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PROSTITUTION LAWS IN INDIA: BETWEEN AUTONOMY AND EXPLOITATION

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Abstract

The study critically examines the legal and societal framework of the prostitution industry in India and the incessant conflict between exploitation, autonomy, and protection of sex workers' rights. The Immoral Traffic (Prevention) Act, 1956 (ITPA) punishes almost all ancillary activities like solicitation, brothel keeping, and third-party facilitation but not sex work per se. Due to this, sex workers who agree to cooperate are always exposed to harassment and stigma but are not protected from it by law. It has a weird implication on the law. It investigates the societal discrimination, patriarchal norms, and traditional caste and poverty inequities that exacerbate these contradictions and push women into prostitution as a means of subsistence rather than choice.

Through doctrinal, jurisprudential and comparative analysis (for instance from Sweden's law and New Zealand decriminalization models), the paper identifies loopholes as well as strengths in the existing Indian legal system. The Supreme Court's decisions in cases like Budhadev Karmaskar and the 2022 directives hold that sex workers have a right to live with dignity under Article 21. But there is a gap between laws and practice due to administrative sluggishness, police brutality, and the failure to abolish the remaining discriminatory laws.

The ongoing conflation of consensual adult sex work with trafficking in India threatens bodily autonomy and access to healthcare and welfare systems, perpetuating poverty-related risks. The respect-based and harm-reduction approach recognizes sex work as a form of labor distinct from trafficking and seeks to secure rights and safety for those involved. Only by addressing these contradictions through substantial legal and policy reforms can the country improve justice, safety and dignity for its most vulnerable citizens.

Keywords: Sex work, exploitation, bodily autonomy, legal reform, trafficking.

Introduction

Prostitution is existing in India in a legal grey area, within the provisions of Immoral Traffic (Prevention) Act, 1956¹ (ITPA). Although the ITPA does not make prostitution itself illegal, it criminalizes everything related to prostitution, that is, solicitation, running a brothel and pimping. This inherent paradoxical framework has a destabilizing effect on sex work, placing these individuals in a seeming state of neither fully protected nor fully criminalized. The legislation apparently sentences trafficking to death but, mistakenly, equates voluntary sexual activity to the proscription of sexual activity among other categories of humans, thereby mixing consensual adult deals with slavery. Consequently, the vulnerable sex workers are subjected to systemic exploitation, police persecution, and social stigmatization. This lack of clarity resides in a moralized versus rights-based stance and therefore it is a detrimental factor to the autonomy of people that are carrying out sex work out of necessity or out of choice. This paradox is the foundation upon which the attempt at solving those problems inside the Judiciary is analyzed.

The Indian courts have made progressive steps towards the recognition of the rights of sex workers, most of the time due to the ineptitude of the ITPA. The apex court in *Budhadev Karmaskar v. State of West Bengal*, 2011² recognized that dignity is also protected to sex workers that is under Article 21 of the Constitution³ that ensures life or personal liberty of the citizen. With this landmark decision the paradigm began to change towards the view of the sex workers not as moral wrongdoers but as rights bearers. However as per Hohfeldian analysis, sex workers would not be possessive of rights but rather privileges They essentially have a natural freedom (privilege) to practice the occupation of their will without any interference. The Court later in 2022⁴ reaffirmed that voluntary sex work is a trade and instructed states to provide access to welfare, health, and protection from violence. These rulings align with international human rights norms, such as the UNAIDS recommendations⁵, which advocate decriminalization to reduce stigma and improve health outcomes. On the other hand, judicial decisions cannot reconcile with the repressions of the ITPA, thus generating a contradiction between aspirations to progress and backwards enforcement. Obviously there is also the much

¹ Immoral Traffic (Prevention) Act, No. 104 of 1956.

² *Budhadev Karmaskar v. State of W.B.*, (2011) 10 SCC 354.

³ INDIA CONST. art. 21, cl. 2.

⁴ *Budhadev Karmaskar v. State of W.B.*, (2022) 20 SCC 229.

⁵ Joint United Nations Programme on HIV/AIDS, UNAIDS Guidance note on HIV and sex work, ISSN 9789291737635, (Issued in April, 2012), <https://digitallibrary.un.org/search?f1=author&as=1&sf=title&so=a&rm=&m1=p&p1=Joint%20United%20Nations%20Programme%20on%20HIV/AIDS&ln=en>.

more cumbersome jurisprudential issue of bodily autonomy and its commodification.

The core jurisprudential question is whether the body may be leveraged as a market good for commercial purposes. Liberal thinkers generally insist that bodily autonomy is a right that is not to be interfered with; and, if, for example, a person has expressed consent to criminal activity that a sex worker is engaging in, the state is not to be allowed to intervene. This view also corresponds to the harm principle proposed by John Stuart Mill, which allows individual freedom unless it violates the rights and interests of others.⁶ In this view, sex work is, by definition, a legal market and illegalization is an infringement on a person's right. Nonetheless, opponents, especially feminist schools of thought, point out that the profession of prostitution actually commodifies the body and reinforces patriarchal exploitation. They claim that, even in apparent cases of consent, social and economic pressures can make such consent illusory. The market for prostitution is the patriarchy itself. In the Indian setting this discussion is made more complicated by socio-economic aspects. A significant number of 46% of sex workers belong to the stigmatized castes and classes, and they enter the trade to escape poverty, trafficking or because of a lack of other choices.⁷ Here, "choice" is frequently informed by social and economic structural inequalities, posing questions about the genuineness of consent and the moral consequences of the commodification of the body. This tension of autonomy versus exploitation underscores the need for a thoughtful legal system.

As the law is intended to protect the weak, its deterrent effect in the worst case can make them even more unprotected. Alternatively, absolute decriminalisation, as is the case in New Zealand, can be used to incentivize the worker to become union, demand labor rights and as a consequence thereby limit exploitation and improve security. Yet, Indian policymakers resist such reforms, fearing societal backlash. The 2022 Supreme Court rulings⁸, which established the notion that police may not arrest adult, consenting sex workers, exemplify this ambivalence, striking the sex workers as human beings, but without further legal recognition. This ambivalence is an indication of broader social unease about the commodification of the body, at a time when the very condition that forces sex work to be a profession demands that these realities dictate the means by which sex work is performed.

⁶ David Brink, *Mill's Moral and Political Philosophy*, The Stanford Encyclopedia of Philosophy (Fall 2022 Edition), <https://plato.stanford.edu/archives/fall2022/entries/mill-moral-political/>.

⁷ Neha Hui, *Bargaining Power and Indicators of Well-Being Among Brothel-Based Sex Workers in India*, *Feminist Economics* 23(3): 49–76 (2017), <https://doi.org/10.1080/13545701.2017.1315440>.

⁸ *Supra* note 4.

The law on prostitution in India requires readjustment in such a way as to weigh ethical considerations along with practical considerations. For the sake of itself, it is, however, morally problematic to think of the body as a good per se, and criminalization will only cause greater pain and suffering than reducing them will. A changing paradigm would distinguish between voluntary sex work and pressure (like coercion or forced prostitution), and decriminalize the former and regulate the latter with extreme scrutiny toward trafficking and exploitation. Legislation has to be directed towards harm reduction, access to medical attention and social welfare, and in associating sex work not as a moral aberration, but as a form of labour. This approach shall be in line with the (oral) affirmation by the judiciary of the sexual rights of sex work, as defined in Article 21⁹ and international human rights norms. Only by releasing the structural straitjacket that compels individuals into sex work, and by securing and valuing them, can India ever hope to resolve the impasse between bodily autonomy and systemic marginalization. Through the use of such a rights-based structure it is possible to keep dignity for one of the most marginalized communities of the country, beyond moralistic considerations and to practical, humane responses.

