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THE LEGAL LEGACY OF AN UNREGULATED PROFESSION: UNPACKING THE INDIAN JUDICIARY'S STANCE ON PROSTITUTION

AUTHORED BY - VARALAKSHMI. TADEPALLI*

Abstract

Prostitution in India has undergone a significant legal transformation, evolving from an unregulated practice to a system governed first by the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA), and later by the Immoral Traffic (Prevention) Act, 1956 (ITPA). This article critically examines how judicial interpretation has shaped the legal status of prostitution, culminating in the Budhadev Karmaskar Vs. State of West Bengal (19.05.2022) judgment, which has effectively altered the legislative framework by invoking Article 142 of the Constitution. The study explores the problematic judicial treatment of prostitutes as professionals and punters (clients) as mere customers, leading to the quashing of criminal proceedings against them despite their role in sustaining commercial sexual exploitation. It further critiques the amended definition of "prostitution" under the ITPA, arguing that its flawed construction has diluted the law's enforcement, allowing the monetary transaction to be viewed as mere encouragement rather than inducement. This article highlights how some courts have misapplied statutory interpretation, treating the payment of money by punters as a neutral act rather than an active facilitation of exploitation, impeding ITPA's effective implementation. It lays a key focus on the jurisprudential shift introduced by the Supreme Court in Budhadev Karmaskar, where the Court, under the guise of rehabilitation, issued directives that effectively legitimized voluntary sex work. By restraining police action, prohibiting the use of condoms as evidence, and involving sex workers in policymaking, the judgment has created a legal paradox—while brothel management and trafficking remain criminalized, sex work itself is insulated from scrutiny. This judicial manoeuvre, based on the double negation that prostitution is "not illegal," undermines the ITPA's objectives and weakens enforcement mechanisms. This article argues that judicial overreach has redefined prostitution's legal status instead of eradicating commercial sexual exploitation--thereby eroding statutory safeguards and contradicting public policy. It calls for the Apex Court's action *ex debito justitiae*, to rectify the deviation taken, to restore clarity, ensuring the broader goal of judicial interpretations aligning with constitutional propriety.

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Keywords: Prostitution Law, ITPA, decriminalisation, legalisation, Judicial Overreach, Punters, Legal Semantics, Budhadev Karmaskar, Article 142, Commercial Sexual Exploitation, Public Policy.

I. From Royal Patrons to Social Margins: The Evolution and Erosion of India's Courtesans and Devadasis

Unlike deeply patriarchal and misogynistic Greeks who considered all women to be like some animal and an ultimate burden to men[1]-- Women in India have long been regarded with high esteem, traditionally placed under the protection of their fathers, brothers, husbands, or sons. Social norms sought to safeguard their innocence and honour. However, history also witnessed remarkable women who transcended societal expectations, demonstrating unwavering commitment to their duties, fulfilling obligations, and protecting their families from various threats. Among them were those with extraordinary skills in performing arts and warfare, whose intelligence and allure enabled them to influence and captivate men of great power and stature--rooted in the belief that men possessed an inherent inclination towards desire and sensual pleasures.[2]

The ancient sovereigns of Indian kingdoms, often in collaboration with intellectuals, wealthy patrons and feudal lords (the 'Sabhapati') local rulers or military chieftains (the 'Nayakas') and temple administrators, strategically recruited a distinct class of glamorous, highly educated individuals skilled in arts, crafts, and warfare having high social status. These individuals served as spies or informers, either as patronized sophisticated courtesans 'Ganika' directly under royal protection or as devadasi, who, while not directly linked to the sovereign, maintained religious affiliations with temples, through the Sabhapathis or Nayakas. This dual role not only enabled them to fulfil their covert missions but also safeguarded them from being

[1]배소연,2018. Married with Beasts: Animalization of Women in the Works of Hesiod and Semonides of Amorgos. 서양고대사연구, (53), pp.233-281. Simonides of Amorgos (a Greek poet from the 7th century BCE), "*Types of Women*" (*Semonides 7*)-writes representing the misogynistic portrayal of women categorizing women into different "types," comparing them to various animals to highlight their perceived flaws and vices.

[2] Kangle, R.P., 1965. *The Kautilya Arthasastra Part III: A Study*. Bombay: University of Bombay, At 81- He says Among the 'open' thieves are enumerated officers receiving bribes, deceitful artisans, gamblers, astrologers, clever prostitutes and so on. At p.247- He says 'The loyalty of the troops is of utmost importance and therefore it is recommended that they should be under the constant surveillance of spies, prostitutes, artisans, actors and singers in secret service, besides being under the watchful eye of senior army officers (5.8.47).'' It warns about men who become excessively attached (*samsakta*) to courtesans, noting that their obsession could lead to financial ruin, loss of reputation, and political vulnerability

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perceived as morally depraved.[3]

In the Indian societal strata, these enchantress Devadasis and courtesans, like *Hetairai* of Greece and *Geishas* of Japan, were autonomous women who cultivated lasting associations with elite men, offering intellectual and cultural enrichment in addition to physical companionship. At the cost of their own reputation, prestige, and the burden of social stigma, these women willingly dedicated themselves to advancing the king's purpose and serving the kingdom's cause. These activities were conducted in the confines of the lavish courts they maintained by luring the targets or by escort method.

As these selected few were, implicitly or explicitly, the creation of a sovereign and under the Royal patronage, hence the legitimacy of their work was never under question in the same kingdom—however when their espionage was traced elsewhere, they were sentenced on far more serious counts than the method adopted.

Subsequently, as patronage declined for various reasons including complex interplay of historical, political, socio-religious, and economic transformations, these individuals, adapting to the shifting circumstances, recalibrated their roles for roles for survival in an unrecognizing world. 'As a result of the changes, these once highly esteemed women—who played crucial roles in espionage, governance, and cultural preservation—were gradually relegated to the margins of society, forced to recalibrate for victualling and openly offer themselves in exchange for payment'[4]. This shift in their position brought a pejorative notation "Prostitution".

II. Pain, Purpose, and Pleasure: The Forces Driving Prostitution

From ancient to medieval and modern times, an overwhelming number of women have entered prostitution. Predominently, lack of legal protections, dependence on indifferent or neglectful men, poverty, lack of education, and economic disparity often forced abandoned, widowed, or ostracized women to turn to prostitution as a last resort to sustain themselves and their families.

There are three kinds of women who got into sex trading: The first kind are those who are driven into it by 'Pain' dehumanizing effects of hunger which overrides morality. where

[3]Jha D, Sharma T (2016) *Caste and Prostitution in India: Politics of Shame and of Exclusion*. Anthropol 4: 160. doi: 10.4172/2332-0915.1000160

[4] Dr. P Hathiram et al, Women's Exploitation as Devadasis and its Correlated Evils: A Review, 2023 (JETIR) September 2023, Vol 10 Issue 9, (ISSN-2349-5162 page no.1457)

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starvation has left them with no choice but to commodify the body—a stark reminder of how economic deprivation forces people into moral compromises. The second kind are those who volunteer with a calculated intent to achieve prestige, property or prosperity. Unlike the first group, they actively choose this path, seeing it as an opportunity to gain financial independence, power, and social influence. Historically, courtesans, *tawaifs*, and *hetairai* were among such women who, through their intelligence, artistry, and charm, secured patronage from elite men and gained active and influential positions in politics and societies. The third kind are those who engage in sex work out of personal inclination, driven by a sense of adventure, desire, or personal gratification. For them, this is not merely a necessity but a deliberate choice—a space where they find agency, control, and empowerment over their own bodies and desires. This category challenges the moral stigma attached to sex work, raising questions about autonomy, choice, and societal perception.

The first kind includes young girls who are victims of trafficking, traded by pimps or procurers, or even coerced by their own family members. These individuals continue in the trade regardless of social stigma, as their circumstances leave them with no opportunity to return to normalcy. The second kind, often famous personalities, lead extravagant lives and operate discreetly—engaging in sex work for quick financial gains, political leverage, property acquisition through illicit means, or as part of honey-trap operations. They typically remain unnoticed until exposed through law enforcement raids. The third kind, usually from wealthy circles—such as wives of aging barons or socially confined housewives—engage in the trade, or sometimes in no trade at all, by hiring young males from familiar or unfamiliar circles. They explore new avenues while carefully curating a deceptive appearance of nobility, often masquerading as advocates for a social cause.

The transition of prostitution from ancient temple practices, royal courts, and wartime survival to modern commercialized sex work reflects deep-seated socio-economic and gender inequalities. While some women have used it as a means of empowerment, for many, it remains a last resort due to systemic oppression, poverty, and limited opportunities. What is pertinent to note is that all three kinds engage in this work voluntarily, yet their choices are shaped, if not dictated, by their compelling living circumstances. This work changed its expression over time reflecting the conception of an institution, particularly for the poor and marginalized, who had to adapt to their living conditions. Despite its long-standing presence, there was neither legal intervention nor regulation until 1947.

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III. Regulation To Penalization: Evolution of India's Legal Framework from Prohibition of Dedication, SITA (1956) To ITPA (1986)

The states of Tamil Nadu, Karnataka and Andhra Pradesh initially enacted Madras Devadasis (Prohibition of Dedication) Act, 1947, Karnataka Devadasis (Prohibition of Dedication) Act, 1982, Karnataka Devadasis (Prohibition of Dedication) Act, 1988 respectively, to prevent the dedication of women as "Devadasi" to Hindu deities, idols, objects of worship, temples and other religious institutions; Holding that--such practice, however, ancient and pure in its origin, lead many of the women so dedicated to a life of prostitution; and that it is necessary to put an end to the practice; These acts in explicit terms not only declared any form of dedication illegal, whether voluntary or forced but also made it a punishable offence including the woman in respect of whom such ceremony or act is performed.

In view of the increased human trafficking, and international obligations from the UN Convention for the Suppression of Traffic in Persons (1956), to prevent more women from entering into this work, the government of India formulated its first legislative intervention through the Suppression of Immoral Traffic in Women and Girls Act 1956 (the "**SITA**"), which aimed to regulate and penalize prostitution-related activities. It however, did not criminalize sex work per se, but it penalized brothel-keeping, soliciting, and third-party profiteering (pimps, traffickers, brothel owners). However, due to its ineffectiveness in controlling organized trafficking and loopholes, that allowed the continued exploitation of women, the law was amended and strengthened as The Immoral Traffic (Prevention) Act 1986 (the "**ITPA"**).

It can be contended that, certain key gaps in SITA were apparently fixed by ITPA.

Gaps in SITA (1956)	How ITPA (1986) Fixed Them
1. Focused only on women and girls – The law applied only to female victims, failing to recognize that men and children could also be trafficked.	Expanded to all genders, including boys and transgender individuals, acknowledging a broader spectrum of trafficking victims.

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2. Lenient punishment for traffickers and brothel keepers – Brothel-keeping and trafficking were punishable by only one-year imprisonment, making it easy for offenders to return to illegal activities.	Increased punishment for brothel-keeping to 3-7 years and for traffickers to 7 years to life imprisonment, making penalties more stringent.
3. Penalized sex workers instead of exploiters – Women engaged in prostitution were often arrested and punished, while traffickers and pimps went unpunished.	Shifted focus to penalizing exploiters (brothel owners, pimps, and clients), recognizing sex workers as victims rather than criminals.
4. No clear provisions for rehabilitation – The law lacked provisions for rescue, rehabilitation, or alternative livelihood options for victims of trafficking.	Introduced rehabilitation programs, shelter homes, and vocational training to help rescued women reintegrate into society.
5. Weak police powers and enforcement – Law enforcement could only intervene if a formal complaint was filed, making it difficult to act proactively against trafficking.	Strengthened police powers to conduct raids on brothels, rescue trafficked victims, and arrest perpetrators without waiting for a formal complaint.
6. Limited provisions for child trafficking – Did not have strict penalties for the sexual exploitation of minors.	Introduced severe penalties (7 years to life imprisonment) for trafficking and exploiting minors in prostitution.
7. No accountability for clients (punters) – The law ignored the role of customers in sustaining prostitution, focusing only on women and brothel owners.	Criminalized clients (punters) who sought services from trafficked victims or minors, aiming to reduce demand.

