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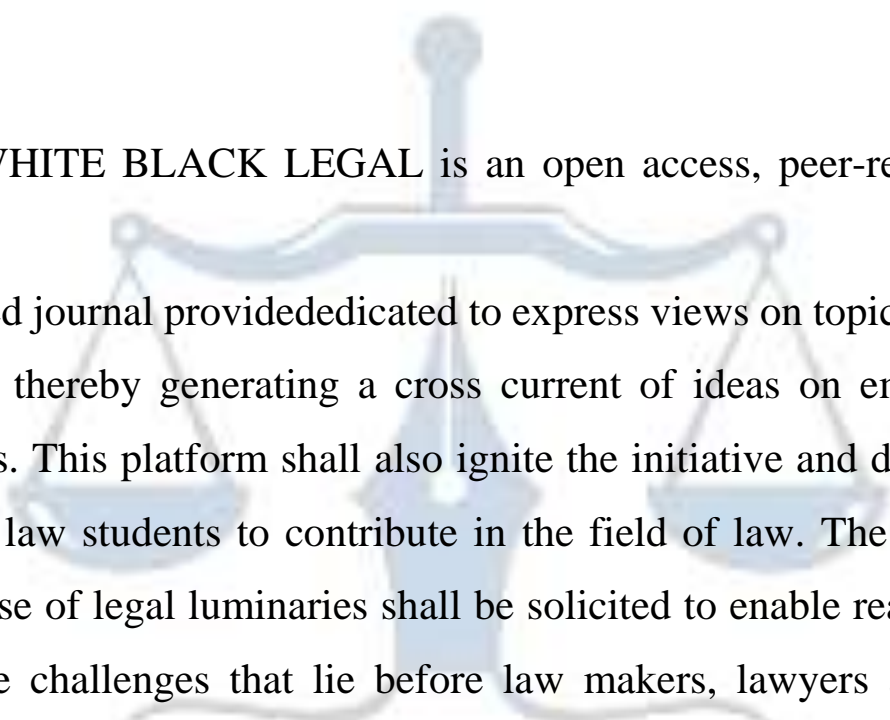


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## ***ABOUT US***



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **‘RIGHT OF PROSTITUTES TO LIVE A LIFE OF DIGNITY’**

AUTHORED BY - SNEHA RAJENDRAN

## **ABSTRACT**

The research article talks about the new dimension that has been brought to article 21 of the Indian Constitution, right to life and personal liberty, which is right to dignity. Right to dignity is a requirement for everyone residing in the country and is in fact considered to one of the human rights as well. This research article has discussed this aspect of article 21 with regards to prostitutes also called as the sex workers. The topic is introduced with the evolution of the aspect of right to dignity, which is followed by right to dignity in respect to prostitutes. The process of legalizing prostitution has been further discussed with the help of case laws. Few literatures review of the articles and books related to the topic has been critically analyzed to support the content of the article. The article not just consist of the legal aspects of right to dignity with respect to prostitutes and prostitution but rather also the social aspect of the same. The research article is concluded with a few legal and social solutions on how prostitution can be considered just like any other profession in the country.

## **KEY WORDS**

- Prostitution
- Dignity
- Article 21
- Profession
- Decency
- Immoral

## **INTRODUCTION**

Fundamental Rights are the basic and essential rights that are being given to the people of the country. This stands as the foundation of the Constitution which has to be respected by everyone residing in the country. As said in the constitution under Article 14 that, “The State

shall not deny to any person equality before law or the equal protection of the laws within the territory of India.”<sup>1</sup> Therefore, standing that everyone is to be treated equally before law. In this case, the prostitutes are also to be treated just like any other person residing in the country with no discrimination, at least not by law or the authorities who are the first ones to abide by law. The Indian constitution has started recognizing the rights of the prostitutes and have been given them justice since the time changes have been brought after the case of Budhadev Karmaske but still there can be an absence of the complete implementation of the same.

As said under Article 19 (1) (g) it's the fundamental right of every citizen “to practice any profession, or to carry on any occupation, trade or business”<sup>2</sup>, therefore every profession is to be respected at the same rate unless otherwise considered to be unreasonable as when it questions the decency, public interest, public order or welfare the people.