Literature review

1. Statutory Provisions

Prostitution laws in India are sparse and not even categorised as offences of sex work. The primary statute containing provisions that express the stance of the criminal justice system on prostitution is the Immoral Traffic (Prevention) Act, 1956¹⁰. This legislation deals with crimes of human trafficking with special focus on preventing trafficking for and commercialising sex work. Dedicated sections of this Act specify punishments for engaging in the sexual exploitation of women and its monetary gain. These provisions are explained as follows.

- Section 3¹¹

The act of keeping a brothel or facilitating a brothel's functioning is penalised under this section. First time offenders are to face an imprisonment between two and three years in addition to a fine up to ten thousand rupees. Subsequent convictions are liable to imprisonment time of three to seven years and two lakh rupee fine.

- Section 4¹²

Punishment is prescribed for the offence of living off the earnings of prostitution.

⁹ *Supra* note 3.

¹⁰ *Supra* note 1.

¹¹ § 3, Immoral Traffic (Prevention) Act, No. 104 of 1956.

¹² § 4, Immoral Traffic (Prevention) Act, No. 104 of 1956.

Whoever knowingly lives on the earnings of another's prostitution is liable to a punishment of imprisonment up to two years and a fine up to one thousand rupees. The penalty is even higher on the sex work being a child's.

- Section 8¹³

The solicitation and seduction in pursuance of prostitution in public areas is an offence that is punishable by imprisonment and fine. Thus tempting potential clients to engage with sex work through words or actions is barred by this act.

The Immoral Traffic (Prevention) Act regulates sex work in India although not criminalising it.

Additionally, Article 21 of the Constitution of India¹⁴ which will be repeatedly referenced in this paper ensures the right to life and personal liberty, interpreted by the courts to include the right to dignity, privacy, and bodily autonomy. This article forms the constitutional basis for the recognition of sex workers as rights-bearing individuals.

The Bharatiya Nyaya Sanhita, 2023¹⁵ also provides scope of criminalising activities associated with prostitution. Since they outline the parameters of criminal culpability and the extent of unlawful assemblies, Sections 98, 99, 141 and 143 of the BNS, 2023, are pertinent to prostitution regulations. A foundation for examining voluntary sex work between consenting adults is provided by Sections 98¹⁶ (acts done by consent not intended to cause death or grave hurt) and 99¹⁷ (acts not offenses when done by consent of a person above 18), which demonstrate that consensual behavior does not necessarily need to be criminalized. When sex workers are harassed or criminalized through raids on brothels, Section 141¹⁸ (definition of unlawful assembly) and Section 143¹⁹ (penalty for unlawful assembly) are invokeable because they frequently confuse collective affiliation for livelihood with illicit behavior. These provisions highlight how the BNS could either perpetuate the conflation of consensual sex work with criminality or serve as a basis for distinguishing voluntary prostitution from exploitation and trafficking.

¹³ § 8, Immoral Traffic (Prevention) Act, No. 104 of 1956.

¹⁴ *Supra* note 3.

¹⁵ Bharatiya Nyaya Sanhita No. 45 of 2023.

¹⁶ § 98, Bharatiya Nyaya Sanhita No. 45 of 2023.

¹⁷ § 99, Bharatiya Nyaya Sanhita No. 45 of 2023.

¹⁸ § 141, Bharatiya Nyaya Sanhita No. 45 of 2023.

¹⁹ § 143, Bharatiya Nyaya Sanhita No. 45 of 2023.

Article 3(2)(c) of the EU Charter of Fundamental Rights²⁰ applies to the tension in your paper between bodily autonomy and commodification of the sex trade. The clause enshrines a strong anti-commodification rule, mandating that the human bodily form cannot serve as a commodity in the market. Accordingly, the clause aligns with the feminist attack on prostitution, which holds that even consensual engagement in sex work represents the market's commodification of the human form and entrenches structural inequalities.

At the same time, the range of this paper is limited as it was originally written taking into account organ trafficking, bioethical issues, and genetic materials, but not voluntary sexual work. Yet, its reasoning carries a jurisprudential shadow over prostitution laws. If the body cannot generate financial gain, then voluntary sex work seems inconsistent with this European principle. But critics note that the Charter does not prohibit individuals from using their body in labour markets (athletics, performance art, manual work all involve bodily commodification). Thus, applying Article 3(2)(c) rigidly risks overextension and selectively moralising certain forms of labour while permitting others.

The ITPA 1956 exhibits the same ethical unease about body-for-profit reasoning, though devoid of the Charter's bioethical approach. We end up in a contradiction wherein sex work is sexualised and stigmatised, but other bodily commerce goes unproblematically unquestioned. The EU clause, if interpreted expansively, upholds the exploitation prism, but if interpreted negatively, shows us how these kinds of moralised provisions might blur, instead of define, the distinction between autonomy and exploitation.

2. Case Laws

The bold engagement of the Supreme Court in the rights of sex workers emerged not through a public interest litigation but from a criminal case of violence. The case, *Budhadev Karmaskar v. The State of West Bengal*, 2011²¹ was commenced after the brutal killing of a sex worker in 1999 in the red-light area of Kolkata. The accused, Budhadev Karmaskar, was convicted by the trial court, and the conviction was accepted by the Calcutta High Court. He then attempted to appeal his conviction at the Supreme Court of India.

In the appeal hearing in 2011, the bench of the Supreme Court, consisting of Justice Markandey

²⁰ Art. 3(2)(c), Charter of Fundamental Rights of the Eur. Union, 2016 O.J. (C 326) 389, 391.

²¹ *Supra* note 2.

Katju and Justice Gyan Sudha Misra, was deeply moved by the barbarity of the crime committed. The justices recognized the fact that the victim was a sex worker and expressed serious concern at the systematic violence and exploitation suffered by members of this profession. Notably, the Court decided to widen the scope of the criminal appeal to include a broader investigation of the human rights of sex workers across the country. Citing Article 21 of the Constitution (under which the Right to Life and Personal Liberty falls) and proclaiming sex workers' right to live with dignity, the ruling uplifted a run-of-the-mill criminal appeal into a landmark case of human rights.

Since the Supreme Court took up the issue of larger questions in the 2011 case, the following directives have been made²².

Formation of a Panel (2011): The Court appointed an investigation team into the issue of sex workers' who reported on their rehab and protection. The team which did the study consisted of senior lawyers, government representatives, and members from sex worker community groups which in turn made the process very comprehensive and inclusive.

Panel Recommendations: Over the coming years the panel did in depth research and had extensive consultations. They put forth a report which was very detailed and which put forth a series of recommendations that became the base of the Supreme Court's later decisions. The key recommendations were in three main areas:

- Prevention of human trafficking and entry into the sex trade.
- Reentry for sex workers that wish to leave the trade.
- Creating environments in which professionals can continue to work with respect and safety.

Draft legislation: The panel put out in detail The Immoral Traffic (Prevention) Bill which was to take the place of the present out of date ITPA, 1956. The draft bill focused on the punishment of traffickers and exploitative clients which at the same time protected the rights of adult sex workers who were willing participants.

Interim Orders (2022): Frustrated with what we see as the central government's slow progress

²² Spraha & Abhimanyu Sharma, *Analysing Judicial Framework on Sex Work in India*, SSRN (Apr. 28, 2023), <http://dx.doi.org/10.2139/ssrn.4870664>.

on put forth legislation in May 2022 the Supreme Court used its very wide powers as per Article 142 of the Constitution²³ to issue a series of interim directives. Article 142 reports that the Court may pass any which in its judgment do full justice. These directives which are binding until we have that which formal legislation is to present included key protections on police conduct, health care, and issue of identity documents.