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8. Allowed brothels to operate discreetly – Since running a brothel was not explicitly illegal, many disguised their operations to continue business.	Made running, managing, or funding a brothel illegal, strengthening laws to dismantle trafficking networks.
9. Encouraged detention instead of support – Sex workers were often detained in "corrective institutions", without proper rehabilitation.	Shifted focus from detention to voluntary rehabilitation, providing legal aid, counselling, and skill training.
10. Ambiguous definition of prostitution – Did not clearly define what constituted "immoral trafficking", leading to inconsistent enforcement.	Clarified legal definitions of trafficking, commercial sex, and forced prostitution, ensuring better enforcement.

The ITPA was introduced to combat human trafficking and exploitation within the sex trade. the Act's emphasis lies on curbing exploitative practices, such as managing brothels, living off earnings from prostitution, and trafficking for sexual exploitation. It does not criminalize voluntary sex work though--this omitting apparently creates an obscure point in knowledge for getting false ideas on validating 'Prostitution' in India. Instead of hastening to conclude, it would be relevant to gain a grasp on the intent of the policy makers indelibly, through placing reliance on the maturity of knowledge that makes right observation conforming to it. The Supreme Court in the case of CJ Chagla, in the case of **State of Bombay Vs. Narasu Appa Mali[5],** while considering the validity of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, held: "*A question has been raised as to whether it is for the Legislature to decide what constitutes social reform. It must not be forgotten that in democracy the Legislature is constituted by the chosen representatives of the people. They are responsible for the welfare of the state and it is for them to determine what legislation to put up on the statute book in order to advance the welfare of the state*." In furtherance to this the Supreme Court in the case of,

[5]AIR 1952 Bom 84

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Pannalal Bansilal and others Vs. State of AP and another[6] while deciding on the question if the legislature should make law uniformly applicable to all religions, held, "*A uniform law, though is might desirable, enactment thereof in one go, perhaps may be counter-productive to the unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt more acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief of defect which is most acute can be remedied by process of law at stages*."

A full bench of the Apex court, presided by Justices AM Ahmadi, S.V. Manohar and K. Venkataswami in the case of **Ahmedabad Women Action Group (AWAG) and others Vs. Union of India**[7] reiterated the same in deciding whether, Muslim personal law can be amended by Judicial interference. It acknowledged that while a uniform law may be desirable, its sudden imposition may be counterproductive to national unity and social stability. The judgment underscored that legal reform is a gradual and evolutionary process, addressing the most pressing issues first while ensuring a stable transition for those affected.

Applying the same analogy ITPA, it becomes evident that the Government of India took a cautious and phased approach in addressing prostitution. Instead of outrightly criminalizing prostitution, the government initially focused on regulating and penalizing third-party exploitation (such as brothel-keeping, trafficking, and procuring) before moving towards more structured interventions. This measured approach was necessary because an immediate and absolute ban on prostitution would have created more harm than good. Declaring prostitution illegal overnight would have:

a. **Turned victims into offenders** – Many sex workers, who were already vulnerable, would have been criminalized under state law.
b. **Left thousands without livelihood** – A sudden legal prohibition, without adequate economic alternatives or social support, would have rendered them jobless and without a safety net.
c. **Resulted in mass arrests and detentions** – Without a robust rehabilitation mechanism, sex workers could have faced punitive action, including incarceration, exacerbating

[6][1996] 1 SCR 603
[7]AIR 1997 SC 3614; (1997) 3 SCC 573

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their hardships rather than alleviating them.

Recognizing the entrenched and complex nature of prostitution, the Indian legislature adopted a calibrated step-by-step approach, gradually criminalizing exploitative elements while simultaneously working on frameworks for rehabilitation, vocational training, and reintegration programs through social groups and voluntary organisations. This dual-track legislative strategy reflects the constitutional commitment to both social justice and human dignity. This approach aligns with the Supreme Court's observation in Pannalal Bansilal case (supra), which stressed that legal reforms must be introduced progressively, addressing the most pressing issues first while allowing for structured social adaptation. The delay in outright criminalization of prostitution must therefore not be misread as tacit legalization, but rather as a conscious policy decision aimed at avoiding collateral harm to vulnerable individuals. By prioritizing the regulation of coercive and exploitative practices, while concurrently developing protective and rehabilitative frameworks, the Indian state sought to ensure that the law does not turn punitive against the very individuals it is intended to protect.

This nuanced position finds judicial reinforcement in State vs Bashir Ahmed and Ors.[8] wherein Justice M.L. Jain of the Delhi High Court made a pivotal observation:

> *"In spite of puritan fervour, it is difficult to totally eradicate this ancient practice unless the society guarantees to supply suitable employment and more rigorous its suppression is, more defiantly does it emerge overtly and covertly in other sophisticated forms."*

This legislative framework must, therefore, be interpreted as a deliberate effort by the Government of India to systematically address not only human trafficking but also the broader concerns surrounding prostitution, especially considering that similar practices under the 'Devadasi' system, have been strictly prohibited and penalized. Further, this legislative intent has been bolstered by the incorporation of Section 370A(2) of the Indian Penal Code, introduced following the recommendations of the Justice J.S. Verma Committee. This provision criminalizes the exploitation of trafficked victims, thereby shifting punitive focus to the exploiters and reinforcing the victim-centric orientation of the law. It is not a move towards legitimizing or decriminalizing sex work, which could later evolve into forces disrupting the

[8] 23 (1983) DLT 486

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social fabric but rather a structured approach avoiding abrupt legal measures unsupported by socio-economic realities.

IV. A Disproportionate Moral and Legal Scrutiny

> *"...Conception of the value is determined by the conception of the self. The individual selves lokking upon themselves as lions, tigers, bears, men, yakshas, raakshas, gods, demons, females, and males, have corresponding and mutually separate conceptions, of what is to be desired and what is to be avoided. These various conceptions of value are mutually contradictory. Therefore, the whole positions is cleared up and explained on the principle that what an individual pursues as a desirable end depends upon what he conceives himself to be."*

Vedartha Sangraha

The early cases addressing prostitution, such as **State of Uttar Pradesh vs. Kaushalya**[9], recognized that sex workers are entitled to fundamental rights under Article 19(1)(d) and Article 21 of the Indian Constitution, which safeguard personal liberty and the right to move freely. However, the Supreme Court also upheld the state's authority to impose reasonable restrictions in the interest of public order and morality. Similarly, in **Baidyanath Kundu vs. The State of West Bengal**[10], the Supreme Court, while interpreting the ITPA, upheld the conviction of a brothel owner under Sections 3 and 7, reinforcing that while sex work itself is not explicitly criminalized, running or managing a brothel remains illegal, this however did not speak about the liability of the Punters. Likewise, in **State of Maharashtra vs. Chandraprakash Kewalchand Jain**[11], the Supreme Court significantly shaped the legal discourse by holding that a sex worker's past sexual history is irrelevant in cases of sexual assault, reinforcing her right to dignity and protection under the law.

While these cases contributed to the evolving legal stance on prostitution, the most transformative judicial intervention came with **Gaurav Jain vs. Union of India**[12], which shifted the focus toward rehabilitation and reintegration of sex workers and their children, rather than merely regulating or criminalizing aspects of the trade. However, the judgment also

[9] (1964 AIR 416, SCR (4) 1002)
[10] WP.No.7858 (W) of 2012
[11] 1990 AIR SC 658,
[12] 1990 AIR SC 292;

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carried inherent contradiction. In the second round of **Gaurav Jain Vs. Union of India**[13]**,** while advocating for their rights and upliftment, Supreme Court reinforced the stigmatizing label of "Fallen Women", a term of its own making.

Before analysing the judicial paradoxes resulting from various rulings, it is essential to critically examine the terminology of 'Fallen Women', 'Prostitution' and 'Profession' employed by the courts and their broader implications. The fundamental questions or points of enquiry that arise are—

(a) does this designation of 'Fallen Women' acknowledge victimhood, or does it inadvertently reinforce the social exclusion and moral condemnation that the law seeks to rectify? and

(b) what are the roles played by the participants of 'Prostitution'? and how should they be evaluated?

The primary focus of legal frameworks in this context is the rehabilitation of sex workers and their children. However, judicial discourse often reveals inconsistencies in how gendered roles are defined and treated under the law. In a case, **Gaurav Jain Vs. Union of India**[14] where the Supreme Court addresses gender equality in paragraph 14 of its order, it cites provisions from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), emphasizing the prohibition of gender discrimination, modification of social norms to eliminate prejudices, equal access to healthcare, and economic and social equality. It also affirms that the right to development is an integral part of the Indian Constitution and the Human Rights Act, with the National Commission for Human Rights being responsible for ensuring its implementation--Yet, despite acknowledging these principles, the Supreme Court refers to sex workers as "fallen women" while making no mention of the men (Punters and Procurers) who engage their services. If women carrying out sex work are labelled as such, the men approaching them are equally complicit, yet they remain unexamined and unlabelled. In a game of Kabaddi or Cricket where two teams are involved, both are identified as 'Players', not as "Players" and "customers." The same analogy should apply to sex work, where both parties are engaged in the same activity both must be called sex workers or 'sex workers' and 'sex seekers.'

[13] AIR 1997 SC 3021, (1997) 8 SCC 114
[14] AIR 1997 SC 3021, (1997) 8 SCC 114

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Further, in another case **State of Maharashtra & Ors. Vs. Madhukar Narayan Mardikar**[15], the Supreme Court corrected the Bombay High Court's observation that an unchaste woman's testimony is inherently unreliable. The apex court held that even a woman of "easy virtue" is entitled to privacy, protection from violation, and fair treatment under the law. Her testimony cannot be dismissed outright, though caution may be exercised in evaluating it--while the courts deliberated extensively on the credibility of such women, little attention was given to the government officer in uniform who approached the complainant demanding sexual intercourse. This pattern of differential treatment underscores a deep-rooted bias--starting and ending with women.

In continuation to the above discussion on labelling Prostitutes as 'fallen Women' it would be pertinent to mention the statement of Justice Shah, in **Western M.P. Electric Power & Supply Co. Ltd.Vs. State of M.P. & Ors.**[16]**,** who while interpreting Article 14 of the Indian Constitution on ensuring equality among equals, safeguarding individuals against discriminatory treatment while permitting rational classification—he says, "the principle dictates that equals must not be treated unequally, just as unequals should not be treated as equals. However, the application of this principle does not demand mathematical precision, nor should it be subjected to rigid or dogmatic interpretation—a practical and realistic approach must prevail."

This reasoning when applied, exposes the glaring gendered inconsistency in legal discourse surrounding sex work. If women engaged in prostitution are labelled "Fallen Women," then the men who seek their services cannot remain shielded from a similar classification—they too are participants in the same act and must be labelled accordingly. If the former are called "Sex Workers," then the latter must necessarily be referred to as "Sex-Cravers." Any failure to apply the same linguistic and moral scrutiny to both parties, reflects a systemic bias, contradicting the constitutional promise of equal treatment under the law. Ensuring genuine gender equality requires dismantling these biases and applying the law with equal scrutiny and accountability to all individuals engaged in the same activity.

The impact of this bias on the judiciary's approach will be further examined in the course of this article, analysing how it influences legal interpretations and the treatment of individuals

[15] AIR 1991 SC 207
[16] (1969) 3 SCR 865

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within the justice system. To fully grasp the legal contradictions discussed in this article, it is essential to carefully examine the perspectives on the definitions of 'Prostitution' and 'Profession'.

Before delving further into the structural aspects of Prostitution, it is important to first examine the observations made by the Full Bench of the Supreme Court in **Dwarampudi Nagaratnamba Vs. Kunuku Ramayya and Ors**,[17]. The Court held:

> *"The services of the concubine were given in exchange for the promise of a paramour under which she obtained similar services. In lieu of her services, the paramour promised to give his services only and not his properties. Having once operated as the consideration for his earlier promise, her past services could not be treated under Section 2(d) of the Contract Act as a subsisting consideration for his subsequent promise to transfer the properties to her. The past cohabitation was the motive and not the consideration for the transfer."*

This ruling established that a concubine's services were rendered in exchange for a promise of sexual companionship rather than any legal claim over property. This was followed by the high court of Madras in **Saradambal Ammal vs A.M. Natesa Mudaliar**[18] the high court of Andhra Pradesh in **Sanagavarapu Venkata Subbaiah Sarma Vs Karuthota Galib Saheb and Ors.**[19]

This very principle applies to prostitution in the same length and width, where both participants engage in the act, with a tacit understanding that each will cooperate in rendering sexual services to satisfy each one's hunger. The money offered by the punter (or so-called customer), knowing the subject women's vulnerability, serves not as a consideration or contractual obligation but rather as the motivation (inducement) for the prostitute to agree and commit herself for the sexual exploitation. Thus, the motive for the inducement and the object intended to be achieved are both immoral.

