemes for providing technical/vocational training to sex workers and sexually exploited women across the country. The schemes must mention in detail who will give the technical/vocational training and in what way they can be rehabilitated and settled by giving them employment. For instance, if a technical training is for craft like sewing garments, etc. then some arrangements should also be made for providing a marker for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself.

---

<sup>938</sup> 2003 (2) MhLj 105.

<sup>939</sup> Cr Appeal No. 858, 2009.

<sup>940</sup> (2011) 11 SCC 538.

## CONCLUSION

The position of sex workers in India is not satisfactory they are marginalized by the system which prevails in our country. There is strong proof to show that they face physical and psychological harassment. Livelihood schemes and rehabilitation programs will help them to come out from this low esteem sex work. Most of the commercial workers do have children and they are worried about their future and hence the government should come forward to make and execute the schemes which are essential for these children to ensure that they live a life with dignity as it is the fundamental right and the duty of the state to protect such rights, and to provide remedies on violation of these rights.



IJLPA

WORDS SPEAK