The passage of the Supreme Court's orders which sought to protect sex workers has been a very progressive yet at the same time very difficult journey. The central government was made out of the panel's recommendations which the Court put forth, and while they did accept the Court's orders they did little to implement them which is a very slow process. Also we see that there is a great deal of delay in passing new laws which tell the difference between what is free choice and what is forced labor which in turn is a very careful approach on the part of the government. Also we note that it is the state governments and the police forces which are charged with the implementation of these orders which is a matter of notice as they are the ones which are to report back to the centers. Also organizations like the National Legal Services Authority (NALSA) and the National Human Rights Commission (NHRC) have played very key roles in this process which includes running workshops to make the police and other functionaries aware of the Court's directions. But we also see that we have a great many issues. Very rooted social stigma against sex workers which in turn breeds prejudice among the law enforcers and the public which in large part causes issues like harassment and which although has gone down a bit is still a problem. Also many sex workers are not aware of the legal rights which they now have which leaves them open to exploitation. Also we see admin based barriers which include the directive to get out Aadhaar cards and other identity proofs which the Court said may be given out without proof of residence. Although the Government was asked to take a flexible approach on this by the UIDAI which is in charge of the said issue, we see that red tape is a great issue which is the gap between what is said and what is done.

The Supreme Court has set up a new legal framework, but for it to work, Indians need to work together to make sure that every sex worker has the right to dignity. This means that the legislature, the executive, and civil society all need to work together to solve problems in the system.

²³ INDIA CONST. art. 142.

In *Gaurav Jain v. Union of India* 1997²⁴, the Supreme Court responded to a public interest lawsuit for the rehabilitation and education of sex workers' children by acknowledging the cycle of exploitation that passes from one generation to the next. The court also called for the protection of the rights and dignity of sex workers and their children. The case contextualised the need for affirmative state action and social reintegration instead of criminal punishment.

3. Articles

In order to explore how the Indian legislation and judiciary tackle the stigma and subsequent conflict on sex work, it would be insightful to learn what other researchers have discovered.

Akanksha Dave in “Prostitution is Legal in India According to a Ruling by the Supreme Court”²⁵, makes the case that by recognizing sex work as a profession and ordering states and law enforcement to uphold the dignity of sex workers, the Supreme Court has made prostitution “legal.” Although the 2022 directives of *Budhadev Karmaskar vs State of West Bengal* limit abuse and protect consensual adult sex work from routine police, they do not eliminate the fundamental ITPA offenses against brothel-keeping, procurement, and public solicitation. This interpretation highlights a significant change in rights but overstates the legal impact. The article demonstrates a judicial shift toward a rights-based framework but understates the persistent legislative conundrum that maintains sex workers in a gray area.

A broader perspective into the politics of prostitution is adopted in “A Radical Feminist View of Prostitution: Towards a Model of Regulation”²⁶ by Lisa Hung. This article examines how law often reflects moral concerns more than empirical realities. It highlights that prostitution is regulated through criminal prohibitions that frame sex workers as either victims or deviants. The reasoning is that the state connects morality with legal order, and thus equates bodily autonomy with social harm. This dependency between morality and law creates structures where individual choice is distrusted if it appears shaped by inequality. The author argues that the law’s refusal to recognize agency leads to paternalism. From a jurisprudential standpoint, such paternalism as a result of law’s refusal to recognise agency, limits rights by presuming incapacity rather than affirming autonomy.

²⁴ *Gaurav Jain v. Union of India*, AIR 1997 SC 3021.

²⁵ Akanksha Dave, *Prostitution is Legal in India, According to a Ruling by the Supreme Court*, 3 IJIRL, ISSN: 2583-0538 (2023), <https://ijirl.com/wp-content/uploads/2023/01/PROSTITUTION-IS-LEGAL-IN-INDIA-ACCORDING-TO-A-RULING-BY-THE-SUPREME-COURT.pdf>

²⁶ Lisa Hung, *A Radical Feminist View of Prostitution: Towards a Model of Regulation*, 1999 UCL JURISPRUDENCE REV. 123 (1999).

This critique resonates strongly with the paradox in India's ITPA 1956, which criminalizes surrounding acts while leaving sex work itself in limbo. Where the author insists on rethinking autonomy beyond moral judgment, my analysis sees a bridge to John Stuart Mill's harm principle. If harm is absent in consensual exchange, prohibition loses justification. Structural inequalities exist that shape consent, echoing feminist concerns ingenuine choice influenced by poverty and patriarchy. Thus, prostitution law must move from moralized prohibition to rights-based regulation.

The Swedish/ Nordic model of prostitution does precisely that. Don Kulick, Professor of Anthropology New York University, Talk delivered at Beijing Plus Ten meetings on the "Swedish model"²⁷. The Swedish model frames prostitution as structural violence and criminalises buyers only. It rests on Nordic social-democracy's rational governance and radical feminism. The state assumes authority to regulate sexuality for public good. Feminist theory sees sexual acts as micro-enactments of hierarchy and calls for change in personal behavior.

Sweden passed a law in 1999 criminalising purchase of sex while leaving selling sex legal. Yet the law proves challenging in practice. Words in the legislation are vague and interpretation is the burden of courts. The model, though meant to curb exploitation, effectively undermines sex workers' safety and rights. It relies on ideology linking prostitution with violence and hierarchy. Ideology leads policy to assume victimhood and deny agency. This model mirrors India's ITPA: both laws criminalise related activities but not sex work itself, creating marginalization and unsafe conditions. The Swedish model's state-centric regulation expands control while failing to ensure dignity. It underscores the need for rights-based legal frameworks—like those emerging under Article 21 in Indian jurisprudence—to override moralistic, control-oriented models such as the Swedish or ITPA regimes.

4. Legal Dictionaries, Textbooks

A good place to begin when considering prostitution law is with definitional vagueness in legal dictionaries and encyclopaedic works. Black's Law Dictionary refers to prostitution as "the act or practice of a female offering her body indiscriminately for sexual intercourse for hire".²⁸

²⁷ Don Kulick, *Talk delivered at Beijing Plus Ten meetings on the "Swedish model"*, La Strada Documentation Center (2005), [https://documentation.lastradainternational.org/lisdocs/258%20The%20Swedish%20model%20\(Beijing%20Plu%20Ten%20meeting\).pdf](https://documentation.lastradainternational.org/lisdocs/258%20The%20Swedish%20model%20(Beijing%20Plu%20Ten%20meeting).pdf).

²⁸ Prostitution Definition, Black's Law Dictionary (9th ed. 2009), <https://thelawdictionary.org/prostitution/>.

Both gendered and moralized, this definition is an expression of an older socio-legal approach that identifies prostitution with immorality, not consensual transaction. By way of contrast, the Oxford Dictionary of Law takes a neutral approach, defining prostitution as "the provision of sexual services in return for payment".²⁹ The variation of tone reflects the jurisprudential tension at the core of Indian prostitution legislation, whether the law views sex work as immoral deviance or contractual work.

From the perspective of statutory commentary, Halsbury's Laws of India³⁰ is informative of the use of the Immoral Traffic (Prevention) Act, 1956. The commentary highlights that prostitution in itself is not made a crime, but the Act criminalizes conduct incidental to it, including brothel-keeping (Section 3)³¹, living on profits earned by prostitution (Section 4)³², and solicitation (Section 8)³³. The encyclopaedic approach emphasizes the paradox that voluntary sex work is not illegal but each act incidental to it is criminalized, resulting in what scholars call a "grey legality". This model situates sex workers in an in-between group—neither quite respected as workers nor quite stigmatized as criminal offenders.