In a legitimate marital relationship operates on an implicit understanding between partners, encompassing emotional and sexual fulfilment, companionship, and financial stability. The core motivation is often procreation and building a family, yet despite the presence of sexual relations, financial security, and mutual dependence, such a relationship is neither considered

[17] AIR 1968 SC 253, [1968] 1 SCR 43
[18] (1972) 1 MLJ 244
[19] 1997 (4) ALT 274

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immoral nor illegal. The key distinction lies in 'exclusivity'--a man and wife are committed to each other—unlike prostitution, marriage does not involve eithers' accessibility to multiple individuals in exchange for financial or material benefits.

Recognizing this fundamental distinction is crucial to understanding the legal and societal perceptions of prostitution. The defining factor is not merely financial exchange, which is the notion deeply embedded in historical and legal interpretations--but it is unrestricted accessibility to many men.

The courts in the cases of **re Ratnamala and another Vs. State of Tamil Nadu**[20], and **Bai Shanta Vs. State of Gujarat**[21] stated—"…. Promiscuity in prostitution means indiscriminate bartering of sex favors without any emotional attachment and for monetary considerations. It was also pointed out that 'the purpose of ITPA was not to render prostitution per se a criminal offence, but it is to inhibit or abolish commercialised vice as an organized means of living.' And that "Promiscuity lies in an intentional indifference in the selection of parties as long as they pay. The relationship is usually marked by brevity and inside contempt for each other." Apart from its legal definition given at Section 2(f) of the ITPA (which has been discussed in detail infra), the term "Prostitution" has evolved colloquially to describe not only sexual transactions for money but also the act of compromising one's integrity, skills, or Values for material gain. In medieval English society, "Fasciculus Morum", a 14th-century Latin moral treatise, defines a prostitute as a woman who indiscriminately offers herself to anyone, i.e., refuses no one, and engages in such acts for monetary compensation"[22]**.** Expanding on this perspective, historian Ruth Mazo Karras, argues that 'a prostitute's defining characteristic was not simply the exchange of money for sex but her perceived accessibility to all men. This notion reduced prostitutes to communal property rather than autonomous individuals.[23] In essence, the defining feature of prostitution is not merely monetary compensation but the aspect of being accessible to many. It is this lack of exclusivity that distinguishes prostitution from other sexual relationships, shaping both its legal treatment and societal stigma. The, the money offered by the Customer to motivate the economically and socially frail and feeble

[20] AIR 1962 Mad 31
[21] AIR 1967 GUJ 211
[22] *Bullough, Vern L.; Brundage, James A., eds. (2000). Handbook of Medieval Sexuality. Garland Publishing Inc. member of Taylor & Francis. ISBN 9780815336624*
[23] Karras, R.M., 1996. *Common Women: Prostitution and Sexuality in Medieval England*. New York: Oxford University Press. ISBN 9780195352306.

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women, to consent for Prostitution. Therefore, the offering money, social security, promise of marriage, and or other material benefits by the customer is to be noted as 'inducement' (by exploiting her vulnerability) to offer herself for the immoral object of giving/taking sexual service—when the inducement is by offering money, commercial element arises to the sex-service. The higher the money offered by the inducer, the greater is the inducement for the women to agree to the immoral objective.

It is now essential to examine how ITPA defined Prostitution and the legal framework established under the ITPA, how the courts have interpreted the definition, particularly in the context of judicial rulings. Understanding the judiciary's approach and perspective on 'Prostitution' will provide critical insights into how the courts perceive, regulate, and address this issue.

1. **Definition of 'Prostitution' and 'Prostitute' under section 2(f) of the ITPA:**

It is important to scrutinize the imperative yet legally incongruous definition of 'Prostitution' as prescribed under the ITPA, as it significantly deviates in both scope and substance from its conventional and dictionary meaning and the established legal interpretations of the term. As per Section 2(f) of ITPA (prior to the amendment in 1987 extracted in **State vs Bashir Ahmed And Ors**[24];

> "*2(f) 'prostitution' means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression 'prostitute' shall be construed accordingly.*"

After the Amendment it came to be read as;

> ***"**2(f) Prostitution means the sexual exploitation or abuse of persons for commercial purposes, and the expression 'prostitute' shall be construed accordingly**."***

The language employed in Section 2(f) of ITPA after amendment is problematic and legally incongruous, as it fails to encapsulate the fundamental essence of Prostitution—the act of

[24] 23 (1983) DLT 486

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offering oneself for sexual services in exchange for monetary consideration. Instead, the statutory definition erroneously equates prostitution with the act of sexual exploitation or abuse. This mischaracterization distorts the intrinsic nature of prostitution, as it grammatically suggests that the individual inflicting sexual exploitation or abuse is the one engaging in prostitution.

This structural inconsistency creates a misleading interpretation wherein the perpetrator's act of sexual exploitation or abuse means engaging in 'Prostitution,' while in reality, Prostitution—by its intrinsic definition—refers to the act of voluntarily or otherwise engaging in sexual activity in exchange for financial compensation. This legislative anomaly engenders a fundamental contradiction, as the essential economic element—engaging in sexual activity for remuneration—is conspicuously absent from the statutory definition. Moreover, by misplacing the role of the "prostitute" within the definitional framework, the provision erroneously suggests that the prostitute is the exploiter rather than the exploited individual. In short it calls 'the act of sexual exploitation and abuse' to be 'Prostitution'—and accordingly, the one who exploits and abuses to be a 'Prostitute'.

Even if, for the sake of argument, it is assumed—but not accepted—that the language used in Section 2(f) of the ITPA refers to a woman's or girl's self-sexual exploitation or self-inflicted sexual abuse for commercial purposes, the interpretation remains specious. This is because, by definition, "exploitation" necessitates the presence of two distinct individuals—an exploiter and the exploited. Similarly, "abuse" inherently involves an abuser and a victim, making it conceptually impossible for both roles to be occupied by the same person.

From a jurisprudential standpoint, the grammatical and conceptual flaws in the definition distort the legal characterization of prostitution, when the definition is employed. Instead of recognizing sex-work for money, whether voluntary or coerced—the definition subsumes it entirely under the umbrella of sexual exploitation or abuse, thereby collapsing distinct legal concepts into a singular restrictive interpretation. This misinterpretation has significant judicial repercussions, as courts have mechanically extracted, and adopted this flawed statutory language in their rulings, without undertaking a substantive textual analysis of the definitional construction. Such judicial reliance on an inherently defective definition has further compounded the ambiguity and misapplication of the law, necessitating an urgent legislative and judicial re-evaluation of the terminology enshrined within Section 2(g) of the ITPA.

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2. Acknowledging Prostitution as a 'Profession' as mentioned under Article 19 (1) (g) of the Constitution:

The Supreme Court, in **Gaurav Jain Vs. Union of India**[25] refers to 'Prostitution' as a 'Profession'. This not only altered the legal and societal perception of sex work but also conferred upon it an unintended semblance of legitimacy, thereby reshaping the legal and social discourse surrounding sex workers. A critical examination of the statutory and judicial understanding of 'Profession' accentuates the inherent flaw in equating 'Prostitution' with a legally recognized 'Profession' under Article 19(1)(g) of the Indian Constitution. The term 'Profession', though not explicitly defined under a single codified statute, has been consistently interpreted in Indian jurisprudence as an occupation requiring specialized knowledge, training, skill, and ethical standards, which are indispensable to its legal recognition.

The Income Tax Act, 1961, under Section 44AA, distinguishes 'Profession' from 'Business' and enumerates professions that inherently involve intellectual engagement, ethical obligations, and specialized expertise. These include Law, Medicine, Engineering, Architecture, Accountancy, Technical Consultancy, Interior Decoration, and Film Artistry, among others—none of which have an immoral act as their primary motive or object.

The Supreme Court, in **Commissioner of Income Tax Vs. Manmohan Das**,[26] unequivocally held that a 'Profession' involves specialized knowledge, skill, and personal service, differentiating it from mere trade or business. Similarly, in Devendra **M. Surti Vs. State of Gujarat**,[27] the Court reiterated that a profession is characterized by systematic and habitual engagement in an occupation that renders material services to the community. The distinction between profession and business/trade was further articulated in **Commissioners of Inland Revenue Vs. Maxse (1919 1 KB 647)**, wherein Scrutton, L.J. noted that a profession involves intellectual or manual skill controlled by expertise, and has historically been associated with high ethical and educational standards.

The Supreme Court in **The National Union of Commercial Employees Vs. M.R. Meher Industrial Tribunal, Bombay and Ors**,[28] further delineated the unique attributes of liberal

[25] AIR 1997 SC 3021, (1997) 8 SCC 114
[26] 1966 AIR SC 798,
[27] AIR 1969 SC 63; [1969] 1 SCR 234
[28] AIR1962 SC 1080

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professions as opposed to general professions that fall within the ambit of Section 2(j) of the Industrial Disputes Act, 1947. It held that a liberal profession is distinguished by the absence of employer-employee relationships and is largely dependent on intellectual capital rather than material resources. Similarly, in **Indian Medical Association Vs. V.P. Shantha & others**[29] the Court, quoting Jackson & Powell on Professional Negligence, identified four essential characteristics of a profession:

1. Specialized and skilled work requiring mental rather than manual labor.
2. A commitment to moral and ethical principles extending beyond mere honesty.
3. Regulation by professional associations that uphold ethical codes and conduct.
4. High status in society due to the public interest served.

The Supreme Court's jurisprudence clearly establishes that professions are:

a) Distinct from businesses or trades.
b) Ethically regulated and intellectually driven.
c) Structured within a legal framework ensuring accountability and competency.

In stark contrast, neither ‘Prostitutes’ nor ‘Prostitution,’ as are conventionally understood and defined in dictionaries, conform to any of these characteristics.

It is necessary to note that there is no regulatory authority to oversee the functioning of the ‘Prostitutes’. ITPA is not a regulatory framework for prostitution but a penal statute aimed at curbing organized commercial sex work, human trafficking, and sexual exploitation. Sections 3, 4, 5, and 7 of ITPA criminalize brothels, pimping, solicitation, and trafficking for prostitution. This legislative intent reflects the Indian State's consistent stance that prostitution, as an institution, is inherently exploitative, morally objectionable, and against public policy.

Thus, if prostitution were to be acknowledged as a ‘Profession,’ it would mean that an act of "sexual exploitation and abuse" (as defined under ITPA) is being legitimized as a legally recognized occupational practice—an absurd and legally untenable proposition.

The Supreme Court's reference to prostitution as a "profession" in **Gaurav Jain Vs. Union of India** does not align with established legal principles governing professions under Article

[29] AIR1996SC550; (1995)6SCC651

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19(1)(g). The ITPA unequivocally criminalizes commercial sex work when it involves third-party exploitation, making it legally inconsistent to categorize it as a legitimate 'profession' within the meaning of the Indian Constitution.

While individual sex workers may claim the right to livelihood, the Profession itself lacks the ethical oversight, regulatory framework, and legal protections that are intrinsic to a recognized profession under Article 19. It is inconceivable that the framers of the Constitution intended for prostitution to be covered under Article 19(1)(g), which provides the right to practise any profession, or to carry on any occupation, trade, or business.

The judicial equation of Prostitution with a legally protected Profession is both ethically flawed and legally erroneous—as clients don't pay and also render similar services to the professionals in return for the services availed. If the legal definitions of 'Profession' (as upheld in Supreme Court judgments) and 'Prostitution' (as defined under ITPA) were to be applied correctly, it would logically follow that 'the act of sexual exploitation and abuse' would have to be recognized as a legally sanctioned profession—a conclusion that is fundamentally untenable and contrary to public policy.

