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LEGISLATIVE COMMENT ON THE SEX WORKERS

(REHABILITATION AND SOCIAL SECURITY) BILL, 2015

ABSTRACT

The Legislative comment focuses on judicially analysing the Sex Workers (Rehabilitation And Social Security) Bill 2015, while keeping in view the current legislation(s) with regard to sex- workers in India. Through this legislative comment, the Author(s) provides a socio-legal insight towards this Bill, pointing out the anomalies in the Bill. The legislative comment starts off with an introduction of the Bill followed by the legislative background of the Bill. The legislative comment further draws attention towards the Chapter wise analysis of the Legislation, which includes critical analysis of the provisions which are of inadequate nature and provisions which are creating ambiguity in the legal sphere. The comment mainly deals with the anomalies that this Bill holds and tries to shed some light on those irregularities. The Author(s) has used the Doctrinal Methodology, that is, went through the existing literature in order to reach a firm conclusion. This comment does not limit its base of research to the Sex- workers' Bill but extends it to other legal instruments such as Case laws, Constitution of India and various other legislations for an extensive study of the Bill. The comment towards the end concludes by some suggestions for better implementation of the Bill.

KEYWORDS: Ambiguity, Anomaly, Doctrinal, Instruments, Rehabilitation

I. INTRODUCTION

The Sex Workers (Rehabilitation and Social Security) Bill was proposed in the year 2015 by Shrimati Poonam Mahajan, a Member of Parliament with the aim to provide for the rehabilitation and social security of sex workers within the Indian Subcontinent acting upon the direction of the Supreme Court given in the case of *Budhadev Karmaskar v. State of West Bengal*. This particular Bill has been pending from the past eight years and recently on 4th May 2023, the Supreme Court of India has orally asked the Central Government for an update on this Bill. According to the statement of objects and reasons, this Bill is proposed with the aim to provide welfare rights to Sex workers helping them to be integrated in the wider community.

The main aim of this Bill, according to the proposers of this Bill is to provide the Sex- workers in the Indian Society, an equitable status and dignity, through this Bill. Majority of the provisions in this particular Bill are exact replicas of certain provisions enlisted in the Indian Constitution, creating a separate set of Rights for the sex- workers, thus treating sex- workers as a separate community within the Indian society. Through this Bill, the sex- workers are being treated as a community which requires a different set of rights to be integrated in the so- called society. The same provisions are mentioned in the Constitution of India which are applicable to the sex- workers as well. The Author(s) through this Legislative comment claims that *Sex- workers do not need a separate set of rights other than those mentioned in the Indian Constitution and this bill creates segregation of sex- workers rather than assimilation in the society.*

II. CHAPTER WISE ANALYSIS

A. Chapter I: Section 2: Definitions:

Section 2(a) of the definition clause defines ‘*Abuse*’ as any sort of verbal and physical abuse.¹ This definition of abuse is a restrictive one which only talks about two forms of abuse; that is verbal and physical. The other forms of abuse which a sex- worker faces are left out in respect to this definition such as emotional and financial abuse. Sex- workers often face emotional and financial forms of abuse during their lives, which are gravely overlooked in this Bill. Sex- workers might be emotionally exploited through means such as objectification, stigmatisation, etc. People are often judgemental with respect to the profession of sex- workers. According to this Bill, sex- workers can only be verbally or physically abused which is untrue and restricts the rights of sex- workers against other forms of abuse.

Section 2(n) of the Bill defines *Rehabilitation* as a process which is aimed at providing maximum independence to the Sex- workers in all spheres of life.² This definition specifically talks about all Sex -workers and does not intend to differentiate between voluntary practising sex- worker and forced/ abused sex- worker. This provision is rather vague in nature as it neglects the right to a voluntary sex- worker who is willingly involved in sex- work. According to this provision, all sex- workers, whether willingly or not, require rehabilitation taking away their right to choose, a fundamental right under Right to Life.³ And in the case of *Budhadev Karmaskar v. State of West Bengal*, it was held that Sex- workers have the same rights as other citizens including Right to Life.⁴ This provision is rather stigmatised against the sex- workers, discriminating against them as a community which needs to be rehabilitated like some criminals. The decision of joining the process of rehabilitation should preferably be a voluntarily taken one rather than being a forced one. In Judicial sense, every citizen in India has the Right to personal liberty and

¹ Sex Workers (Rehabilitation and Social Security) Bill 2015, s 2(a) (Sex Workers’ Rehabilitation Bill 2015).

² Sex Workers’ Rehabilitation Bill 2015, s 2(n).