Jurisprudential encyclopedias like Corpus Juris Secundum³⁴ and Halsbury's Laws of England (for the purpose of comparative analysis) serve to bring into sharper relief the varying regulation of prostitution by jurisdictions. Prostitution, for instance, is not prohibited in England, but soliciting on the streets and keeping brothels is governed under the Sexual Offences Act. Colonial morality-drenched Indian law was left with this repression-bent outlook, wherein "public morality" approves of state intervention even in consensual private life. This is similar to how Indian Penal Code has criminally defined homosexuality in Section 377 (prior to reading down in *Navtej Johar v. Union of India*)³⁵, illustrating how morality took precedence over autonomy in Indian law.

Referring to textbooks' jurisprudential commentary, books such as Ratanlal & Dhirajlal's

²⁹ Prostitution Definition, Oxford Dictionary of Law (10th ed., 2014) <https://www.oxfordreference.com/display/10.1093/acref/9780192897497.001.0001/acref-9780192897497-e-3105>.

³⁰ Halsbury's Laws of India-Criminal Procedure; Vol 12 (2016).

³¹ *Supra* note 11.

³² *Supra* note 12.

³³ *Supra* note 13.

³⁴ Corpus Juris Secundum Vol. XLIX.

³⁵ *Constitutionality of Section 377 IPC*, Supreme Court Observer (June 16, 2023)

<https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/>.

Commentary on the Indian Penal Code³⁶ acknowledge that prostitution offences are nested within ideas of more general "public order and decency." The commentary indicates that offences such as solicitation or trafficking are maintained upon the grounds of the protection of vulnerable women and the upholding of society's morality. However, the textbook also admits the paradoxes of this method, especially regarding adult, consenting sex workers who are criminalized not on charges of coercion or exploitation but on grounds of visibility. This text analysis gives background to the judicial move in *Budhadev Karmaskar v. State of West Bengal*³⁷, when the Supreme Court acknowledged the dignity of sex workers under Article 21.

Constitutional law textbooks such as H.M. Seervai's *Constitutional Law of India*³⁸ and M.P. Jain's *Indian Constitutional Law*³⁹ provides an interpretative framework. Both the books emphasize the fact that Article 21 ensures dignity and freedom to everyone, no matter what vocation. Seervai specifically cautions against expansive reading of morality-based limitations under Article 19(2)⁴⁰. Such eminent commentaries affirm that the Indian constitutional structure can be made to support a rights-oriented approach to sex work, though statutory law continues to be fettered by colonial morality.

Statement of Problem

India's legal framework when it comes to prostitution is conflicting and complex. While criminalizing acts related to sex work such as pimping, solicitation, and brothel-keeping, the Immoral Traffic (Prevention) Act of 1956 paradoxically does not prohibit sex work in itself. Lacking or not being provided with legal or social coverage, this contradiction has created a legal vacuum that makes sex workers susceptible to institutional exploitation, police harassment, and social marginalization.

There remains a basic chasm between the evolving justice of rights by the judiciary and the outdated moralistic system of the existing statutory regime, even with the advent of progressive judicial utterances upholding the dignity and rights of sex workers under Article 21 of the Constitution, as in the case of *Budhadev Karmaskar v. State of West Bengal*⁴¹. The current legal system erodes the bodily autonomy of individuals who opt to work in the sex industry,

³⁶ Ratanlal & Dhirajlal, *The Indian Penal Code*, ISBN: 9789388548403 (2019).

³⁷ *Supra* note 2.

³⁸ Seervai, H. M. (2015). *Constitutional Law of India*. Haryana: Universal Law Publishing.

³⁹ M.P. Jain, *Indian Constitutional Law*, Sanjay Jain ed., 9th ed. (2025).

⁴⁰ INDIA CONST. art. 19, cl. 2.

⁴¹ *Supra* note 2.

and especially women belonging to marginalized castes and communities, by not distinguishing between voluntary commercial sex work and forced trafficking.

The primary questions this research seeks to explore are whether the existing laws on prostitution in India effectively protect the rights of sex workers or exist merely to maintain patriarchal and moralistic controls, and the conflict of jurisprudence between the commodification of the body and bodily autonomy. Additionally the study probes the question of which is more moral and constitutional: to decriminalize or to criminalize issues of the sex industry in India which we grapple with.

Research questions

1. What has the Immoral Traffic (Prevention) Act of 1956 contributed to the sex workers' rights and autonomy in India?
2. What has the recent Supreme Court's verdict in the Budhadev Karmaskar case and the 2022 directives done to the legal status and daily lives of sex workers?
3. What is the issue of which laws and courts treat sex work differently and how do these differences play out in enforcement and protection?
4. What role does caste, poverty, and stigma play in the real and legal issues related to sex work in India?
5. Can India look at the Swedish model and New Zealand's approach to decriminalization which are from the experience of other countries' policies to implement in its own legal reform?
6. How does Indian law define which acts are consensual adult sex work and which are trafficking or forced labor in a way that also protects the former and which upholds the women's and men's right to autonomy?

Significance

This research paper on prostitution laws is important because it considers the autonomy and exploitation of women's bodies. It is relevant with respect to issues like HIV, work conditions along with patriarchal roles. This information contributes in the understanding of the complex difficulties sex workers face in India.

The research shows that India's Immoral Traffic (Prevention) Act presents a "paradoxical framework." The law connects consensual sex work with slavery, which causes exploitation

and stigmatization - this really undermines bodily autonomy. Because of underlying socio economic inequalities plus poverty, many women enter the trade from necessity. That questions the concept of "choice" in sex work.

For addressing health concerns, such research is also important. It notes that marginalized women face a higher risk of HIV and may turn to sex work for support. The research argues for better work conditions - it proposes a rights based framework that decriminalizes voluntary sex work, provides access to welfare and healthcare, but also treats sex work as legitimate means of labour.

Scope and Limitation

The focus of this study is predominantly on the Indian legal framework. It includes a review of the Immoral Traffic (Prevention) Act, 1956 as well as what may be called inherent contradictions. The struggle between what the ITPA does to criminalize and the constitutional protections of life, dignity and personal autonomy which are enshrined in Article 21, equality which is ingrained in Article 14⁴², and the right to practice any profession as stated in Article 19(1)(g)⁴³ is demonstrated.

The issue at hand also reports on the evolution of Indian courts' stand on sex workers' rights in the last century when the Supreme Court recognized sex work as a profession and also protected the dignity of sex workers.⁴⁴ The jurisprudential scope encompasses a theoretical discourse, juxtaposing liberal feminist views on bodily autonomy with radical feminist critiques of bodily commodification. To put this in full perspective the study provides an international comparison of the Swedish Model and New Zealand's approach to the issue which also plays a role in what may be seen as the way forward for legal reform in India.

This study is of a doctrinal and qualitative nature which includes only what is put forth in legal statutes, judicial decisions, academic articles and reports. The use of empirical research is absent which would include the results of interviews or surveys of sex workers, law enforcement, or legal professionals. Instead the analysis is that of theory and text which is presented instead of primary field data.

⁴² INDIA CONST. art. 14.

⁴³ INDIA CONST. art. 19, cl. 1(g).

⁴⁴ *Supra* note 4.

The research reports on what we see as the main issues of the legal framework at a national scale. We see in it the social and economic issues which push people into sex work out of which poverty and caste play a large role; at the same time the study does not do in depth work in a socio-structural or state based capacity with respect to these issues. Also we see that which legal issues adult, cisgender female sex workers face are put under the microscope but we do not get into the unique issues of vulnerability and law which affect male, transgender, or child sex workers.⁴⁵ Also the paper touches upon international models but only insofar as they relate to what is seen in India. It doesn't give a full picture of how they have been used and what happened in their own countries.