Therefore, the Supreme Court's classification of 'Prostitution' as a 'Profession' is not just a misreading of the word but also a distortion of established jurisprudence.

1. Legal Immunity for Punters: Misclassification as 'Customers' and Its Implications:

Alfred George Gardiner, in his essay 'On Giving Up Tobacco', characterizes smoking as the "bondage of habit", a compulsive indulgence that diminishes personal autonomy and subjugates the will. In a similar vein, prostitution can aptly be described as "the bondage of hunger"—a coercive reality imposed by socio-economic deprivation, rendering individuals vulnerable to exploitation under the guise of consent. Jayanta Mahapatra, in his evocative poem 'Hunger', juxtaposes physical hunger (a physical deprivation) with sexual hunger (sexual desperation), illustrating how poverty fosters a vicious cycle of commodification and moral decay.

Recognizing the exploitative roots of Prostitution, Indian lawmakers introduced ITPA, as a statutory mechanism to mitigate its proliferation and curb systemic abuse. While the statute is fragmented in its legislative articulation and enforcement, its foundational intent is rooted in

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protecting human dignity by suppressing the burgeoning sex trade.

The judicial scrutiny of ITPA provisions, particularly in cases where punters (brothel customers) were arrested under Sections 3, 4, 5, and 7, has led to a troubling shift in legal reasoning. Numerous punters challenged the FIRs against them by filing petitions under Section 482 of the Code of Criminal Procedure (CrPC), seeking to quash the proceedings at the FIR stage or post-charge sheet filing. The judicial response to these petitions appears to be majorly based on the legal maxim criminal law is subject to strict legality principles (nullum crimen sine lege)—meaning no one can be punished for an act, unless it is explicitly criminalized by law. The interpretation of Sections 3, 4, 5, and 7 vis-à-vis the amended definition of Prostitution, has resulted in a systematic absolution of punters, culminating in a dangerous precedent that reinterprets their criminal liability as mere 'participation' rather than active exploitation. This judicial interpretation has diluted this legislative mandate, distorting the legal landscape in ways that effectively shield those who perpetuate exploitation.

In **Arjun Rao Vs. The State Of A.P**[30], the High Court quashed FIRs against punters charged under Sections 3, 4, 5, and 7 of the ITPA, reasoning as follows:

> "*Here, it cannot be said that the Petitioners indulged in any sexual exploitation or the abuse of persons for commercial purposes. The Police have shown the Prostitutes as witnesses and made the customers as accused. In any event, merely having sexual intercourse by paying money does not attract 'Prostitution' mentioned in Section 7 of the ITPA.*"
>
> "*This Court, therefore, is of the considered view that the petitioners in all the cases are not liable for punishment under Sections 3, 4, 5, or Section 7(1) of the Act, and therefore, they cannot be prosecuted. If they are made to face trial, it would cause undue hardship and embarrassment, and according to this Court, it would result in miscarriage of justice. Therefore, the proceedings in FIR… against the petitioners are hereby quashed*."

The court's interpretation is problematic on multiple fronts. By framing punters as 'mere customers', the ruling negates their contributory role in sustaining and perpetuating the prostitution industry. It disregards the fundamental reality that demand fuels supply—if there

[30] Criminal Petition Nos.1786 Of 2013 And Batch—decided on 22-03-2013 <https://indiankanoon.org/doc/139813153/>

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were no punters, there would be no commercial sexual exploitation. Moreover, this reasoning contradicts the broader legislative intent of the ITPA, which seeks to criminalize the ecosystem that enables prostitution, not just those who explicitly organize or manage it.

Pursuant to Arjun Rao's case, numerous High Courts across India have quashed cases against punters, reinforcing their misclassification as non-culpable entities under the ITPA beginning with **Z. Lourdiah Naidu and Ors. Vs. State of Andhra Pradesh**[31] wherein the Petitioners who filed the Quash Petition were directly connected with Accused Nos.1 and 2 who runs a brothel—and that they would visit the brothel whenever they come to Hyderabad. They were apprehended in a raid conducted by the Police and arrayed as A4 and A5. High Court of Andhra Pradesh citing Crl. P No.1230 of 2012 of Andhra Pradesh held;

> "*6. Section 4 of the Act would be attracted only if a person knowingly lives on the earnings of the prostitution of any other person. The activity carried out in a given premises will amount to prostitution within the meaning of Section 2 of the Act only if sexual abuse by exploitation of the person is done for commercial purpose*."

This was followed unfettered in **Goenka Sajan Kumar Vs. The State of A.P.**[32] leading to a cascade of rulings that effectively exempt punters from criminal liability under the ITPA**;** and based on these findings some of the significant other rulings were made that include: **S. Naveen Kumar Vs. State of Telangana**[33]; **Mahesh Hebbar Vs. Station House Officer, Banaswadi Police Station Bangalore**,[34]; **Mohammed Rafi Vs. State of Karnataka**[35]; **Shivaraj Vs. State of Karnataka**[36]**; Sri Pravesh Chatri Vs. State of Karnataka**[37]; **Ashwath@ Naveen Vs. State of Karnataka**[38]; **Chandru S and another Vs. The State by Malleswaram PS, Bengaluru and another**[39]; **Vinod Vs. State of Gujarat and Ors,**[40] **Sanaulla Vs. State of Karnataka and Ors.**[41]; **Sri Roopendra Singh Vs. State of Karnataka**[42]**; Chennuboina**

[31] 2013 (2) ALD (Cri) 393, 2014 (1) ALT (Crl.) 322 (A.P.)
[32] 2014 (2) ALD (Cri) 264, 2015 (1) ALT (Crl.) 85 (A.P.), 2015(3) Crimes 281(A.P.)
[33] 2015 (2) ALD (Crl.) 156 (AP), 2015 (4) Crimes 332 (A.P.)
[34] Writ Petition No. 56504 of 2015, High Court of Karnataka
[35] 2016 (2) AKR 263; 2015: KHC:37359
[36] 2016: KHC-K:3141
[37] Criminal Petition No. 5808 of 2016
[38] Criminal Petition No. 9682 of 2016; Also see 2018 (1) AKR 494
[39] Criminal Petition No.5059/2017, High Court of Karnataka
[40] (2017) 4 GLR 2804, 2017: GUJHC:15310
[41] 2018 (1) AKR 494
[42] 2022 (2) AKR 862, 2021: KHC: 2978

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Rajkumar Vs. State of AP[43]; **Bikash Kumar Jain and Ors. Vs. State of Odisha**[44] The common judicial rationale in these cases was that mere presence in a brothel does not establish criminal liability under the ITPA. Courts held that punters cannot be prosecuted simply for engaging in sexual intercourse with a prostitute, as long as they did not engage in "procurement, inducement, or trafficking." In **Suresh Babu Vs. State of West Bengal and Another**[45]**,** the Kolkata High Court took an even more lenient stance, stating:

> "*Prostitution per se is not prohibited under ITPA. A 'customer' may virtually encourage prostitution and may exploit the sex worker for money, but in the absence of any specific allegation and materials, I have serious doubt as to how the petitioner (accused) who is merely a 'customer' can be convicted under the said provisions of law*."

The Kerala High Court, however, adopted a purposive approach, in **Abhijith Vs. State of Kerala**[46] and **Mathew Vs. State of Kerala**[47]**,** holding that punters fall within the purview of "procurement" under Section 5 and "participation in prostitution" under Section 7(1) of the ITPA. These rulings, however, remain isolated instances of judicial adherence to the true spirit of the ITPA, whereas most other High Courts have veered towards providing legal immunity to punters.

The Madhya Pradesh High Court in the case of **Naman Laddha vs The State Of Madhya Pradesh**[48] and Karnataka High Court in another case **Priyanka Bhagel vs The State Of Madhya Pradesh**[49] relying on the aforementioned cases quashed the criminal proceedings initiated against the customers. Again, in the case of **Rishi Pal Vs. State of Madhya Pradesh**[50], Madhya Pradesh High Court, observed that while grave suspicion about a person committing certain offenses is sufficient for framing charges, 'mere presence as a customer in a brothel, without evidence of involvement in procurement or exploitation', may not warrant prosecution under Sections 5 and 6 of the ITPA.

[43] Criminal Petition No.2900 OF 2022, High Court of AP.
[44] 2024 (257) AIC 683; 2024(I)ILR-CUT1112
[45] 2022 SCC OnLine Cal 1485
[46] 2023/KER/81946
[47] 2023 (243) AIC 659,
[48] Misc. Criminal Case No. 34970 of 2022
[49] Criminal Revision No. 2792 of 2023
[50] Misc. Criminal Case No. 13452 of 2024

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The High Court of Allahabad, in the case of **Dinesh Tiwari Vs. State of U.P. and Ors**.[51] proceeded a little further, and elaborated on the point of 'commercial purpose or earning money' by stating;

> "*In view of the above analysis, this Court is of the view that if a person visits a brothel, then, at the most, he may be said to be a procurer of a prostitute to satisfy his lust but not for the purpose of prostitution because acquiring a person for prostitution means sexual exploitation or abuse for commercial purposes and not for any other purpose which does not have any commercial purpose or earning money."*

This distorted application of legal principles is seemingly rooted in the flawed statutory definition of "Prostitution" under Section 2(f) of the ITPA, which not only erroneously characterizes the act of sexual exploitation and abuse as "Prostitution" itself, but also elusive in language. Consequently, judicial interpretations fail to acknowledge the role of punters as active participants in the exploitation—instead treating them as passive consumers rather than facilitators of systemic abuse.

Perhaps stricken by the realization of this contradiction, courts have attempted to reconcile their position by holding that the punters, "encourage persons for prostitution" rather than stating they "induce persons for prostitution." This deliberate linguistic distinction is legally significant because the term "induce" would have directly implicated punters under Section 5(1)(d) of the ITPA, which criminalizes procuring, inducing, or taking a person for prostitution. By sidestepping this statutory provision, the courts have effectively created a loophole that absolves punters from liability—a clear judicial deviation from legislative intent.

The judicial approach to punters' criminal liability under the ITPA is not only legally flawed but also undermines the objectives of the statute. A correct application of statutory interpretation principles—including the Purposive Rule and Mischief Rule—demands that the courts uphold the spirit of the law, rather than allowing literal interpretations to subvert its intent.

The judiciary's misclassification of punters as 'mere customers' constitutes a severe deviation from both legislative intent and legal logic. This jurisprudential anomaly not only weakens the

[51] 2024(2) ACR136; 2024 (127) ACC 530

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enforcement of the ITPA but also emboldens the very structures that the law seeks to dismantle. By failing to acknowledge punters as enablers of commercial sexual exploitation, the courts have created a dangerous precedent, one that demands urgent legislative or judicial reconsideration to align legal interpretations with the true objectives of the ITPA.

A fundamental error in these judicial interpretations is the failure to apply the Purposive Rule of statutory interpretation, which mandates that legislation must be construed in a manner that advances its intended purpose. The Purposive Rule, as articulated in the Heydon's Case (1584), establishes that courts must suppress the mischief the statute was intended to remedy and advance the remedy proposed by the legislature. The seven key principles of statutory interpretation, particularly in the context of penal provisions, dictate that:

1. A statute must be read as a whole to discern legislative intent.
2. Legislation is enacted to rectify an identified mischief and provide a statutory remedy.
3. The intent of Parliament is reflected in the language of the statute, and if the literal meaning does not coincide with the perceived purpose of the legislation, courts must align their interpretation accordingly.
4. Literal interpretation should not override legislative purpose when it leads to unjust or
5. absurd outcomes.
6. The Purposive Rule must be applied when literal interpretation undermines the statute's core objective.
7. Penal statutes must not be construed in a manner that excludes cases clearly intended to be covered.
8. The Mischief Rule (Heydon's Rule) requires that penal provisions be interpreted to suppress the mischief sought to be addressed.

In **State of Maharashtra Vs. Natwarlal Damodardas Soni**[52] this principle was successfully applied to ensure that statutory interpretation aligned with legislative intent. Similarly, in **R Vs. Secretary of State for Health, ex parte Quintavalle**[53], the House of Lords held that even though certain aspects were not explicitly mentioned in the statute, they fell within its broader regulatory intent. Had the courts in India applied the Purposive Rule, they would have concluded that punters fall within the ambit of ITPA's prohibition against commercial sexual exploitation.

