

# Identity and Illusion: Plight of Children of Commercial Sex Workers in India

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## ABSTRACT

The Budhadev Karmaskar vs. the State of West Bengal and Others judgement (2007) stimulated the discussions on the recognition of sex work as a profession whose practitioners are entitled to the dignity of labour and equal protection under the law, as decreed by the Constitution of India. In 2022, the Indian Supreme Court emerged as an agent of its effectuation. Against this backdrop the question of dignity becomes pertinent especially in the case of the children of commercial sex workers who operate on the contours of identity and illusion. Reformation, rehabilitation and mainstreaming have been the critical considerations of the auxiliary legislations and an accommodative lens has been the juridical adoption. However it is imperative to problematise the very meaning of 'accommodation' while simultaneously locating the voices of children from the latitudes of integration vis a vis a substantive mapping of praxis of social exclusion.

Drawing from the United Nations Convention on the Rights of the Child, which underscores the right to preserve one's identity, this study sets the stage for a critical examination of the Indian context. The Juvenile Justice (Care and Protection) Act of 2000, amended in 2015, aimed to provide care, protection, and rehabilitation to children in need, including those born to sex workers. However, the overlooked dimension has been the implicit incognisant perpetuation of social exclusion, with these children facing formidable barriers in education, health, and social integration.

An examination of the case of the Perna community, a tribe traditionally engaged in sex work, reveals the intergenerational nature of these issues. Child marriage and the prioritization of marriage over education, disproportionately affects girls, leading to high dropout rates and absenteeism.

The article highlights the paradoxical nature of legislations that render an identity to children of commercial sex workers, yet fail to take into cognisance their basic human right to education thereby mandating an illusion and a simultaneous exclusion of the very identity that it seemingly confers upon them.

**Keywords:** Child rights, identity, social exclusion, commercial sex workers, caste.

## 1. Child Rights : A Refresher

The United Nations Convention on the Rights of the Child is a concord between humanity that recognizes a "child" as any person below the age of 18 years. It provides that all children, all across the world, enjoy certain basic rights by the virtue of being human.

A crucial feature of the convention is its promise to proffer an identity as a right of the children. The provision states that "Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, Parties shall provide appropriate assistance and

protection, with a view to re-establishing speedily his or her identity" (OHCHR, 8).

Against this backdrop it becomes interesting to map the complexities circumscribing the identities of children of commercial sex workers especially in the Indian context vis a vis the state conferred legislations that mandate a simultaneous erasure of the muffled registers of violence faced by the children. It further compels one to question whether a mere procedural identity rendition is sufficient or that identities are value laden entities calling for a recognition of the illusory politics of social exclusion.

## 2. The Indian Case : Evolution of a Perspective

The Juvenile Justice (Care and Protection) Act of 2000, amended by 2015, is an Act to consolidate and amend the

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law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto. Thus within its ambit it paternalistically bestows certain rehabilitative renditions for the children in need of special care and protection. (*The Juvenile Justice (Care and Protection of Children) Act, 2015 [India]*, Act No. 2, 31 December 2015).

The amended 2015 Act looked into the earlier misconception of straightjacketing children 'in conflict with law' with that of children 'in need of care and protection' and commissioned setting up of Juvenile Justice Boards and Child Welfare Committees, in every district of the country, even accounting for the rehabilitation of children of sex workers.

Much of the rationale came to be derived from the apex court's position in the *Gaurav Jain vs. Union of India & Ors* (1989) & (1997), stating that "*Children of prostitutes should not be permitted to live in an inferno and an undesirable surrounding of prostitute homes*". The Public Interest Litigation was in response to an article – "A Red-Light Trap : Society gives no chance to prostitutes' offspring", published in a prominent periodical 'India Today' on July 11, 1988. Setting up of educational facilities for the children of 'fallen women' ( a term repeatedly utilised by the court, throughout the proceeding) atleast up to sixteen years of age, was the fundamental assertion by the advocate Gaurav Jain.