Objectives

- Analyse the current legal framework governing prostitution in India.
- Investigating the impact of ITPA's inconsistencies on the autonomy and safety of sex workers.
- Identifying how the nature of sex as a means of livelihood contributes to the vulnerability, systemic exploitation and social stigmatisation of women,
- Examination of jurisprudential developments on the matter in Indian courts.
- Assess the debate surrounding bodily autonomy and its commodification in the context of prostitution.

Methodology

This research follows a doctrinal and jurisprudential study design, with comparative and socio-legal analysis. Doctrinal study is necessary for the analysis of India's statutory framework of prostitution, more especially the Immoral Traffic (Prevention) Act, 1956 (ITPA), and its relationship with constitutional protections under Articles 14, 19, and 21. Jurisprudential investigation will make use of liberal, feminist, and critical legal theories to engage the further normative issues of body autonomy, commodification, and exploitation. Comparative analysis will be incorporated by examining overseas legal models like the Swedish Model and New Zealand's decriminalization model and their relevance to India.

The study is qualitative in nature, with a focus on critical interpretation of legal documents, judicial precedents, international agreements, and scholarly literature. Instead of using

⁴⁵ Lucy Platt, *Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies*, PLoS medicine, 15(12), e1002680 (2018) <https://doi.org/10.1371/journal.pmed.1002680>

quantitative material, the research focuses on conceptual understanding, theoretical basis, and normative connotations of prostitution legislation.

Scheme of Study (Body)

1. History of Prostitution

Poverty, social stigma, issues of migration, and the day to day struggle for existence in host or unsympathetic city spaces. These facts which break up the image of free and unencumbered “choice” in to which sex work enters, instead we see sex work as a range of survival methods rather than acts of willpower.

Historally what we see is that attitudes towards prostitution in India have changed greatly over time. In the Kamasutra which is an ancient text and also in the case of courtesans or devadasis which had a very high status we see that sex work was accepted by society in many complex ways which included its role in art and ritual. At one point in history courtesans had high social standing, were supported by patrons and also had a great deal of independence which they used to practice music, poetry, dance and to serve royal courts.⁴⁶ That which was once very respected broke down with the change in social structures and also the introduction of more stringent moral codes.

During the colonial time which was a very transformative period European powers brought in their moral codes which at the time were that of Victorians which in turn led to more control and attention brought to bear on the issue of prostitution as a social issue. We saw the introduction of the Contagious Diseases Act which gave colonial governments the right to control sex workers’ health in the name of public health which in turn created a culture of watchfulness, stigma, and gender based violence.⁴⁷ What we also saw was the beginning of the criminalization of related practices which though not the actual act of prostitution itself became enshrined in law and we live with the legacy of that today.

After independence we saw the passage of the Suppression of Immoral Traffic in Women and

⁴⁶ Najar, Jaffer Latief, *Brahmanical patriarchy and the politics of anti-trafficking and prostitution governance: from colonial to contemporary India*, Third World Quarterly, 44(4), pp.667-685 (2023) <https://doi.org/10.1080/01436597.2022.2099824>.

⁴⁷ Philip Howell, *Prostitution and Racialised Sexuality: The Regulation of Prostitution in Britain and the British Empire before the Contagious Diseases Acts*, Environment and Planning D: Society and Space, Sage Journals 18(3), pp.321-339 (2000) <https://doi.org/10.1068/d259>.

Girls Act, 1956⁴⁸ which was later amended into the Immoral Traffic (Prevention) Act (ITPA). Also the ITPA does not put sex work itself beyond the law's reach but does go after related activities like soliciting, running brothels, and benefitting from the proceeds of prostitution. This has created a gray area of law which is at best inconsistent and at worst non-existent. What we see is that law enforcement has a tendency to go after street based and brothel based workers which in turn puts them into cycles of police violence, extortions, and arbitrary arrest.

Sex work is still very much a marginalized issue which is in large part due to media that likes to sensationalize stories and also to what today would be termed as traditional male dominated thinking which presents sex workers as either beyond good and evil or as very sorry creatures. These are in fact depersonalized reports which also take away from the sex worker's personhood and in turn support discrimination. While some in the judiciary have put out positive reports which do include the sex worker under the protection of what the Constitution says regarding human dignity (Article 21) we see that these are still the exception and that we as a society are very slow to change our laws and legislative structures.⁴⁹ Out of a past which saw little to no effort by Indian state in recognizing sex work as a legitimate form of labor which instead was put forward for punitive action.

In India we must address the past in order to reform sex work laws which is to say we must engage with this historical legacy, put forth clear legislation, and put to the fore the rights and agency of those most affected especially women at that intersection of multiple forms of disadvantage.⁵⁰ Looking ahead we may see a fairer framework that differentiates between consensual adult sex work and what is exploitative trafficking, which will prioritize health and welfare, and also put forward policies which challenge social structures which push marginalized groups into what is essentially precarious labor which includes sex work.

2. Current State of Prostitution in India

Prostitution today in India is a very complex issue which is a result of what we see as the interaction between legal structures, social attitudes, and economic issues which in turn play out in the lives of sex workers. Although we have had some progressive judicial actions and

⁴⁸ Suppression of Immoral Traffic in Women and Girls Act, No. 104 OF 1956.

⁴⁹ Prabha Kotiswaran, *Labours in Vice or Virtue? Neo-liberalism, Sexual Commerce, and the Case of Indian Bar Dancing*, *Journal of Law and Society*, 37(1), pp.105-124, (2010) <https://doi.org/10.1111/j.1467-6478.2010.00497.x>.

⁵⁰ Svati P Shah, *Street Corner Secrets: Sex, Work, and Migration in the City of Mumbai*, Duke University Press (2014) <https://doi.org/10.2307/j.ctv125jps4>.

see a growth in awareness of the sex workers' rights issue, the legal framework still is filled with contradictions which in turn do not support the sex workers' autonomy and safety.

Recent reports that have come out on the issue of commercial sex workers (CSWs) report that they are at greater risk which is a result of what is in the system economic debt and also access to other types of work is very limited. For instance a large scale study which we looked at reported that 99% of commercial sex workers in Pune want out of what they are in at present which is a picture of a very fragile existence. Also during the COVID 19 pandemic the lock downs brought these vulnerabilities to the fore which in turn saw many sex workers fall into debt traps which in large part is a result of high interest rates put forth by pimps or controllers. This has been put forth as a modern day slavery crisis which many sex workers are caught in and are not able to get out of because of the very real economic forces which are against them.

Also we see that the issue of sex work is still very much a social issue which puts sex workers at a disadvantage. Many sex workers report discrimination and violence which is in many cases made worse by their social economic status. Also we note that a large number of sex workers are from marginalized communities which they join out of poverty or lack of other options. This puts forth a paradox of which while individuals may choose this as a option structural issues play a large role in that choice which in turn questions what we as a society consider to be free consent in sex work.

Legal presentments on the issue of prostitution in India are dominated by the Immoral Traffic (Prevention) Act which still puts sex work related activities including that of the pimps and the brothel keepers in the criminal category.⁵¹ While the Act does not make sex work a crime in itself what it does is put sex workers in a gray legal area which in turn causes their marginalization. Though some court orders have brought to light the issues of sex workers' rights and dignity as in the case of the 2011 landmark decision in *Budhadev Karmaskar vs State of West Bengal* in general what we see is that present law which groups consensual sex work with that of trafficking and exploitation which in fact they are not.