³ *Gian Kaur vs The State Of Punjab* [1996] 2 SCC 648

⁴ [2011] 11 SCC 538.

therefore has the power to make decisions which he/she deems fit for them. In this sense, Sex- workers have the personal freedom to choose whether to join the rehabilitation centre or not accordingly. The State provides rights to the citizens but the power to enforce those rights on their violation lies with the citizens and the State cannot force the individual to seek remedy against any such violation. There should be rehab centres for sex-workers established but the power to take advantage of these centres should lie with the sex- workers wholly. It was held in the case of *Gaurav Jain v. Union of India* that sex- workers who wish to leave their profession should be rehabilitated by the State.⁵ The provision for rehabilitation should be precisely articulated in a way which properly conveys that joining a rehabilitation centre shall be the voluntary decision of a sex- worker and this Statute just makes sure that the rehabilitation centres are properly maintained in case needy sex- workers want to join the rehab centre.

B. Chapter II: Right to equality and non- discrimination

Section 3 of the Bill describes that the Sex- workers have a right to equality, life with dignity and integrity equal to others⁶ *Section 4* of the Bill talks about the sex-workers' *Right of non-discrimination*, according to which Sex- workers have the right to live in a community without any discrimination along with other rights such as access to community support services, etc.⁷ These provisions of the Bill state that the *appropriate Government* is responsible to protect the rights of the sex-workers. The appropriate government according to *Section 2(c)* of this Bill is the State or Central Government which should take necessary steps in order to protect the Sex-workers from being abused or violated. The aim of these provisions is already

⁵ [1997] 8 SCC 114

⁶ Sex Workers' Rehabilitation Bill 2015, s 3.

⁷ Sex Workers' Rehabilitation Bill 2015, s 4.

regulated under *Article 14* of the Constitution of India, which talks about Equality before law and equal protection of laws meaning that every citizen must be treated equally in the eyes of law.⁸ This provision is itself a discriminatory and self-contradictory measure which provides for the same right (right to equality) to sex-workers that every citizen of India is already entitled to, thus treating sex-workers as unequal and different from the other sections of society. This provision rather than assimilating sex-workers, segregates them as a different community. According to the *horizontal application* of Fundamental Rights, certain Fundamental rights can be enforced upon *non-state actors*; that is, *private individuals*. And *Article 14 & 15* of the Indian Constitution is one of those fundamental rights which can be enforced against other citizens. There is a gross violation of the '*Reasonable Classification Test*', which says that there should be reasonable classification rather than class legislation. Article 14 of the Indian Constitution prohibits class legislation in every manner and means. Here, it is a clear case of class legislation wherein a whole class of sex-workers have been put under the radar. Therefore, the right to equality and non-discrimination is already provided to the Sex-workers under the Indian Constitution and the violation of these rights have remedies under the provisions of Constitution itself.⁹

C. Chapter IV: Quality healthcare:

Section 13 of the Bill directs the Board to ensure quality healthcare facilities for the sex-workers and their children by ensuring that there are *separate clinics* for them and also by ensuring that there are no barriers for getting access to hospitals and other healthcare institutions.¹⁰ *Clause (1)* of *Section 13* is itself violative of the

⁸ Constitution of India 1950, Art. 14.

⁹ Constitution of India 1950, Art. 14, 15, 32 & 226.

¹⁰ Sex Workers' Rehabilitation Bill 2015, s 13.

fundamental right of *Right to Equality* under *Article 14 and 15* of the Constitution of India.¹¹ This section provides for establishment of *separate clinics* for sex-workers and their children which substantially means that Sex- workers need separate medical institutions for getting medical treatment. This unequal treatment against sex-workers implies that they cannot be treated in the same hospital where all the other citizens go for treatment. This provision is in grave violation of the *Objectives of the Constitution* which aims for *equality* among all the citizens.¹² It was held in the case of *Paschim Banga Khet Mazdoor Samity & Ors v State of West Bengal & Anr.* that Right to Health falls under the ambit of Right to Life (Article 21), which involves the duty of the Government to provide adequate medical facilities to the people.¹³ Section 13(c) of this Bill provides for barrier free access to medical care facilities which is just the same as mentioned under Right to Health under Article 21 of the Indian Constitution. Therefore, the Right to have access to quality medical facilities for all people is also enshrined under the fundamental rights of Indian Constitution, which means that Section 13 of this Bill is also just a repetition of the same as previous Sections of this Bill.

Section 14 of this Bill provides for separate special health insurance schemes for the Sex- workers for paying Bills for accessing medical facilities. The aim of this provision is to provide financial support to the Sex- workers enrolled under these schemes. But in present times, in conformity with Article 21 of the Indian Constitution, schemes such as *Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB-PMJAY)*, *Aam Aadmi Bima Yojana (AABY)*, etc are already established and working in favour of the economically weaker section of the society for paying the medical Bills and providing health insurances to them. Therefore, a separate

¹¹ Constitution of India 1950, Art. 14; Art. 15.