The resultant judgement of establishing Juvenile Homes for the purpose of reformation and rehabilitation, bringing the neglected juveniles into the mainstream, was hailed as an inclusionary advance for it not only appropriated an entire spectrum of Fundamental rights but rhetorically argued that "*accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified*". (*Gaurav Jain vs Union of India and Ors - 1998* (4) SCC 270). However this often led to a rupture of ties from their mothers.

More recently, a three-judge bench of the Supreme Court led by Justice L.Nageswara Rao, Judges Justices B. R Gavai and A. S Bopanna on 19th May 2022 in the matter *Budhadev Karmaskar Vs. the State of West Bengal and others*, rendered a historic order, recognizing sex work as a profession whose practitioners are entitled to dignity of labour and equal protection under the law as decreed by the Constitution of India. (Rajagopal, 2022)

Refraining the police from interfering or taking criminal action against adult and consenting sex workers, the Supreme Court ratified the dignity of sex work and opined that "*It need not be gainsaid that notwithstanding the profession, every individual in this country has a right to a dignified life under Article 21 of the Constitution*". (Rajagopal, 2022)

The omnipotent Article 21 of the Indian Constitution provides an expansive meaning to life, not merely limited to the functions and activities constitutive of bare minimum expression of the human self but also encompassing the basic protection of human dignity extending it to the sex workers and their children, positioned at the receiving end of social stigma by the virtue of the socially constructed disposition of their work.

The 2022 judgment emerged as ostensibly liberating as it legally reinforced claims of accommodation and effectively challenged the previous paternalistic notions. It not only provided a semblance of legitimacy to the previously overlooked reputation of sex work and its practitioners but also unveiled a critical reevaluation. However, despite this progressive shift, the status and well-being of their children remains at risk, subject to fragmentation, irrespective of the ongoing efforts for recognition and the concurrent persistence of societal obscurity. This challenge is further compounded by the generational stigma that continues to encircle their elusive existence, adding complexity to the pursuit of a more inclusive and empathetic societal perspective.

### 3. Social Exclusion of Children of Sex Workers

The experience of being socially excluded is not unfamiliar to the human register. On an everyday basis, an individual may be included in some spheres of life while concurrently excluded from others. A better understanding can be garnered by focusing on the theoretical underpinnings of social exclusion as analysed by Hilary Silver in their work 'The Process of Social exclusion : The Dynamics of an evolving concept' (2008)

To begin with, social exclusion can be aptly described as a dynamic process of progressive, multidimensional rupturing of the social bond at the individual and collective levels. Social exclusion as a process thrives on restricting the full participation of an individual or a group in the normatively prescribed activities of a given society and denies access to information, resources, sociability, recognition, and identity, eroding self-respect and reducing capabilities to achieve personal goals. (Silver, 2008)

Against this backdrop, the case of commercial sex workers and their children becomes a poignant one. A crucial argument made in the *Gaurav Jain Vs Union of India* judgement by the court was one against setting up of *separate* hostels and other reformatory homes for the child

victims and rather propounded an accommodative and an assumingly inclusionary approach in other domains of life as well. However, underlying this accommodative approach is the functional praxis of social exclusion that comes to underline the identity of most of these children.

Children of commercial sex workers are prevented from taking admissions in schools which given the patriarchal fervour of the Indian society seeks a paternal validation of the child's birth. This impedes inclusion for most children of commercial sex workers who have no knowledge of their fathers and for whom registered births are a far-fetched reality. Ambiguity delimits them into bodies with no identities. Even if the children are able to secure admissions to schools by forging names and signatures of fathers, economic considerations lead most to drop out sooner or later.

Children of traditional sex workers face significant abuse and discrimination at school by students from other communities (NCPCR,2018 p3). Reticence in interaction and intermingling comes to define the social and moral development of the children. The euphemistic presentation of consequent introversion silences the voice of most, reinforcing an erasure of their already blurred identities.