In the face of these issues it is important to look at what other countries are doing to address

⁵¹ Chi Adanna Mgbako, A Roadmap For Sex Workers' Rights Reform: Lessons Learned From Recent Legal Advancements, 29 Berkeley Journal of Criminal Law 2 (2024) <https://doi.org/10.15779/Z38VH5CK96>.

similar problems. For example, New Zealand's sex work policy which is based on decriminalization and the implementation of labor rights for sex workers is put forward in great contrast to India's present model. That approach reportedly had better health results and also saw to it that sex workers' safety improved which in turn means that we may see positive results of a move away from criminalization and toward regulation in India. But also to that we see large scale resistance from the policy makers which is a result of fear of public reaction which in turn plays out the ongoing struggle between legal change and public image.

3. Legal Framework Surrounding Prostitution

The main body of law which structures prostitution in India is the Immoral Traffic (Prevention) Act of 1956 which saw amendments in 1986. That which is put forth by this legislation is a very complex and at times a very contradictory environment for sex workers. Although the Act permits sex work in private settings it at the same time criminalizes which goes to public spaces for the purpose of solicitation, running brothels, and plying as a pimp. This legal gray area is to say that while sex workers may in theory carry out their trade, those which surround the trade are very much against them and in fact present great risk to their rights and safety.

In spite of red light areas' presence in India sex workers do not see the protection which is available to other laborers via labor laws or trade unions. Also they may turn to state run shelters which in fact do not provide sufficient support or resources. The ITPA's attention to issues of trafficking and exploitation does not include recognition of consensual adult sex work as a valid form of labor which in turn causes report of trafficking to be used as a proxy for consensual prostitution.⁵² This report of trafficking which includes what may be consensual sex work also blinds us to other forms of exploitation which play out in other sectors like sweat shops and agriculture.

What we have seen is the 15 year old issue of state run rehabilitation which in fact uses forced detention of sex workers which they present as a victim issue not that of an independent person. Also these programs do not in fact engage with the communities they claim to help which in turn supports discriminatory practices in the name of public health. This institutional approach which we see from a policy level pushes sex workers away and does not give them a forum to

⁵² Lavika, The Scope of "Prostitution" under the Immoral Traffic (Prevention) Act, 1956:Judicial Interpretations and Legislative Ambiguity, YourLawArticle (Sep. 18, 2025) <https://www.yourlawarticle.com/post/the-scope-of-prostitution-under-the-immoral-traffic-prevention-act-1956-judicial-interpretation>.

put forth their issues or fight for what is right for them.

The implementation of ITPA by law enforcement has seen many issues arise which in large part play out in the life of sex workers' human rights. The criminalized approach we see today has put sex workers and pimps at the front of police attention in public areas which in turn breeds a great deal of harassment and abuse. Also we see that the legal system in fact supports patriarchy instead of breaking it down which puts law enforcements in the role of heroes and sex workers that of deviants. This presentation of sex workers' issues ends up to be a factor which pushes them to the periphery which in turn complicates their access to justice and basic human rights.

Also in the past the Indian law which relates to prostitution was shaped by what the country was bound by like the 1949 UN Convention on the Suppression of the Traffic in Persons and the Palermo Protocol. While we see recently that the judiciary is beginning to report in favor of sex workers' rights, that element is still very much in play in our legal structure which at large still is a force for oppression and stigma.

To address these systemic issues, it is crucial to rethink the legal framework governing prostitution in India. A more nuanced approach that differentiates between voluntary sex work and coercion can help in creating a regulatory environment that prioritizes harm reduction, access to health services, and social welfare.⁵³ By decriminalizing consensual sex work and strictly regulating forced prostitution, lawmakers can align with both international human rights norms and the evolving judicial interpretation of bodily autonomy.

Immoral Traffic (Prevention) Act, 1956

The 1956 Immoral Traffic (Prevention) Act which is the main legal framework on prostitution in India also puts forth a very complex set of issues which in turn lead to what may be seen as large scale contradictions within the act. What the ITPA does is to not make prostitution illegal but at the same time to put forward that related activities like street solicitation, running of brothels, and pimps do in fact break the law. This which is in many ways a put together structure of what is illegal and what is not, allows for sex work to take place in private spaces but at the same time creates very unstable and dangerous environments for sex workers to operate in.

⁵³ Anshika Dhingra, *Prostitution in India: A Complex Relationship of Morality and Legality*, 3 JLRJS 1 (2023) <https://jlrjs.com/wp-content/uploads/2023/11/36.-Anshika-Dhingra.pdf>.

Key elements of the ITPA put forward criminal measures against sex workers but also develop which law enforcement can use to single out persons at public spaces. This has led to large scale arrests and harassment which in turn is making it hard for sex workers to assert their rights. Also the Act reports on family members that live from what sex workers earn which it does so without looking at the base socio-economic issues that put people into sex work. What results is a legal structure which instead of empowering and securing safety does in fact reproduce present social stigmas.

Legal vagaries in the ITPA present the contrast which is between sex workers put forward as victims to be saved out of which a few may be trafficked or as deviant elements which must be punished. This black and white view doesn't recognize the agency of sex workers at all nor does it tie in with larger patriarchal systems which in turn play a role in their oppression. Also the state's image of law enforcers as saviors of society at the same time which they criminalize sex workers plays into harmful stereotypes which in turn complicate the route to justice and equality for sex workers. Also the ITPA's preoccupation with trafficking issues out ways the issues of consensual sex work which it fails to recognize as a form of work in itself thus pushing sex workers into a marginal space. Ambiguities in the ITPA mean voluntary sex workers are often criminalized alongside traffickers; reform is needed to align the Act with constitutional rights and international obligations.⁵⁴

The ITPA's impact on sex workers' rights is great and complex. While in recent years we have seen reform through the Supreme Court's 2022 decision⁵⁵ which began to turn an eye toward the rights of sex workers and their health and welfare needs, the ITPA still remains a disadvantage to the marginalised. The Act's primary focus is on criminalization which in turn silences sex workers' voices, which in turn leaves them open to harassment and exploitation without which they should have from the law.

Judicial Interpretations and Landmark Cases

The change in the Indian judicial approach to prostitution laws has been very evident, in large part through landmark cases which put the issue of sex worker rights into the fore and also which point out the laws' contradictions. In the case of *Budhadev Karmaskar v. State of West*

⁵⁴ *Supra* note 52.

⁵⁵ *Supra* note 4.

Bengal, 2011⁵⁶ the Supreme Court did break new ground by its recognition of the dignity and rights of sex workers which it said are protected under Article 21 which is the right to life and personal liberty of the Indian Constitution.⁵⁷

In its ruling the Court put forth that within the frame of consensual sex work should not be put in the same category as that of trafficking or exploitation which in turn puts forth a challenge to what is now the accepted narrative which presents all sex work as a form of exploitation. This landmark decision which is a point of reference in itself initiated a progressive discussion on the issue of protection of sex workers' rights which in turn aligns with international human rights standards which the UNAIDS put forth which in turn support the decriminalization of sex work to improve health outcomes and reduce stigma. But despite this recognition the putting into practice of such progressive decisions is marred by the present legal framework of the Immoral Traffic (Prevention) Act.

In 2022 the Supreme Court issued rulings which also put forward the case that voluntary sex work is a legal trade which also does welfare access. This ruling is a turning point in how sex workers are seen, which is that they are not put forth as moral outcasts but as people with rights and dignity which must be honored. It reports a trend toward the acceptance of the need for change which we also see play out as that which puts forward the contrast between what the law says it should be and what it practically does to sex workers. Judges are beginning to develop a space for sex workers in the legal system which is a step forward but we still see large scale bureaucratic push back and social stigma against sex work.