[52] AIR 1980 SC 593; (1980) 4 SCC 669;1980 CriLJ 429
[53] [2003] UKHL 13 <House of Lords - Regina v. Secretary of State for Health (Respondent) ex parte Quintavalle (on behalf of Prof-Life Alliance) (Appellant)>

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While the most glorious ways of the masters in the judiciary are the prescriptions of declared law, etched in legal reasoning and words of eternal wisdom, one cannot overlook the inherent limitations of human perception. After all, persons are persons, whether they sit as judges on the bench or stand as reformers before society. The human mind, bound by its finite nature, and periphery of perceptions may not always fully conceive the weight of unseen consequences of its thought, words or actions, just as John Henry Newman aptly observed—*"the finite can tell us nothing about the infinite."*

It is in this delicate interplay between legal interpretation and evolving societal realities that judicial thought may, over time, be influenced by contemporary needs, shifting values, and the march of urbanity. The judgment of any era can never be anything more than the impression of its author's contemplation—a reflection of the values, assumptions, and necessities that frame its conception. The value of judicial thought, therefore, lies either in the substance of the matter considered or in the manner in which the reasoning is developed.

The High Courts have extended undue legal immunity to punters, indiscriminately quashing FIRs and charge sheets filed under Sections 3, 4, 5, and 7 of the ITPA. This judicial trajectory, while seemingly a product of legal deliberation, appears to be a direct consequence of a misinterpretation of Section 2(f) of the ITPA, leading to a systematic dilution of the legislative intent behind the Act.

Compounding this misinterpretation of the ITPA, it can be contended the courts have also misapplied Section 482 of the CrPC, which provides for the inherent power of the High Courts to quash criminal proceedings. Instead of exercising this power sparingly and in exceptional cases, courts have routinely quashed FIRs and charge sheets against punters, thereby granting them de facto legal immunity. This pattern of judicial overreach stands in direct contravention of the Supreme Court's pronouncements on the limited scope of intervention under Section 482 CrPC--in **Radhey Shyam Gupta Vs. State of U.P.[54]; Dineshbhai Chandubhai Patel Vs. State of Gujarat,[55] Dhruvaram Murlidhar Sonar Vs. State of Maharashtra,[56] State of Haryana Vs. Bhajan Lal**,[57] **CBI Vs. Arvind Khanna**,[58], **State of Telangana Vs.**

[54] 2020 SCC OnLine All 914
[55] (2018) 3 SCC 104
[56] (2019) 18 SCC 191
[57] 1992 Supp (1) SCC 335
[58] (2019) 10 SCC 686

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Managipet,[59] and **in XYZ Vs. State of Gujarat,**[60] later Supreme court unequivocally reaffirmed the limited jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure (CrPC), in the case of **Kaptan Singh Vs. State of Uttar Pradesh**[61], emphasizing that the quashing of criminal proceedings must not be exercised as a parallel adjudicatory mechanism or an appellate review of evidence. The Court categorically held that by the time a petition under Section 482 CrPC is entertained, the investigating agency has already undertaken a detailed fact-finding process, including the recording of witness statements, collection of material evidence, and examination of independent witnesses, culminating in the filing of a charge sheet before a Magistrate, who has taken cognizance of the offenses. The Supreme Court reproved the High Court for overstepping its jurisdiction by quashing criminal proceedings without due consideration of the evidentiary material collected during the investigation, declaring such a course of action as legally impermissible. The ruling further reiterated that the High Court, in determining whether an FIR discloses a cognizable offense, cannot assume the role of an investigative authority or an appellate court, nor can it prematurely evaluate the probative value of evidence at the pre-trial stage. The Court explicitly clarified that at the stage of quashing, the FIR and prima facie material alone must be considered without requiring substantive proof, and that drawinginferences from disputed material amounts to a serious miscarriage of justice. This judgment serves as a pivotal precedent, reinforcing judicial discipline in exercising inherent powers under Section 482 CrPC and curbing unwarranted interference in pending criminal proceedings, ensuring that the sanctity of the investigative process remains intact.

Despite this unequivocal judicial mandate, various High Courts have continued to quash criminal proceedings against punters, citing flawed reasoning derived from the defective statutory definition of Prostitution and an outcome seemingly facilitated by the language of the Panel (constituted by the Supreme Court vide its orders dated 19.07.2011) that Prostitution is "not illegal" in India, as reproduced by the Supreme Court in its pronouncement dated 19.05.2022 in the case of **Budhadev Karmaskar Vs. The State of West Bengal & Ors**[62]. This language was subsequently borrowed and extracted by the print media in reporting the case and by the High Court of Odisha in the case of **Bikash Kumar Jain and Ors. Vs. State**

[59] (2019) 19 SCC 87
[60] (2019) 10 SCC 337
[61] AIR 2021SC 3931
[62] I.A No. 80140/2020 filed in Criminal Appeal No(s).135/2010; 2022 SCC Online SC 704

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of Odisha (supra) clearly holding—"Prostitution per se is not illegal" –the High Court's deliberate linguistic manoeuvre in using the phrase **"**not illegal**"**, explicitly declared prostitution lawful, thereby legalising the institution of Prostitution for the State of Odisha.

At the watershed moment, the statement 'Prostitution is not illegal in India' if read in conjunction with the flawed definition under Section 2(f) of the ITPA, it would lead to the absurd and legally untenable conclusion that sexual exploitation and abuse for commercial purposes are not illegal in India. This erroneous application of judicial precedent and statutory interpretation has resulted in a systemic failure to uphold the ITPA's objectives.

This misconstruction of legal provisions, coupled with the misclassification of punters as 'mere customers' rather than as active enablers of commercial sexual exploitation, fundamentally undermines the core objectives of the ITPA. By misconstruing the law in this manner, the courts have inadvertently created a dangerous judicial precedent that negates the legislative mandate to combat human trafficking, systemic exploitation, and organized prostitution, thereby significantly weakening the enforcement of the Act.

For law, at its core, is an evolving entity—moulded by time, necessity, and human experience. Rather, the concern lies in the ability of the law to transcend the shifting perceptions of an era—to remain true to its fundamental purpose while adapting to contemporary realities. And if legal interpretation is to be held as a guiding light, it must not merely follow the shadows of urbanity but illuminate the path towards justice in its truest form.

V. Expansive Use of Article 142: Transforming a Rehabilitation Scheme into a Legalization Framework for Prostitution:

Justice M.L. Jain of the Delhi High Court, in **State vs. Bashir Ahmed & Ors**. (supra), highlighted the inherent complexities in enforcing laws that attempt to regulate morality, particularly in the context of prostitution. He observed that morals and law are not synonymous, and the legal suppression of prostitution presents significant enforcement challenges. Despite various attempts to eliminate it, prostitution has persisted across civilizations, often resurfacing in more covert forms when subjected to strict regulation. Acknowledging the historical and socio-economic dimensions of sex work, the judgment emphasized that unless society guarantees viable employment alternatives, harsher legal suppression will merely drive

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prostitution underground rather than eradicate it. Further, Justice Jain noted that the provisions of the ITPA, must be strictly construed against prosecution, recognizing that the law disproportionately penalizes individuals driven into the trade by circumstances rather than addressing systemic exploitation. The judgment underscores the necessity of a balanced legal approach, ensuring that provisions targeting trafficking and exploitation do not unintentionally criminalize vulnerable individuals, thereby aligning legal enforcement with the broader objective of upholding human dignity and public policy.

It was this constitutional concern for human dignity, driven by the horrific crime committed against a sex worker in the case of **Buddhadev Karmaskar Vs. State of West Bengal**, that seemingly compelled the Supreme Court to intervene suo moto, extending beyond the criminal appeal at hand to address the broader socio-legal issue of rehabilitation of sex workers. The initial approach, spearheaded by Justices Markandey Katju and Gyan Sudha Misra, was both humane and progressive, recognizing the fundamental right to life and dignity under Article 21 of the Constitution. The Court acknowledged the harsh realities that force many women into sex work not by choice, but due to economic deprivation and systemic exploitation. In a groundbreaking judicial pronouncement, the Court sought to rehabilitate sex workers by directing the Central and State Governments to formulate schemes that would provide alternative livelihoods through technical and vocational training, thereby enabling them to transition away from prostitution into dignified employment. The Justices observed:

> *"17. Although we have dismissed this Appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.*
> *18. As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body."*

The Court, moved by the dehumanization and vulnerability faced by sex workers, sought to initiate systemic reform, aiming not merely to criminalize the trade but to offer viable escape

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routes for those trapped within it. This initiative was undeniably progressive, but it raises fundamental jurisdictional concerns—most notably: Was the Supreme Court empowered to undertake such an exercise? If so, under what legal authority? These questions are crucial because jurisdiction is a creation of law, and courts cannot confer upon themselves powers beyond the statute (Vide: **The United Commercial Bank Ltd. Vs. Their Workmen**[63]; **Smt. Nai Bahu Vs. Lal Ramnarayan & Ors.**[64]; **Natraj Studios Pvt. Ltd. Vs. Navrang Studio & Anr.,**[65]. The settled principle of law dictates that conferment of jurisdiction is a legislative function—it cannot be granted by consent, nor assumed by a superior court. If a court acts without jurisdiction, its orders become nullities, as jurisdictional defects strike at the root of judicial authority.

The Supreme Court, in **Buddhadev Karmaskar**, appears to have derived its authority from Article 142 of the Constitution, invoking its plenary powers to issue binding directives. However, a critical distinction must be made—this case was transformed into a Public Interest Litigation (PIL), as is customarily required when courts exercise their extraordinary jurisdiction in matters of social welfare. Furthermore, far graver crimes have been committed against women both before and after this case, yet no similar intervention was undertaken by the Court. The distinguishing factor in this instance appears to have been the Court's recognition of the unique societal position of prostitutes, prompting it to distinguish their legal status and confer upon them special protections.

This raises a fundamental constitutional paradox: *In its attempt to protect the rights of the "fallen women" under Article 21, has the Supreme Court resorted to "Class Legislation" forbidden under Article 14?* Alternatively, has the Court—within the permissible limits of Article 14 and founded on an intelligible differentia—made a rational classification to justify judicial legislation? These are pertinent legal questions that merit separate, detailed analysis. What remains evident, however, is that the Court's subsequent orders, in **Buddhadev Karmaskar dated 19.05.2022**[66], that took a dramatic departure from the original intent of the initiative.

[63] AIR 1951 SC 230
[64] 1977 INSC 203
[65] AIR 1981 SC 537 b
[66] I.A No. 80140/2020 filed in Criminal Appeal No(s).135/2010; 2022 SCC Online SC 704

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What began as a well-intentioned initiative for the rehabilitation of sex workers has evolved into judicial overreach that undermines the legislative framework designed to prevent commercial sexual exploitation. The Supreme Court's transition from advocating dignity through rehabilitation to judicially endorsing voluntary sex work represents a significant departure from the constitutional principle of judicial restraint. In its order dated 19.05.2022, instead of guiding the executive and legislature towards policy reform, the Court issued binding directives that altered the legal landscape surrounding sex work in India.

The Panel constituted by the Supreme Court proposed far-reaching policy changes, including restraining police intervention in voluntary sex work, prohibiting the use of condoms as evidence in brothel-related investigations, preventing law enforcement from taking action against sex workers, and mandating state authorities to include sex workers in policymaking. The Supreme Court further directed State Governments and Union Territories to act in strict compliance with these recommendations, effectively creating a regulatory framework for sex work that directly contradicts the Immoral Traffic (Prevention) Act, 1956 (ITPA).

By imposing executive obligations that blur the lines between legality and illegality, the Court has created an enforcement vacuum that could be exploited by traffickers under the pretext of voluntary participation in sex work, resulting in a legally unsound endorsement of a profession never intended for legalization by the legislature.