The veracity of malnourishment amongst children of commercial sex workers is often overlooked ( Kakeri et al, 2018, p10 ) and immunization is often perceived as a non-obligatory and discretionary exercise. This augments the already existent health risk to the children.

Psycho- emotionally, love, care and affection are an absent certitude from the experiential registers of most children of sex workers whose biological mothers may remain absent from caregiving duties on account of dealing with the consequentialities of taking up the trade :- deficient institutional support in medical terminations and a variety of other illnesses. Successive lack of parental support may wield negative psychological impacts.

The clandestine nature of sex work erases the experiences of most of the children, pushing them to operate at the margins of the society and thoroughly determine their psychological makeup. Given the economic vulnerability, most children raised in brothels take up work of assisting other female sexual workers or assist in operating illegal liquor shops etc. (Deepa & Manjula, 2020)

A feeling of antipathy, precariousness and complacency with their existent situation comes to define the everyday life of these children which seemingly runs on the wheels of mercenary urgencies.

On a variety of axes, a synchronous rupture between the societal matrix and the self is witnessed. An anticipated internalization is to follow. While legalizing is the first step in legitimizing the very existence of practitioners of commercial sex work, cognizance of the intergenerationality of social exclusion is the need of the hour.

#### 4. The Case of Perna Community

The NCPCR report of 2018 identifies certain tribes engaged traditionally in sex work, of which is the Perna Tribe inhabiting the regions of Najafgarh, South-west Delhi. It states that the *“Perna community is found mainly in the state of Haryana and NCT of Delhi mostly in the districts of Rohtak, Gurgaon, Faridabad and Sirsa and also in the Najafgarh area of South-west Delhi, Perna is a de-notified and nomadic tribe listed in the Ayangar Committee report. Though, the law was repealed and the tribes de-notified, the identification of these communities as ethnic groups with criminal antecedents continues to this day, leading to everyday discrimination in terms of access to education and jobs, as well as brutal violence by neighboring communities and police personnel.”* (NCPCR, p.11)

The Perna community of Najafgarh (Delhi) has been the victim of intergenerational prostitution wherein men have come to pimp their own women. A pertinent question that emerges is that with regard to their participation in education.

*‘What will they do with school education? Who will give them jobs? Nobody in our family and community has ever been in a government job or a private job?’ is how most of them respond to queries about sending their children to school.’* (Kakoty, Mishra, Mir, 2018, p. 164)

Children of the Perna community gain delimited access to primary education. Girls drop out generally after the 5th and 6<sup>th</sup> grade on account of marriage considerations, pre-determined even before birth. While child marriage is the causal evil, motherhood eventually paves way into prostitution. Consequentially the primacy of education is disregarded for both boys and girls but ramifications are greater for the girls. (Kakoty et al, 2018, pp 175)

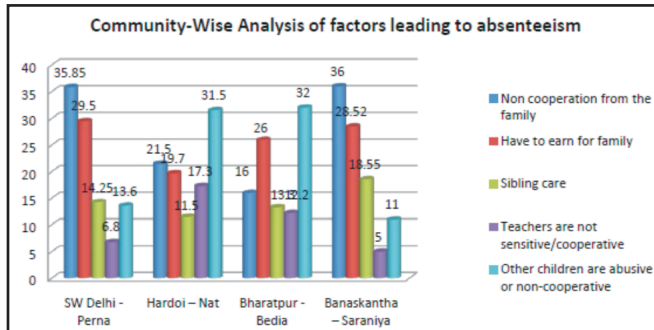
A detailed study of the report by NCPCR 2018 rationalises arguments highlighting greater dropout rate amongst girls of the Perna community.