Despite major court pronouncements, there remains an ongoing gap between superior jurisprudential requirements and their real-life application in India. Bureaucratic resistance, intimidation by the police, social stereotyping, and lack of awareness among sex workers stand in the way of successful implementation and the enjoyment of rights promised by the courts. Closing the gap would entail the use of holistic training of law enforcement officials, concentrated community outreach, procedural amendments, and inclusive policy-making so that judicial protections come to meaningfully translate into better and more respectable lives for sex workers.

⁵⁶ *Supra* note 2.

⁵⁷ Manvitha B. S. Breaking Chains: A Quest for Justice in India's Legal Battle over Sex Work, McGill Centre for Human Rights and Legal Pluralism (Dec. 11, 2024) <https://www.mcgill.ca/humanrights/article/breaking-chains-quest-justice-indias-legal-battle-over-sex-work>.

Finding

Prevalence and Demographics

The issue of sex work in India is very complex which is a result of demographic, economic, and regional factors. We look at the data on the size of the sex worker population and their make up which is key to tackling the many issues related to sex work in the country. Recent studies report that the numbers of sex workers in India wide greatly, some put the number at over 3 million nation wide which we have a hard time to know for sure due to the very private nature of the sex work industry.⁵⁸

In terms of demographics, sex workers in India are from marginalized groups which include large numbers of lower caste and economically underprivileged classes. For example we see that a great number of sex workers are from stigmatized castes and many enter the profession as a way to leave poverty, trafficking, or in the absence of other job options. This demographic picture also brings out the issues of social stigma, economic determinism and the very few choices available to these individuals which in turn complicate the issues of what is given out there regarding consent and agency in sex work.

In the report which is “Demography and sex work characteristics of female sex workers in India” we see that women which are illiterate, of low social status, and have few economic options are very much at risk of HIV infection which in turn may cause them to turn to sex work as a means to support themselves.⁵⁹

Regional sex work trends present a complex picture. In major urban centers which include Mumbai, Delhi and Kolkata we see very different issues play out in the sex work industry. For example in the city of Pune it was reported that 99% of commercial sex workers would like to leave the trade which is a clear indicator of the unstable nature of that which they are engaged in. Also it is the case that in terms of what is seen in these cities’ sex work markets that local economic conditions, cultural views on sex work, and the role of organized crime all play large roles.⁶⁰ The following table which we present gives a comparative overview of sex worker

⁵⁸ Rohini Sahni & V. Shankar, Sex Work and its Linkages with Informal Labour Markets in India: Findings from the First Pan-India Survey of Female Sex Workers, IDS Working Papers (2013) [10.1111/j.2040-0209.2013.00416.x](https://doi.org/10.1111/j.2040-0209.2013.00416.x).

⁵⁹ R. Dandona, L. Dandona, G.A. Kumar, et al. *Demography and sex work characteristics of female sex workers in India*, BMC Int Health Hum Rights 6, 5 (2006). <https://doi.org/10.1186/1472-698X-6-5>.

⁶⁰ N. Saggurti, A.K. Jain, M.P. Sebastian et al, *Indicators of Mobility, Socio-Economic Vulnerabilities and HIV Risk Behaviours Among Mobile Female Sex Workers in India*, 16 AIDS Behav, 952–959 (2012).

populations in key Indian cities:

City	Estimated Number of Sex Workers	Percentage Seeking Alternative Livelihoods
Pune	Approx. 25,000	99%
Mumbai	Approx. 100,000	Varies
Kolkata	Approx. 30,000	Varies
Delhi	Approx. 70,000	Varies

This table highlights, on the one hand, the estimated population in a few of these urban centers and, on the other, the urgent need for multiple sources of livelihood for these individuals. The statistics reflect a ubiquitous trend of economic marginality, which impacts the lives of sex workers in varied spaces, thus underscoring the necessary urgency for strong socio-economic safety nets.

The prevalence and demographics of sex work in India form key components of the necessary discussion of prostitution laws and rights of the individual. The intermingling of caste, class, and geographical disparity not only sheds light on the socio-economic realities behind individuals' involvement in sex work, but also highlights the need for a nuanced understanding of the meaning of consent and personal agency. As India grapples with these challenges, it becomes increasingly clear that addressing problems facing sex workers will require a multi-faceted approach sensitive to these demographic complexities and seeking significant reforms in legislation and social attitudes alike.

Socio-Economic Factors

The socio-economic contexts underlying the sex work landscape of India derive their genesis from systemically entrenched poverty, human trafficking, and culture-embedded stigmas. Not only do these contexts contribute toward the existence of the sex trade, but toward the formation of the conditions and choices available for individuals engaged in sex work. Understanding these contexts serves toward the creation of efficacious policies and interventional strategies

<https://doi.org/10.1007/s10461-011-9937-7>

toward promoting the welfare of sex workers.

Poverty continues to be one of the most significant push factors influencing people to engage in sex work. Individuals enlisting in sex work hail nearly exclusively from poverty-struck communities with few prospects for education and employment. It was shown by studies that the majority of sex workers enroll in sex work from a motivation of escaping a severe economic deprivation, finding themselves stuck in poverty from which there is no escape so readily. For example, a study revealed that 99% of sex workers in Pune were seriously looking for an alternative source of livelihood, citing how vulnerable their present situation was and how strongly there was a need for an economic alternative.⁶¹

Neither can the impact of trafficking be negated. Individuals, particularly women and men belonging to weaker economic groups, are exploited by traffickers taking advantage of their vulnerable conditions. Criminalisation of various aspects of sex work by the Immoral Traffic (Prevention) Act further exacerbates the condition by excluding sex workers of any kind of law safeguarding them. This absence of legal relief makes it hard for people to escape exploitative situations, as they are usually trapped by a debt cycle initiated by controllers and traffickers who charge outlandish interest on loans taken for subsistence. Most sex workers are trapped in a position in which they cannot repay such loans, and thus the exploitation continues and they are even solidified in the sex industry.⁶² Social stigma surrounding sex work is also a significant determinant of the working conditions of sex workers. Society's perception of prostitution as a vice adds to the isolation and exclusion of sex workers.

This stigma not only operates upon available choices for sex workers but also upon their psychological health. The majority of these individuals experience law enforcement and societal stigmatization, which worsens the issues of finding alternate work or leaving the job altogether. Stigma around sex work is usually compounded through prevalent gender norms carrying patriarchal ideals and thus discouraging women from pushing for their rights and self-determination, in particular. Overall, the socio-economic environment of sex work in India is marked by poverty, rampant consequences of trafficking, and deeply-rooted societal stigma. These add to a complex web of problems that one must deal with while engaging in the sex trade.

⁶¹ *Id.*

⁶² *Id.*

In response to these issues, what is required is an overall policy that economically empowers, decriminalizes, and provides legal protection in order to be able to assist in enhancing the safety and dignity of sex workers. It is only by making correct interventions grounded in these socio-economic realities that actual progress can be made in the battle against exploitation and stigmatization within the sex work industry.

The Nordic Model

The Nordic Model, also referred to as the Equality Model or the Neo-Abolitionist Model," represents a paradigm shift in sex work legislation by criminalizing the purchase of sexual services while decriminalizing the selling of them. First implemented in Sweden through the 1999 Kvinnofridslagen (Women's Peace) bill, the model is rooted in the radical feminist framework that views prostitution not as work, but as a form of gender-based violence and a manifestation of structural inequality.⁶³ Unlike the New Zealand model, which focuses on labor rights and full decriminalization, the Nordic Model aims to end demand by targeting the buyer and third-party profiteers.

The Model has drawn harsh criticism from academic scholars and human rights organizations despite its goal of protecting vendors. Human Rights Watch, the World Health Organization, Amnesty International, and other organizations contend that partial criminalization perpetuates a culture of fear and stigma.⁶⁴ The approach frequently drives sex work underground, according to research from the London School of Economics.⁶⁵ Clients who are afraid of being arrested seek more secrecy and speedy transactions in remote areas, depriving sex workers of the time and space needed to negotiate condom use or perform safety screenings.