Though prostitution when conducted in brothels are considered to illegal as duly said that the public interest is being actively violated. The question that stands here is that if prostitution is being considered as a legal profession, then why not a legal business when it is being conducted within the four walls which doesn't even bring any nuisance or indecency to the society? Not just that but when prostitution is done anywhere else like in hotel rooms due to illegality of performance in brothels, it is still being considered to be illegal or violation of law under “public indecency” or “public nuisance” which is not being done on a considerable ground. If something is recognized as legal then the place it has to be conducted too has to be considered legal, otherwise it cannot be carried out nor does the legality of the profession stand valuable or sensible. So why was this decision taken up by the authorities? This directly and indirectly finally reflects on questioning the dignity of the conductor of the profession called the prostitutes who got into the profession out of situation or by choice. This clearly finally reflects on the violation of a lot of the fundamental rights of the prostitutes, therefore the system being corrupted.

This article focuses on a new dimension that has been brought to Article 21 of the Indian Constitution which is Right to Dignity in the eyes of prostitutes or sex workers. Fundamental rights are for all and not just with respect to a considerable amount of people of the society.

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<sup>1</sup> INDIA CONST. art. 14.

<sup>2</sup> INDIA CONST. art. 19(1)(g).



After years of efforts put in by multiple people, the authorities have finally recognized that dignity is a basic requirement that every person including prostitutes around the world gets to enjoy. Questioning the dignity of the person not just affects them but also everyone connected and related to them and therefore is a matter of significance and fragility.

The main of the article is to bring requirement for the society to recognizing the already lawfully recognized aspect of Article 21, i.e., right to dignity in regards to prostitution as prostitution is still being perceived differently by society, especially when it comes to its legality. These people are often considered fallouts and looked down upon. For many, they are not morally acceptable and hence, are generally isolated from mainstream society. Due to this, the very essence of an individual, specifically their dignity, is severely undermined and compromised. This article will also be talking about how the changes in the legal system with regards to the Right to Dignity of the prostitutes came to be recognized by the authorities.

Right to Life and Personal Liberty under Article 21 of the Indian Constitution, is one of the most important fundamental rights of the people residing in the country, be it citizens or non-citizens of the country and is also considered to be a part of the basic foundation or structure of the Indian Constitution. Article 21 of the Indian Constitution states that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”<sup>3</sup> Therefore, assuring and guaranteeing that, article 21 of Indian Constitution being a part of the part III of the Indian Constitution guarantees and assures to preserve and protect every person residing in the country.

As seen in the case of *Maneka Gandhi v. Union of India*<sup>4</sup>, the Supreme Court elaborated that Article 21 of the constitution which talks about the Right to life and personal liberty includes the right to live with dignity. This therefore brings in clarity over the other aspects included under article 21 of the Indian Constitution.

This clarity wasn't just brought in the above-mentioned case, rather was brought through various other cases like in the case of *Francis Coralie Mullin v. Administrator*<sup>5</sup> wherein the Union Territory of Delhi expanded the definition of the right to life to include the right to live

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<sup>3</sup> INDIA CONST. art. 21.

<sup>4</sup> *Maneka Gandhi v. Union of India*, 1978 AIR 597

<sup>5</sup> *Francis Coralie Mullin v. Administrator*, 1981 AIR 746

with human dignity and everything that entails, including the basic necessities of life like adequate nutrition, clothing, and shelter as well as the right to engage in such functions and activities as constituting the minimal expression of the human-self. This was also seen in the case of *Kharak Singh v. State of Uttar Pradesh*<sup>6</sup>, wherein the honorable Supreme Court ruled that the term life that was used wasn't just restricted to the mere existence of animals, rather had a larger and wider perspective which includes right to live with human dignity.

*Immoral Traffic (Prevention) Act, 1956* defines prostitution as “sexual exploitation or abuse of female for monetary purpose and a prostitute is the person who gains that commercial benefit.”<sup>7</sup> This act was passed in 1956 and is also referred as SITA.

As per the act and law, it is clear that the prostitution is a legal profession that is being carried out but that is as long as the profession of prostitution is being held in private and not in any public spaces. Prostitution as a profession is legalized in the country of India but not as business, as the profession can be done by people or women essentially with a specific skillset and is illegal as a business as the authorities also have to consider the public interest by taking their sensitivity into account as well.

Prostitution is also alleged to be obscene and against decency and public morality. Sex work is a profession, and the reasonable restriction of Art. 19(1)(g) does not apply to it. The Hicklin test, which was established in the case of *R v. Hicklin*<sup>8</sup>, is used to evaluate obscenity in India. Based on whether the material accused of being obscene has the potential to deprave and corrupt those whose minds are susceptible to such immoral influences and into whose hands a publication of this nature may fall, the decision is made. Sex work is typically performed behind closed doors, and it does not corrupt or deprave people's minds.