1. **Legal Ambiguity Through Double Negation: The Judicial Equivocation of the Semantics 'Legal' and 'Not Illegal:**

In judicial interpretation, the distinction between "legal" and "not illegal" is not merely a semantic exercise but a doctrinal manoeuvre that carries profound implications, potentially altering the statutory framework and legislative intent. The Supreme Court's reliance on double negation to declare prostitution as "not illegal," despite the Legislature refraining from explicitly legalizing it, has resulted in an interpretative anomaly that blurs the well-established legal classifications of permissible and impermissible conduct. This judicial construction not only contravenes the Law of Excluded Middle **(LEM)**—which mandates that an act must either be legal or illegal—but also raises concerns regarding its rational nexus with the legislative objectives under the ITPA.

The Indian Legislature, while acknowledging the socio-economic vulnerabilities that push

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individuals into sex work, has consistently maintained that prostitution cannot be afforded legal legitimacy or statutory protection due to its inherently unlawful nature. The Supreme Court's semantic approach of using double negation ("not illegal") does not transform an unlawful act into a lawful one. This manoeuvre does not override public policy considerations, which have historically deemed prostitution as an activity contrary to constitutional morality and societal ethics. The legalization of an act requires explicit statutory sanction, and mere absence of prohibition does not amount to affirmative legal recognition.

A careful reading of judicial pronouncements suggests that prostitution, though not explicitly penalized under the ITPA, remains an immoral act with an unlawful object, rendering it against public policy and unworthy of legal protection. The ITPA neither criminalizes prostitution per se nor grants it legal status; rather, it seeks to penalize the ecosystem that sustains and perpetuates commercial sexual exploitation. Courts have historically refrained from granting prostitution legal protection, recognizing its inherent conflict with public morality and social ethics. To fully appreciate this legal stance, it is essential to distinguish between legal, illegal, lawful, unlawful, legitimate, and illegitimate acts.

1) Legal vs. Illegal:

   Legal refers to actions that are explicitly permitted, sanctioned, or regulated by law. It implies compliance with statutory provisions and the broader legal framework of governance.

   Illegal, conversely, denotes actions that are expressly prohibited by law and subject to punitive consequences.

2) Lawful vs. Unlawful:

   Lawful denotes actions that are not only legal but also conform to principles of justice, fairness, and public morality. It encompasses conduct that aligns with both statutory provisions and broader objectives of justice.

   Unlawful, while similar to illegal, has a broader scope, referring to acts that, though not explicitly criminalized, violate legal principles, public policy, or social morality.

3) Legitimate vs. Illegitimate:

   Legitimate refers to an act or status that is not only legally valid but also ethically and socially acceptable.

   Illegitimate, on the other hand, denotes a lack of legal or moral legitimacy, making an

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act unworthy of judicial recognition or statutory protection.

When prostitution is deemed unlawful and not a legitimate means of livelihood, how can it be equated to “legal” merely through double negation? The double negation ("not illegal") does not equate to lawful recognition but merely indicates the absence of direct statutory prohibition. This distinction is critical to ensure that High Courts and Trial Courts do not err in interpreting the double negation as judicial sanction for legalizing sex work. The ITPA’s legislative intent is to curb commercial sexual exploitation, not to validate prostitution as a profession. Thus, while prostitution is not per se illegal, it remains undoubtedly unlawful and illegitimate, preventing it from being protected under the law. Any attempt to elevate prostitution into a lawful profession would require a legislative mandate, which, at present, remains absent. The distinction between these legal concepts is crucial in preventing judicial overreach and preserving the legislative intent behind the ITPA.

The phrase "not illegal" introduces a jurisprudential paradox—one that undermines legislative clarity, weakens enforcement mechanisms, and creates a policy vacuum that indirectly facilitates the institutionalization of sex work without legislative sanction. The judicial manoeuvre of double negation creates an artificial legal liminality where prostitution is neither criminalized nor formally recognized, allowing a grey area that benefits exploitative structures and commercialized vice industries.

The judiciary must exercise restraint in interpreting statutory language in a manner that contradicts legislative intent. Courts should not engage in judicial legislation by creating legal recognition for acts that remain unlawful and against public policy. The equivocation of “not illegal” as “legal” through double negation is a semantic manoeuvre that defies logical jurisprudence and undermines legislative supremacy. This interpretation necessitates urgent judicial and legislative scrutiny to ensure statutory provisions are not diluted through semantic ambiguities that contravene public policy, constitutional principles, and the core objective of the ITPA.

2. **Judicial Legislation: When Judicial Pronouncements Transform into De Facto Legislation:**

The Supreme Court’s invocation of Article 142 in **Budhadev Karmaskar Vs. State of West Bengal** (19.05.2022) to introduce de facto legislation on sex work raises serious concerns about

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judicial overreach and the violation of the doctrine of separation of powers. The Court justified its intervention by citing legislative inaction, asserting that the executive had failed to act on the recommendations of a Panel constituted in 2011, which culminated in a draft Bill in 2016. However, legislative inaction alone does not empower the judiciary to assume a law-making function. By issuing binding directions to states and Union Territories, particularly restricting police intervention in cases where sex work is deemed "voluntary," the Court has ventured into the legislative domain, creating a parallel regulatory framework that contravenes the Immoral Traffic (Prevention) Act, 1956 (ITPA) and effectively legalizes aspects of sex work without legislative sanction.

The Supreme Court itself has previously held that Article 142 cannot be used to create new offenses or remove existing ones, particularly in matters concerning substantive and procedural criminal law. Two landmark cases serve as guiding precedents: **A.R. Antulay Vs. R.S. Nayak**[67] explicitly held that the Court erred in directing a trial by a High Court judge, as it was contrary to statutory provisions. The judgment reaffirmed that Article 142 cannot be used to contravene express statutory mandates. Similarly, in **Girish Kumar Suneja Vs. CBI,**[68] the Supreme Court clarified that Article 142 cannot be invoked to subvert procedural and substantive safeguards prescribed under criminal law. Judicial discretion, even under Article 142, must align with existing legislation and cannot override statutory mandates.

Despite this jurisprudential clarity, the Supreme Court in Budhadev Karmaskar appears to have disregarded these principles by issuing blanket directives that effectively lend legitimacy to voluntary prostitution without legislative approval. The directive restraining law enforcement agencies from intervening when sex work involves consenting adults alters the legal landscape without parliamentary sanction. This move effectively institutionalizes prostitution under judicial oversight, contrary to the legislative intent of the ITPA, which seeks to deter and suppress commercial sexual exploitation. Such a judicial pronouncement not only weakens law enforcement's ability to combat trafficking but also creates an environment where exploitative commercial sex work can flourish under the guise of "voluntarism."

Additionally, the Court's directive that sex workers must be involved in policymaking concerning laws related to prostitution entrenches judicial interference in an inherently

[67] AIR1988 SC 1531
[68] AIR 2017 SC 3620

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legislative function. By compelling the executive to accept recommendations it has expressly opposed, the Court violates fundamental principles of public policy. The precedent set in **Associate Builders Vs. Delhi Development Authority**[69] makes it clear that judicial pronouncements contradicting public policy by fostering or legitimizing an immoral activity must be struck down. Yet, in *Budhadev Karmaskar*, the Supreme Court appears to have deviated from this reasoning, issuing directions that facilitate rather than deter prostitution—an activity historically condemned by law and social ethics. Moreover, the directive preventing law enforcement from treating condoms as evidence at brothels undermines investigative mechanisms designed to detect trafficking and coercion. This directly contradicts the ITPA, which criminalizes brothel-keeping, pimping, and soliciting for commercial sex work. The Court's own jurisprudence in **Associate Builders** establishes that public policy encompasses justice, morality, and societal interests, yet its pronouncements in **Budhadev Karmaskar** fail to align with these principles.

The issue of judicial activism extending beyond its constitutional mandate has been strongly cautioned against in several landmark rulings. In **Madhu Kishwar and Ors. Vs. State of Bihar and Ors.**[70], later reiterated in **Ahmedabad Women Action Group (AWAG) and Ors. Vs. Union of India (UOI)** (supra) the Supreme Court recognized the limitations of judicial intervention in legislative policymaking. It held that while the judiciary can prod the State into action, it lacks institutional competence to legislate comprehensively on intricate matters of public policy—especially in cases involving complex socio-legal dynamics such as sex work, human trafficking, and organized crime syndicates. These rulings underscore the principle that judicial self-restraint is essential to uphold the separation of powers, a doctrine at the core of India's constitutional democracy.

Despite the reservations expressed by the Central Government, the Supreme Court's directives in Budhadev Karmaskar demonstrate judicial overreach, imposing judicially mandated policies on an issue that demands legislative deliberation and public consensus.

The Court's interpretation of Article 142 to fill perceived legislative gaps, in this case, goes beyond its constitutionally prescribed role and risks setting a dangerous precedent where the judiciary assumes legislative authority under the guise of legal interpretation.

[69] [2014] 13 SCR 895
[70] AIR1996SC1864

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3. A Shift from Rehabilitation to Protection of Voluntary Sex Work: A Critical Analysis

The Supreme Court's intervention in the Budhadev Karmaskar case initially emerged as a progressive attempt to rehabilitate sex workers by providing them with dignified alternatives to prostitution. Under the able supervision of Justices Markandey Katju and Gyan Sudha Misra, the Court adopted a humane approach, emphasizing that sex workers are entitled to a life of dignity under Article 21 of the Constitution. Acknowledging that many women are compelled into sex work due to poverty and exploitation, the Court directed the Central and State Governments to formulate schemes that would enable sex workers to transition into alternative livelihoods through vocational and technical training. The Court seemingly, converted the criminal appeal into a Public Interest Litigation (PIL). This initiative sought to uplift sex workers by offering them legitimate economic opportunities, reducing their dependence on a profession that exposes them to violence, social stigma, and exploitation.

However, this well-intended intervention gradually deteriorated into a framework that effectively shields voluntary sex work from legal scrutiny, deviating from the Supreme Court's original rehabilitative approach. The pivotal shift occurred when the Court, in its order dated 19.05.2022, directed State Governments and Union Territories to implement certain recommendations of a Panel it had constituted. These recommendations, particularly those stipulating that sex workers should not be arrested or penalized during brothel raids and that law enforcement agencies should refrain from treating the use of condoms as evidence of an offense, fundamentally alter the legislative intent of the Immoral Traffic (Prevention) Act, 1956 (ITPA).

The implications of these directives are profound. By classifying voluntary sex work as distinct from trafficking and coercion, the Court has effectively created a legal space where prostitution is normalized, contradicting the broader public policy framework aimed at eradicating commercial sexual exploitation. The ITPA was designed not merely to penalize trafficking but to curtail the conditions that enable systemic exploitation in the sex trade. However, the Supreme Court's directives dilute the ITPA's enforcement mechanisms by restraining police action and limiting the evidentiary value of indicators like condom use in brothels. These judicial measures, rather than eliminating the coercive elements inherent in prostitution, offer a de facto endorsement of sex work as a legitimate economic activity.

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In its Order dated 19.05.2022, a legally perplexing situation arose when the Supreme Court noted that the Government of India had expressed reservations regarding the implementation of certain recommendations made by the Court-appointed Panel, perhaps due to the reason that they fell outside the scope of the Rehabilitation Programme earlier envisaged by the Court itself. However, despite acknowledging the existence of these objections, the Court did not explicitly record the nature or substance of the reservations, nor did it provide a reasoned justification for their rejection. The absence of a speaking order addressing the Government's concerns is particularly significant given that these objections were directly related to the foundational framework of the Court's rehabilitative approach. If the Court was of the view that the objections raised by the Central Government were without merit, the principles of judicial transparency and accountability would have warranted a cogent explanation as to why such concerns were untenable. This not only displays a grave omission but also creates an impression of procedural opacity and raises important questions regarding judicial consistency in the protection and rehabilitation of sex workers.