¹² *Keshavananda Bharati v. State of Kerala* [1973] 4 SCC 225

¹³ [1996] 4 SCC 37.

scheme concerned with health insurance is rather useless with respect to medical expenses.

This repetition of provisions with similar aims does not serve any other purpose rather than segregating the Sex- workers from the general public. By making special laws for a particular community, more than serving for its benefit, it works against that particular community and makes a stronger base for societal discrimination. Therefore, special legislation segregates more than it integrates.

D. Chapter IX: Offences and penalties:

Section 20 of this Bill mentions whoever commits the offence of *Abuse* on a sex-worker for commercial gain, will be punished with imprisonment which may extend up to the term of *three years* and fine extending upto *twenty-five thousand rupees*.¹⁴ According to this section, if any sex worker is abused *physically* or *verbally*, the offender is punished with the prescribed punishment under this provision. But the irregularity here is about two things, first this provision only mentions abuse which is only physical or verbal¹⁵, leaving out other forms of abuse and second that this provision provides punishment for abuse only for commercial gain and this provision does not cover any other reason for abuse other than commercial gain, which indicates the exhaustive nature of this provision. This provision lacks other reasons for which sex- workers can be abused. For instance, sex-workers often face abuse of emotional nature by means such as insults, threats, public shaming, demeaning comments, etc. The sex- workers can be exploited on the financial grounds wherein the sex- workers get forcefully underpaid due to the lack of stature they hold in the society. Therefore, this provision is very exhaustive and requires

¹⁴ Sex Workers' Rehabilitation Bill 2015, s 20.

¹⁵ Sex Workers' Rehabilitation Bill 2015, s 2(a).

deliberation for the purpose of adding more facets of abuses faced by Sex- workers in India.

III. CONCLUSION AND SUGGESTION(S)

After critically analysing various provisions of 'The Sex Workers (Rehabilitation and Social Security) Bill 2015', the Author(s) have reached to the conclusion that the majority of provisions in this Bill are replications of the provisions of the Part III of the Indian Constitution, that is, the Fundamental Rights. The salient features of this Bill, mentioned in the *Statement of Objects and Reasons* are a complete imitation of various Fundamental Rights enlisted in the Indian Constitution. This Bill is violative of the Right to Equality, as this Bill participates in class legislation rather than relying on reasonable grounds for classification of sex- workers. According to the '*Reasonable Classification test*', there should be reasonable classification and there should be a nexus with the objectives of the statute. Here, the objectives mentioned are itself being violated by the provisions of this Bill. Also, having the same provisions in two different legislations creates ambiguity for the executive body in regard to which one to follow and which one reigns supreme over the other. And for seeking remedy against violation of any rights, there are explicit provisions in the Indian Constitution such as *Article 32, 226*.¹⁶ This Bill is also vague in the sense that it assumes that there are only forced sex- workers in India and does not try to bifurcate between forced and voluntary sex- work, making it a single-dimension legislation not covering the full community of Sex- workers. This Bill itself moves in an opposite direction of its aim to assimilate the Sex- workers in the wider community, rather creating a special legislation for a sex- workers, thus treating them differently and by making separate clinics for them, proves the point

¹⁶ Constitution of India 1950, Art. 32; Art. 226.

that this Bill is self- contradictory and therefore leads to alienation of the Sex- workers.

This Author(s) suggests that this Bill should be deliberated again solely based on the reason that it consists of a lot of anomalies, for instance, words and phrases are narrowly defined and other irregularities discussed above. The Author(s) suggests that there is no need for separate legislation for the welfare of Sex- workers as they are entitled to all the rights enlisted under Part III of the Constitution of India.¹⁷ The Author(s) further suggest that there should be a proper mechanism for differentiating between forced and voluntary sex- workers, as it would make it easier for the administration to decide who needs the support of the State and who is voluntarily acting as a Sex- worker. The main problem is not that the Sex- workers do not have a set of rights but the societal conception of their work which is utterly discriminating. The State, rather than formulating separate legislation for Sex- workers, should focus on empowering the sex- workers and uplifting the status of sex- work by spreading awareness among the citizens about the legalisation of prostitution and the importance of personal liberty and dignity. The State should focus on formulating and implementing schemes which elevates the social and financial status of Sex- workers. Since *Prostitution* (in private) is legalised in India¹⁸, propagating awareness for dignifying this profession should be taken up by the State in order to prohibit the discrimination of sex- workers.

¹⁷ Budhadev Karmaskar v. State of W.B., [2011] 11 SCC 538,

¹⁸ Immoral Traffic (Prevention) Act 1956