The authorities started recognizing the rights of the prostitutes back in 2010, a criminal appeal was brought before the Supreme Court challenging the conviction of a person for the cruel murder of a sex worker in 1999 living in the red-light district by the Calcutta High Court. According to a factual matrix, the accused killed the dead by brutally hitting her skull over and over again. Due to the awful nature of the alleged offense, the Supreme Court unequivocally

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<sup>6</sup> Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295

<sup>7</sup> Immoral Traffic (Prevention) Act, 1956, Section 4

<sup>8</sup> R v. Hicklin, [1868] 3 QB 360, 371

rejected the appeal on February 14, 2011, affirmed the conviction, and subsequently converted it into a PIL suo motu to address issues with sex workers all over the country.

On 15<sup>th</sup> July, 2011, a bench of Justice Markandey Katju and Justice Gyan Sudha Misra, declared that they had the goal for creating awareness amongst the public regarding sex workers to not be recognized as nasty people of the society, but were in this profession due to their situation and condition of poverty and many more. On February 14<sup>th</sup>, 2011, the bench observed, “Sex workers are also human beings and no one has the rights to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Indian Constitution.”<sup>9</sup>

In addition, the supreme court also appointed a panel for recommending on how trafficking could be prevented and sex workers could be rehabilitated. The panel’s final report on 2016 said that the sex workers struggled for obtaining proofs of identity due to lack of residence. The lack of documents prevented them from opening bank accounts and other facilities offered by various agencies. It was also mentioned that the authorities failed in recognizing the sex workers and their kids’ identities. Therefore, recommending the Immoral Traffic (Prevention) Act, 1956 to be amended. Thereafter the government informed the court for appointing a committee for looking into the suggestions in 2020.

Later on, in the case of Budhadev Karmaskar v. State of West Bengal, the Supreme Court's panel of Justices L. Nageswara Rao, BR Gavai, and AS Bopanna rejected the appeal and stated that Article 21's guarantee of the right to life also protects sex workers' and their children's basic human decency and dignity. Because sex workers bear the brunt of the social stigma associated with their work, they are pushed to the margins of society and denied the opportunity to live with dignity and pass the privilege on to their children. In order to provide technical/vocational training to sex workers and sexually abused women in all Indian cities, a court has directed the Central and State Governments to develop plans.

The panel constituted in 2011 for sex workers by the apex court broadly identified the following

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<sup>9</sup> Indian express, <https://indianexpress.com/article/news-archive/web/sex-workers-also-human-beings-entitled-to-a-life-of-dignity-says-sc/> [last viewed on 9 April, 2023]

aspects:

1. Prevention of trafficking
2. Rehabilitation of sex workers who wish to leave the profession
3. Condition conducive for sex workers who wish to continue working as sex workers with dignity.

In addition, to this it was also clearly mentioned that whenever there is a raid that takes place in a brothel, the sex workers shouldn't be arrested since the profession is legal, it is only the brothel owners who will be arrested for illegally conducting the business which violates law. Through this judgement it was also clarified on why other forms of prostitution, including running brothels or using commission agents, were criminalized, the reason being, this would lead to lowering human trafficking, kidnapping and abduction rates. It's permissible under Article 19 for restricting such sexual work in a reasonable manner for the purpose of social control or societal norms.

The government has also taken actions against the suggestion thereby put up the commission who was in charge of looking into the matter. As Following the Covid-19 epidemic, which severely disrupted daily life, it was discovered that the class of sex workers is among the vulnerable populations being negatively impacted by the pandemic. So that the sex workers who are in severe situations can be saved, the Court granted an order for the supply of dry rescue. Similar to this, the Court instructed the State Governments and Union Territories to swiftly complete the process of issuing ration cards and voter cards to all sex workers in an order dated 10th January, 2022.

*Some of the landmark judgements:*

- ***Gaurav Jain v. Union of India***<sup>10</sup>

In this case, the defense filed the PIL after reading "Red Light Trap" in India Today magazine, the court noted. He prayed that the kids of prostitutes, who lived in unfit conditions for children, would have access to separate dormitories and vocational training programs so that, by living separately, they might integrate into society. The Court also stressed the need to eradicate prostitution. He also commanded the construction of dorms specifically for these kids and residences for young adults to receive vocational training. With the help of the

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<sup>10</sup> Gaurav Jain v. Union of India, 1990 Supp. SCC 709

original petitioner Gaurav Jain, the Supreme Court Bar Association submitted a petition for review asking the court to consider the meaning and application of sections 32, 142, and 145(1) of the Constitution as well as the prohibition of prostitution.