Moreover, the Court's shift towards protecting voluntary sex work overlooks a crucial reality: prostitution is rarely an isolated individual endeavour but is deeply enmeshed in organized crime, human trafficking networks, sexually transmitted diseases, and the commodification of human bodies. The court could not have been oblivious to the fact that most sex-workers work through multilayered brothels which cover more than a street like Sonagachi in Kolkata, (Asia's biggest Red light Area with several hundred multi-storey brothels with more than 16,000 commercial sex workers. Kamathipura, Mumbai, Turbhe Tekdi in Mumbai, Budhwar Peth in Pune, Meerganj in Allahabad, Chaturbhujsthan in Muzaffarpur, Bihar, Shivdaspur in Varanasi. Itwari, Nagpur, Maharashtra, Reshampura in Gwalior, Madhya Pradesh, and Sukumvit in Kochi, that are some famous havens of human trafficking among many more. The Court's orders fail to account for the existence of trafficking mafias, pimps, and enforcers who continue to control and manipulate sex workers under the guise of consent. The blanket exemption of adult sex workers from police scrutiny disregards the structural coercion and exploitation embedded in the trade, allowing traffickers and pimps to operate under the legal shield of "voluntary" prostitution.

This transition from a rights-based rehabilitative approach to an inadvertent protection of voluntary sex work marks a significant deviation from the Court's earlier stance. Initially, the Supreme Court sought to dismantle the cycle of exploitation by providing sex workers with

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pathways to alternative employment, emphasizing that their dignity is best preserved through economic self-sufficiency outside the sex trade. However, the Court's later directives, rather than reinforcing these rehabilitative measures, create a parallel legal framework that selectively isolates voluntary sex work from the ITPA's objectives. The resulting paradox is that while trafficking and brothel management remain criminalized, sex work itself is shielded from law enforcement intervention, effectively weakening the regulatory and deterrent mechanisms of the ITPA.

The degradation of the Supreme Court's initial vision raises fundamental questions about judicial overreach, the sanctity of legislative intent, and the broader implications for public policy. What began as a judicially guided rehabilitation initiative has now morphed into an extrajudicial endorsement of voluntary prostitution, thereby complicating the legal landscape.

In effect, the Court's orders encourage a form of regulatory immunity for sex work, a move that stands in stark contrast to international best practices that focus on reducing demand, dismantling trafficking networks, and strengthening protections for victims of sexual exploitation.

The inconsistency in judicial approach underscores the need for recalibrating the legal framework surrounding prostitution. A policy that genuinely seeks to uphold the dignity of sex workers must not merely provide them legal immunity but should actively facilitate their transition into alternative livelihoods. Rather than shielding voluntary prostitution under the pretext of protecting adult consent, the legal system must ensure that rehabilitation remains the cornerstone of judicial and legislative action. The Supreme Court's role should be to uphold legislative intent rather than modify statutory enforcement through judicial directives. In this regard, the Supreme Court must reassess its shift in focus and align its interventions with the fundamental objective of the ITPA—eradicating commercial sexual exploitation rather than legitimizing its voluntary dimensions.

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In this regard, the Supreme Court should consider reassessing its shift in focus and aligning its interventions with the fundamental objective of the ITPA, by creating a carve-out that selectively permits immoral or unlawful acts, while disallowing the same for others, amounts to arbitrary and discriminatory classification—impermissible under Article 14 of the Constitution and violative of the principle that public policy cannot be tailored for one class alone at the expense of uniform legality, through act ex debito justitiae—eradicating commercial sexual exploitation rather than legitimizing its voluntary dimensions, which is a stark deviation by a judicial direction negating the rule of law, and undermining the existing legal framework under ITPA. As reaffirmed in **A.R. Antulay Vs. R.S. Nayak[71],** the Court's powers under Article 142 do not extend to overriding substantive legal provisions or creating a parallel legislative framework.

4. The Judicial Attribution of Dignity to Voluntary Sex Work:

The Supreme Court of India, in **Budhadev Karmaskar Vs. State of West Bengal**, observed that sex workers are entitled to a life of dignity under Article 21 of the Constitution, as they too are human beings whose rights must be protected. While the protection of fundamental rights is an inviolable principle of constitutional governance, the extension of dignity to an occupation that is immoral, unlawful, and against public policy creates a jurisprudential paradox. The assertion that prostitutes retain an inalienable right to dignity under Article 21 raises critical concerns: can dignity be imputed to an individual who has voluntarily chosen an occupation rooted in illegitimacy and societal degradation? Can the law restore dignity to a person who has relinquished it for pecuniary gain in a manner that contravenes established moral and legal norms? This debate necessitates an examination of the concept of dignity in constitutional law, the voluntary forfeiture of dignity by sex workers, and the incongruity of aligning dignity with immorality.

The right to life and personal liberty enshrined in Article 21 has been expansively interpreted by the Supreme Court to include the right to live with human dignity **Francis Coralie Mullin**

[71] (1988) 2 SCC 602

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Vs. Union Territory of Delhi,[72]. Dignity, in its constitutional sense, implies honor, self-respect, and moral integrity—a state of being that is recognized and protected by law. The Supreme Court, in **Maneka Gandhi Vs. Union of India[73]**, further expounded that life under Article 21 means more than mere existence; it signifies a life of dignity, decency, and freedom from exploitation.

The term honor is intrinsically linked to dignity. Honor denotes a state of esteem and respect, recognized both legally and socially. A person earns honor through their adherence to ethical and moral standards. The Spanish saying "honray provecho no caben en un saco" aptly illustrates this concept—honor and illicit profit (money gained unlawfully) cannot coexist. When an individual willingly engages in an immoral and illegitimate vocation for financial gain, they voluntarily relinquish honor and dignity in pursuit of monetary benefit. Thus, the assertion that prostitutes, while engaging in commercial sex work, retain an inalienable right to dignity is inherently contradictory to the constitutional ethos of justice, morality, and public policy.

Dignity is not merely a birthright but a state of being that is cultivated through lawful and ethical conduct. Individuals who voluntarily engage in immoral and unlawful professions—be it prostitution, trafficking, or any illicit trade—consciously forego their dignity in pursuit of financial gain. Prostitution, even if not explicitly criminalized per se, remains unlawful under public policy, as reflected in ITPA. The law does not recognize prostitution as a legitimate means of livelihood, and for good reason—it is a practice that thrives on exploitation, commodification of human bodies, and organized crime.

When a person knowingly enters an immoral trade and remains in it not due to coercion but by choice, the claim to dignity becomes untenable. The law cannot restore what has been willingly abandoned. Just as the courts do not protect unlawful contracts (as per Section 23 of the Indian Contract Act, 1872), the legal system cannot protect an unlawful and immoral means of earning.

The Supreme Court's position that prostitutes should be afforded dignity without requiring

[72] AIR 1981 SC 746
[73] AIR 1978 SC 597

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them to exit the trade contradicts the foundational principles of law, morality, and rehabilitation. If dignity is to be restored, it must be earned through lawful conduct. A sex worker who chooses to leave prostitution and seeks rehabilitation deserves to be treated with dignity because she has renounced an immoral profession and sought to reintegrate into society through legitimate means. In such a case, the state has a moral and constitutional duty to provide economic and social assistance to ensure that the individual is not forced back into sex work due to financial vulnerability.

However, extending dignity as a right while the individual continues to engage in an immoral vocation undermines the very essence of dignity. The right to dignity cannot be detached from the nature of one's actions. Morality and dignity do not fit into the same purse, and the judicial attempt to protect both the occupation and the person creates a jurisprudential contradiction.

The Supreme Court’s directives not only impute dignity to voluntary sex work but also go further in shielding sex workers from legal scrutiny by granting them rights without corresponding responsibilities. The demand for Aadhar cards without address proof, non-interference from law enforcement, and immunity from investigation and evidence collection stretches the constitutional principle of dignity beyond its reasonable limits. Dignity under Article 21 does not exist in isolation; it must be exercised within the framework of public morality and legal permissibility.

The judiciary's primary function is to interpret and uphold the law, not to create legal sanctuaries for occupations that are inherently contradictory to public policy. This is particularly critical when various arms of the judicial system, nodal agencies, and social activists are tirelessly working towards the eradication of immoral and exploitative practices at their root. Granting unrestricted legal protection to voluntary sex work establishes a dangerous judicial precedent, effectively legitimizing an unlawful occupation and bestowing upon it a de facto constitutional shield—an outcome that was neither envisioned by the legislature nor supported by the broader public policy framework. The Apex Court's endorsement of such claims, without a thorough consideration of legislative intent, constitutional morality, and the broader socio-legal implications, raises grave concerns about judicial overreach. By extending judicial protection to voluntary sex work and issuance of Aadhar Cards to Prostitutes (who are not rehabilitated), who have no address proof, under the guise of safeguarding fundamental rights, the Court risks undermining the very statutory safeguards enacted to curb commercial

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sexual exploitation, thereby diluting the foundational principles of constitutional propriety and the separation of powers.

The Supreme Court's recognition of dignity in voluntary sex work represents a defiance of public policy and legal coherence. The judicial attempt to confer dignity upon an inherently immoral and unlawful trade distorts the fundamental principles of justice and morality. Dignity is not an entitlement that exists in a vacuum; it must be upheld through lawful conduct, ethical living, and adherence to moral standards.

If the judiciary is genuinely committed to upholding the dignity of sex workers, the only constitutional and legally sound approach is to facilitate rehabilitation programs that transition them out of prostitution and integrate them into society through legitimate means. Dignity is restored when one renounces an immoral livelihood, not when one insists on continuing it under judicial protection. The recognition of dignity under Article 21 must be aligned with lawful and ethical conduct, not extended as a blanket shield to perpetuate professions that contradict public morality and statutory intent.

Thus, while every individual is entitled to fundamental rights, including the right to life, the Supreme Court must ensure that its judicial pronouncements do not distort the very essence of dignity by granting it where it has been voluntarily relinquished.

Conclusion: **The Perils of Judicial Adventurism in the face of an immoral Legacy**

Arthur Schopenhauer, in his timeless essay '*On Authorship and Style'*, warned, "No greater mistake can be made than to imagine that what has been written latest is always the more correct; that what is written later on is an improvement on what was written previously; and that every change means progress."[74] This philosophical caution is particularly germane to the Indian judiciary's recent trajectory vis-à-vis prostitution. The Supreme Court's order in *Budhadev Karmaskar* (19.05.2022), cloaked in the rhetoric of empowerment and choice, has in fact unleashed a dangerous precedent—one that trivializes the centuries-old scourge of commercial sexual exploitation by insulating it under the veneer of "consensual adult activity."

Judicial sanctification to implement *inter alia* these recommendations of the Panel that,

[74]Arthur Schopenhauer, *On Authorship and Style: Greatest Essays*, 3rd edn (New Delhi: Rupa Publications India Limited, 2021), p. 46.

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(a) voluntary sex work must be respected as the choice of consenting adults and the police must be refrained from interfering or taking any criminal action;
(b) As voluntary sex work is not illegal and only running the brothel is unlawful, the sex workers concerned should not be arrested or penalised or harassed or victimised whenever there is a raid;
(c) The condoms and other health and safety measures used by the sex workers must neither be construed as offences nor seen as evidence of commission of an offence; and
(d) A mandate for the Central Government and the State Governments to involve the sex workers and/or their representatives 'in all decision-making processes', including planning, designing and implementing any policy or programme for the sex workers or formulating any change/reform in the laws relating to sex work.

Seriously risk legitimizing a deeply immoral and exploitative institution. Such directions not only contravene the spirit and purpose of legislations like the ITPA and CrPC, but also threaten to dismantle decades of progress made by activists, NGOs, and governments in addressing trafficking, rescuing minors, curbing venereal disease, jeopardizing public interest and restoring dignity to victims. This false liberalism—mistaking permissiveness for progress—may well serve as the Trojan horse that re-normalizes systemic sexual slavery under the garb of individual rights.

A single oblivious judgment—bereft of adequate empirical grounding and far removed from grassroot realities—can compromise public interest, upend the painstaking work of altruist individuals and organizations like Prajwala, whose intervention transformed Mehboob ki Mehendi, once Hyderabad's oldest 'Mujra centre', into a safe haven of hope and rehabilitation and other NGOs like 'Bachpan Bachao Andolan', 'Prerana', 'Shakti Vahini', 'Prajwala', 'Guria', and 'Sanjog' etc.,. Thousands of lives are at stake. Every young girl plucked from trafficking networks; every woman pulled back from the abyss of generational prostitution, is testimony to the truth that prostitution is not a profession—it is a forced adaptation to oppression, poverty, and moral neglect.