SN	Community	State	District	Meeting with District level Officials	Number of Teachers Interviewed	No. of School Going Children			Number of Parents	No. of Drop-out Children		
						Boys	Girls	Total		Boys	Girls	Total
1	Perna	Delhi	South - West Delhi	21	19	16	28	44	22	2	6	8
2	Nat	UP	Hardoi	14	2	54	73	127	20	3	4	7
3	Bedia	Rajasthan	Bharatpur	15	23	92	89	181	15	2	10	12
4		MP	Vidisha	36	22	44	56	100	14	0	13	13
5	Bachhara	MP	Raisen	21	6	36	22	58	20	7	5	12
6			Neemach	9	14	69	59	128	23	22	2	23
7	Saraniya	Gujarat	Banasikata	38	2	36	14	50	12	10	20	30
<b>Total</b>				<b>154</b>	<b>88</b>	<b>347</b>	<b>341</b>	<b>688</b>	<b>126</b>	<b>46</b>	<b>59</b>	<b>105</b>

Source : NCPCR 2018

Absenteeism, emerges as a congruent cause, explaining the lack of cooperation from the parents of the community (35.85) and mercenary considerations those being mostly engaging in sex work (29.5) post-marriage.

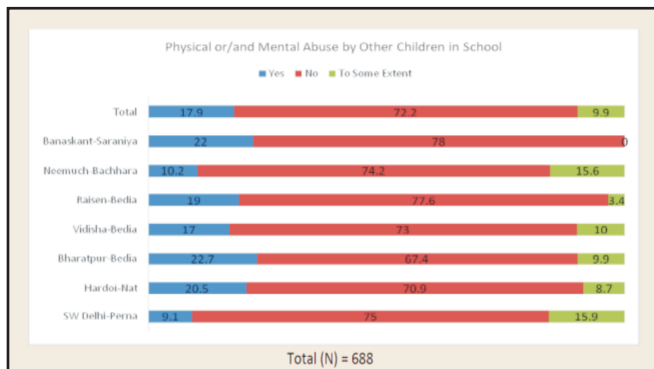
Districts/Communities	Non cooperation from the family	Have to earn for family	Sibling care	Teachers are not sensitive/cooperative	Other children are abusive or non-cooperative
SW Delhi- Perna	35.85	29.50	14.25	6.8	13.6
Hardoi – Nat	21.5	19.7	11.50	17.3	31.5
Bharatpur- Bedia	16.00	26	13.3	12.2	32.00
Banaskantha – Saraniya	36.00	28.52	18.55	5.00	11



Source : NCPCR 2018

Reflective of the exclusionary practices that alienate the children, have been indicators of a lack of guidance and support from teachers which further reinforces the silence of their experiential registers masked by the rhetoric of “shyness”. Thus while 81.8 percent students may feel that they are being heard, a good 18.2 percent students in the Perna community feel neglected on account of lack of proper guidance. (NCPCR 2018)

Physical and mental abuse also emerges as a determinant wherein 25 percent of the students amongst the Perna community feel that the children of other communities abuse them or physically harm them by using derogatory names for them and their community.



Source : NCPCR 2018

### 5. Conclusion

The idea is to place the children first. Recognizing the dignity of sex work does register the identities of commercial sex workers but a mere procedural admission doesn't loosen the chokehold of social stigma constructing their identities, subsequently bequeathed to their children.

The children of commercial sex workers operate on the oxymoronic contours of identity and illusion, validation and obliteration. Internalisations are presupposed by the perceptions of the state. Institutional incomprehension of the complex exclusionary modalities produces an insular understanding. A heightened consciousness in policy formulation requires an evolved sensibility to the operation of social exclusion in the substantive sense, demanding an 'integration' over mere 'accommodation'.

Thus, the rhetoric of accommodation needs to be acknowledged and critically evaluated. A concave, perceptual lens needs to be adopted by the policy and law makers to overcome the myopic understanding of the functioning of social exclusion. Children are the backbone of the society. By obscuring their identities, we throw ourselves into an abstraction, a dissociative future of uncertainty, recovery from which becomes a remote possibility.

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