The court affirmed the order to create a youth home for the offspring of these sex workers while overturning the order to eradicate poverty.

- ***Kajal Mukesh Singh and Ors. V. The State of Maharashtra***<sup>11</sup>

The statute, according to the Bombay High Court, aims to protect sex workers rather than penalize them. Sexual exploitation for financial gain, such as pimping, recruiting, or seduction in public areas, is forbidden by law. Also, it is unlawful to run a brothel or let prostitution to take place on its property. The law acknowledges that those who exchange their bodies for cash are victims, not offenders. Prostitution as a practice is not illegal under the Immoral Trafficking (Prevention) Act of 1956, but rather the enablers and facilitators of prostitution are. There have been numerous requests to legalize prostitution because it is believed to be the oldest "profession" in existence. Yet, there is perhaps no reason to dispute that poverty or some other compelling circumstance is the main driver of prostitution. When advocating for the legalization of this "profession," it is important to consider whether society as a whole wants to elevate prostitution to the level of a profession comparable to that of a doctor, engineer, or lawyer and whether we want our children to treat it as a "career choice."

- ***Maharashtra v. Madhukar Narayan Mardikar AIR 1991 SC 207***<sup>12</sup>

In this case to the Supreme Court being the apex court of India held that even a woman of easy virtue also has the right to live a life in dignified under Article 21.

- ***Unni Krishnan vs. State of Andhra Pradesh***<sup>13</sup>

The Supreme Court ruled that because "personal liberty" has the broadest meaning, the "Right to health and medical aid of workers" is covered by Article 21. In this instance, the sex workers should receive health insurance and be evaluated for their physical fitness, therefore, receiving the highest priority. As prostitution doesn't violate Article 21 of the Indian Constitution, it should be legalized and regulated.

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<sup>11</sup> Kajal Mukesh Singh and Ors. V. The State of Maharashtra, (2020) 09 BOM CK 0027

<sup>12</sup> Maharashtra v. Madhukar Narayan Mardikar, AIR 1991 SC 207

<sup>13</sup> Unni Krishnan v. State of Andhra Pradesh, (1993) 1 SCC 645

Few solutions on combating this issue socially and legally would include:

- Government should take up slow steps on educating the society by holding compulsory community or school meetings showing prostitution as just another profession existing in the society and why people entered the same.
- The 10 recommendations placed before the government has to be taken into consideration and proper implementation of the same.
- Create a team that is specifically geared to protect human rights fundamentals and has access to the court system. The victim parties should be given the proper facilities and backhand support in terms of financial matters; therefore, steps should be conducted in that direction.
- The victim as well as the second generation entering the prostitution industry should be provided with the appropriate facilities of educational and rehabilitation centers.
- Bring about clarity over what is legal in prostitution and what isn't and bring about clarity over the fact if prostitution as a profession is legal then for it to be conducted has to be legal in which all sort of places. This clarifies this aspect to the society but majorly to the authorities.

## CONCLUSION

Prostitution is an age-old profession conducted in India, where the extend it was initially respected is no longer the rate at which it is respected anymore. This is something that is concerning. There are various reasons such as poverty, kidnapping, devadasi system, rape, etc. that has caused them to enter into the profession. It's high time that the society recognize them as any other person residing in the society and for the authorities to treat them the same along with providing them with opportunities that are provided to others in the society.

There have been a lot of steps taken up the authorities to bring about changes in the society starting with legalizing prostitution and then starting with the initiative of providing them with the basic documents for opening bank account or even having a ration card. But these are still in the process of happening and not yet complete. The process for the change has to happen fast so that the society though will rebel initially but will gradually accept them and bring harmony in the society. Prioritizing the society over the people in need would just be considered as a bias of the authorities especially when the term "needy" comes.

Through the case laws, it's hereby proven that right to dignity is a part of article 21 Right to Life and Personal Liberty and as per article 14, equality before law, everyone including the prostitutes have the right to live with dignity and questioning their character or their choice for profession is not less than a crime. Dignity is a need for a prostitution as much as it is a need for the other people in the society. Societal norms has to have an extend to be tolerated and accepted by the authorities and these if unreasonable for a man with no bias should be terminated from the society and legally as well.

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