Courts are not legislatures. Judicial restraint must be the lodestar, particularly in matters that have far-reaching implications on public policy and social morality. It is not the judiciary's remit to re-characterize immoral and unlawful conduct into constitutionally protected activity,

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especially when doing so may inadvertently facilitate trafficking, fuel the demand for child prostitution, and exacerbate public health crises--any such deviation even by a judicial direction will be negation of the rule of law.

To equate prostitution with profession is to insult every ethic upon which the edifice of constitutional democracy is built. This is not progress—it is judicially sanctioned moral regression. In a world increasingly numbed by relativism, let Indian jurisprudence remain anchored in values that prioritize the protection of the vulnerable, uphold public decency, and recognize the limits of personal liberty when it threatens the collective moral conscience of the society.

As with all institutions of justice, rules serve as the scaffolding of order—but not all rules are created equal. Some are inviolable, whose breach poses immediate danger to life and liberty. Others, however, are intended as guidelines—flexible in application, designed to be interpreted with discernment and exercised with empathy. In the context of ITPA and judicial interventions surrounding them, it is crucial to remember that the letter of the law must not eclipse its spirit, by reading between the lines. The aim of judicial oversight should be to uphold the dignity of those whom the law seeks to protect—not to impose rigid frameworks that inadvertently foster ambiguity or systemic exploitation. A just legal order tempers rule-making with goodwill, pragmatism, and a deep sensitivity to human experience. In navigating the complexities of sex work, the Indian judiciary must not merely adhere to doctrinal formality but engage with the law's purpose—to ensure justice, not only in principle but in lived reality.

Any departure from this constitutional path is not merely a misstep in interpretation—it constitutes a breach of the Constitution's solemn promise to uphold justice, dignity, and equal protection under the law, particularly for those without a voice. The judiciary must exercise restraint and constitutional fidelity, not only to uphold the rule of law but to preserve the moral fabric of the nation from erosion under the guise of misplaced progress. In such circumstances, it becomes imperative for this Hon'ble Court to act *ex debito justitiae*—as a matter of right and duty—to correct the deviation from the procedure established by law. This is essential to realign judicial conduct with constitutional mandates and to safeguard both public interest and the integrity of justice administration.

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BIBLIOGRAPHY

1. Abhijith v. State of Kerala [2023/KER/81946]
2. Ahmedabad Women Action Group (AWAG) and others v. Union of India [AIR 1997 SC 3614] [(1997) 3 SCC 573]
3. Amorgos (7th century BCE), “Types of Women” (Semonides 7).
4. A.R. Antulay v. R.S. Nayak [1988 AIR 1531]
5. Arjun Rao v. The State Of A.P [Criminal Petition Nos.1786 Of 2013]
6. Ashwath@ Naveen v. State of Karnataka [Criminal Petition No. 9682 of 2016]; Also See [2018 (1) AKR 494]
7. Associate Builders v. Delhi Development Authority [[2014] 13 SCR 895], [AIR 2015 SC 620]
8. A.R. Antulay v. R.S. Nayak [AIR 1988 SC 1531], [1988 (25) ACC 448]
9. Baidyanath Kundu v. The State of West Bengal [Writ Petition No. 7858 (w) of 2012]
10. Bai Shanta v. State of Gujarat [AIR 1967 GUJ 211], [1967 CriLJ 1140]
11. Bikash Kumar Jain and Ors. v. State of Odisha [2024 (257) AIC 683]; [2024(I)ILR-CUT1112]
12. Budhadev Karmaskar v. The State of West Bengal & Ors [2022 SCC Online SC 704]
13. Bullough, Vern L.; Brundage, James A., eds. (2000). Handbook of Medieval Sexuality. Garland Publishing Inc. member of Taylor & Francis. ISBN 9780815336624 <https://doi.org/10.4324/9780203054284 >
14. CBI v. Arvind Khanna [(2019) 10 SCC 686], [2019 (14) SCALE 84]
15. Chandru S and another v. The State by Malleswaram PS, Bengaluru and another [Criminal Petition No.5059/2017], [High Court of Karnataka]
16. Chennuboina Rajkumar v. State of AP [Criminal Petition No.2900 OF 2022], [High Court of AP.]
17. Commissioner of Income Tax v. Manmohan Das [AIR 1966 SC 798], [1965 INSC 243]
18. Devendra M. Surti v. State of Gujarat [AIR 1969 SC 63]; [(1969) 1 SCR 234]
19. Dhruvaram Murlidhar Sonar v. State of Maharashtra [(2019) 18 SCC 191], [AIR 2019 SC 327]
20. Dineshbhai Chandubhai Patel v. State of Gujarat [(2018) 3 SCC 104]: [AIR 2018 SC 314]
21. Dinesh Tiwari Vs. State of U.P. and Ors [2024(2) ACR136]; [2024 (127) ACC 530]

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22. Dwarampudi Nagaratnamba v. Kunuku Ramayya and Ors [AIR 1968 SC 253], [(1968) 1 SCR 43]
23. Gaurav Jain v. Union of India [1990 AIR 292]; [1990 (Supp) SCC 709]
24. Gaurav Jain v. Union of India [AIR 1997 SC 3021], [(1997) 8 SCC 114]
25. Francis Coralie Mullin Vs. Union Territory of Delhi [AIR 1981 SC 746], [(1981) 2 SCR 516]
26. Girish Kumar Suneja Vs. CBI [AIR 2017 SC 3620], [(2017) 9 SCR 544]
27. Goenka Sajan Kumar Vs. The State of A.P. [2014 (2) ALD (Cri) 264], [2015 (1) ALT (Crl.) 85]
28. Harishankar, V.B. and Priyamvadha, M., n.d. *Exploitation of Women as Devadasis and its Associated Evils*. [pdf] University of Madras.
29. <https://ncwapps.nic.in/pdfReports/Exploitation_of_Women_as_Devadasis_and_its_Associated_Evils_Report.pdf >
30. Hathiram, P., Mondeddula, L. and Tiwari, S., 2023. *Women's Exploitation as Devadasis and Its Correlated Evils: A Review*. *International Journal of Emerging Technologies and Innovative Research*, 10(9), pp.ppf 464–f468.
31. < http://www.jetir.org/papers/JETIR2309669.pdf >
32. Indian Medical Association v. V.P. Shantha & others [AIR1996SC550]; [(1995)6SCC651]
33. Jha D, Sharma T (2016) Caste and Prostitution in India: Politics of Shame and of Exclusion. Anthropol 4: 160. doi: 10.4172/2332-0915.1000160
34. <https://www.longdom.org/open-access/caste-and-prostitution-in-india-politics-of-shame-and-of-exclusion-2332-0915-1000160.pdf >
35. Kangle, R.P., 1965. *The Kautilya Arthasastra Part III: A Study*. Bombay: University of Bombay, p.81 and 247. <https://ia801809.us.archive.org/34/items/NGgU_artha-shastra-part-3-r.-p.-kangle/Artha%20Shastra%20Part%203%20-%20R.P.%20Kangle_text.pdf >
36. Kaptan Singh v. State of Uttar Pradesh [AIR 2021 SC 3931], [2021 CriLJ 3922]
37. Kautilya. (1960) *Arthasastra*. Translated by R. Shamasastry. Mysore: Mysore Printing and Publishing House, Chapter II, pp. 5–6. 900.pdf
38. Madhu Kishwar and Ors. v. State of Bihar and Ors [AIR1996SC1864], 1962 (2) BLJ 327]
39. Mahesh Hebbar v. Station House Officer, Banaswadi Police Station Bangalore [Writ Petition No. 56504 of 2015], Also See [2018(1) AKR 494]

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40. Mathew Vs. State of Kerala [2023 (243) AIC 659], [2022 (6) KLT 897]
41. Mohammed Rafi v. State of Karnataka [2016 (2) AKR 263]; [2015: KHC:37359]
42. Maneka Gandhi v. Union of India AIR 1978 SC 597
43. Natraj Studios Pvt. Ltd. v. Navrang Studio & Anr [AIR 1981 SC 537b], [(1981) 1 SCC 523]
44. Naman Laddha v. The State Of Madhya Pradesh [Misc. Criminal Case No. 34970 of 2022]
45. Pannalal Bansilal and others v. State of AP and another [[1996] 1 SCR 603] [AIR 1996 SC 1023]
46. Priyanka Bhagel v. The State Of Madhya Pradesh [Criminal Revision No. 2792 of 2023]
47. Radhey Shyam Gupta v. State of U.P. [2020 SCC OnLine All 914], [2020 (5) ALJ 539]
48. re Ratnamala and another Vs. State of Tamil Nadu [AIR 1962 Mad 31], [1961 ILR Madras 1232]
49. Rishi Pal v. State of Madhya Pradesh [Misc. Criminal Case No. 13452 of 2024]
50. Sanagavarapu Venkata Subbaiah Sarma Vs Karuthota Galib Saheb And Ors [1997 (4) ALT 274], [1997 (3) ALD 821]
51. Sanaulla v. State of Karnataka and Ors [2018 (1) AKR 494]
52. Saradambal Ammal v. A.M. Natesa Mudaliar [(1972) 1 MLJ 244], [(1971) ILR 3 Mad 540]
53. Schopenhauer, A. (2021) *On Authorship and Style: Greatest Essays*. 3rd edn. New Delhi: Rupa Publications India Limited. ISBN: 978-93-89967-91-3. p. 46.
54. Shivaraj v. State of Karnataka [2016: KHC-K:3141]
55. S. Naveen Kumar v. State of Telangana [2015 (2) ALD (Crl.) 156 (AP)], [2015 (4) Crimes 332 (A.P.)]
56. Sri Pravesh Chatri v. State of Karnataka [Criminal Petition No. 5808 of 2016]
57. Sri Roopendra Singh v. State of Karnataka [2022 (2) AKR 862], [2021: KHC: 2978]
58. Suresh Babu Vs. State of West Bengal and Another [2022 SCC OnLine Cal 1485]
59. Smt. Nai Bahu Vs. Lal Ramnarayan & Ors [1977 INSC 203], [(1978) 1 SCR 723]
60. State vs Bashir Ahmed And Ors [23 (1983) DLT 486]
61. State of Bombay v. Narasu Appa Mali [AIR 1952 Bom 84], [ILR 1951 Bom 775]
62. State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335], [AIR 1992 SC 604]
63. State of Maharashtra v. Chandraprakash Kewalchand Jain [(1990 AIR SC 658], [(1990) 1 SCR 115)]

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64. State of Maharashtra & Ors. v. Madhukar Narayan Mardikar [AIR 1991 SC 207], [(1991) 1 SCC 57]
65. State of Maharashtra v. Natwarlal Damodardas Soni [AIR 1980 SC 593]; [(1980) 4 SCC 669]; [1980 CriLJ 429]
66. State of Telangana v. Managipet [(2019) 19 SCC 87], [2019 (17) SCALE 96]
67. State of Uttar Pradesh v. Kaushalya [(1964) AIR 416], [SCR (4) 1002)]
68. The National Union of Commercial Employees v. M.R. Meher Industrial Tribunal, Bombay and Ors [AIR1962SC1080], [1962 (64) BOMLR 693]
69. The United Commercial Bank Ltd. v. Their Workmen [AIR 1951 SC 230], [1951 INSC 25]
70. Vinod v. State of Gujarat and Ors [(2017) 4 GLR 2804, 2017]: [GUJHC:15310]
71. Western M.P. Electric Power & Supply Co. Ltd. v. State of M.P. & Ors [(1969) 3 SCR 865], [AIR 1970 SC 21]
72. XYZ v. State of Gujarat [(2019) 10 SCC 337], [AIR 2019 SC 5395]
73. Z. Lourdiah Naidu and Ors. v. State of Andhra Pradesh [2013 (2) ALD (Cri) 393], [2014 (1) ALT (Crl.) 322 (A.P.)]
74. [2003] UKHL 13 <House of Lords - Regina v. Secretary of State for Health (Respondent) ex parte Quintavalle (on behalf of Prof-Life Alliance) (Appellant)>
75. 배소연, 2018. Married with Beasts: Animalization of Women in the Works of Hesiod and Semonides of Amorgos. 서양고대사연구, (53), pp.233-281. <https://www.kci.go.kr/kciportal/landing/article.kci?arti_id=ART002423605 >