Furthermore, critics point to de facto criminalization through intersecting laws. For example, legislation pertaining to the advertising or operation of brothels frequently prohibits two or more employees from sharing a place for safety, which effectively forces them to work alone and in greater danger. The Nordic Model forced sex workers to put their clients' safety ahead

⁶³ Evaluation of the Swedish Legislation Criminalising the Purchase of Sexual Services | Office of Justice Programs. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/evaluation-swedish-legislation-criminalising-purchase-sexual>.

⁶⁴ Nguyen, Erika. 'Why Sex Work Should Be Decriminalized'. Human Rights Watch, 7 Aug. 2019, <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>.

⁶⁵ Vuolajärvi, Niina. 'Criminalising the Sex Buyer - Does the Nordic Model Keep Workers Safe?' The London School of Economics and Political Science, 23 May 2023, <https://www.lse.ac.uk/research/research-for-the-world/politics/criminalising-the-sex-buyer>.

of their own, which led to an increase in violence against them in France and Ireland, according to reports from Médecins du Monde and other NGOs.⁶⁶ Regardless of whether the sale of sex is decriminalized or not, migrant workers are disproportionately disadvantaged under this paradigm since they frequently face deportation under immigration restrictions.

However, proponents of the Nordic Model contend that these criticisms frequently focus on the experiences of a privileged minority who say they have chosen to pursue a career in sex work. Addressing the realities of the vast majority, those who enter the trade as a result of systemic failure, homelessness, extreme poverty, or trafficking, is the model's main goal. From this perspective, the choice to sell one's body in a state of economic desperation is not a form of autonomy but a result of a lack of options.⁶⁷

Thus, the Nordic Model's supporters contend that it is the only framework that rejects the normalization of the commodity of human bodies, despite the fact that its effects on active sex workers are still the focus of heated scholarly dispute. The Nordic Model was essentially designed for those without choice, people whose bodily autonomy is already jeopardized by unchecked systems of power and exploitation. The concept aims to demolish patriarchal structures that treat people like commodities by criminalizing the abuser and the buyer instead of the survivor, giving priority to the protection of the most vulnerable who are unable to defend themselves.

New Zealand's Decriminalisation

New Zealand's decriminalization of sex work through the Prostitution Reform Act (PRA) of 2003 offers relevant learning points for Indian law reforms through demonstrated measurable gains in safety, health, autonomy, and sex workers' interactions with law enforcers. Research carried out after decriminalization demonstrates that the removal of criminal penalties for consensual adult sex work creates a safer and friendlier space for persons in this trade.

One of Lynzi Armstrong's papers⁶⁸ highlights how decriminalisation gave sex workers greater

⁶⁶ Fondation Scelles, Charpenel Y., *Sexual Exploitation: New Challenges, New Answers* (5th Global Report), Paris, 2019.

⁶⁷ Aishling Heffernan. 'The Nordic Model Was Built for Those Without Choice'. femLENS, 1 Dec. 2022, <https://femlens.com/blog-post/the-nordic-model-was-built-for-those-without-choice/>.

⁶⁸ L. Armstrong, 'I Can Lead the Life That I Want to Lead': *Social Harm, Human Needs and the Decriminalisation of Sex Work in Aotearoa/New Zealand*, *Sex Res Social Policy* 18(4):941-951 (2021) doi: 10.1007/s13178-021-00605-7

control over work, such as the right to refuse clients if they chose to. Acknowledgement of sex workers within the law as rights-bearing individuals enabled workers the right to demand safety and fewer instances of harassment by the police or arbitrary detention. It was undertaken through in-depth interviews, which documented the ways sex workers recognised their lives had materially improved—financially, socially, and emotionally—within a framework which valued their dignity and self-control.

The work of Armstrong aligns with Lucy Platt's work⁶⁹ on performing a review of international evidence on sex work legislation, which points out that decriminalizing sex work improves sexual health services accessibility and promotes the use of safe sexual practices. By excluding the possibility of prosecution, sex workers become more likely to engage in regular health checks, including HIV and sexually transmitted infections (STIs) tests, without fear of stigma or prosecution. Additionally, accessibility of health and social services is further promoted through peer organization initiatives, for example, the New Zealand Prostitutes Collective, which worked in tandem with government authorities in designing comprehensive outreach programs considering the diversity of culture and language.⁷⁰

The New Zealand model also allowed sex workers to report abuses and seek justice more readily. Notable instances in which sex workers won sexual assault or harassments cases against customers or managers of brothels reflect decriminalisation's facilitation of prosecution and site-of-work safety.⁷¹ Legal empowerment contrasts strongly from the situation under criminalised regimes in which sex workers flee authorities partly because they would end up in jail rather than pursue redress.

Despite these developments, research questions have pointed out gaps in the New Zealand regulatory regime. Sex migrants who hold temporary visas do not receive holistic protection, and this leads to added vulnerabilities and continued advocacy pursuits towards ending this disparity.⁷² However, empirical data conclusively points out that entities under the coverage of

⁶⁹ *Supra* note 45.

⁷⁰ NZPC, *Decriminalisation of Sex Work in New Zealand: Impact on Maori*, <https://www.nzpc.org.nz/pdfs/Impact-on-Maori-Decriminalisation-of-Sex-Work-in-New-Zealand.pdf>

⁷¹ Department of Reproductive Health and Research, *Sexual health, human rights and the law*, World Health Organization (Sept. 15, 2015) https://iris.who.int/bitstream/handle/10665/175556/9789241564984_eng.pdf?sequence=1.

⁷² Dana Hayward, *The Social Consequences of Close Votes: The Narrow Decriminalization of Sex Work in New Zealand*, Yale Graduate School of Arts and Sciences Dissertations. 348. (2021) https://elischolar.library.yale.edu/gsas_dissertations/348

the PRA experience significant enhancements of their work safety and rights.

These conclusions have direct ramifications for India. The Indian criminal law might follow the lead of New Zealand and completely decriminalize consensual sex work to promote sex workers' health, work safety, and self-determination while distinguishing forced labor or trafficking for harsh penalties. This would align internationally accepted human rights norms promoting labor rights, harm reduction, and dignity for sex workers. Creating a legal framework in which sex workers might form associations, receive healthcare, and engage safely with law enforcers would diminish the structural exploitation under the current Indian law.

Suggestions

The Nordic Model also goes by the names of the Equality Model or Partial Criminalization Model which puts forward an interesting idea for India. This model outlaws the purchase of sex (the client) and third party exploitation (pimps, brothel owners) but does not criminalize the sex worker and in fact puts in place full support systems and options for exit. At its root is the idea that by going after demand we may see the sex work institution which we see as very much a health issue and gender based violence issue die out.⁷³ Also this approach puts the criminal responsibility where it is greatest on the pimps, the brokers and the clients which in large part we see to be that which is a result of systemic issues rather than free choice by the individual.⁷⁴ New Zealand's experience provides a compelling empirical basis for India to replace criminalised and ambiguous laws like the ITPA with a rights-based, decriminalised framework that improves the lived realities of sex workers, reduces harms, and promotes justice and public health

India can adopt the implementation of what the Nordic Model stands for which is a robust social and economic support system including financial aid, rehab centers, and alternative career programs to encourage sex workers to leave the trade of their own free will and do so in a sustainable way. Also we see that which may not break up the sex trade for good among those

⁷³ Zee Xaymaca, Sex Work as resistance to marginalization— Lessons from Black Feminist Theory, Disability Justice, and Black-led sex worker organizing. *Disability Studies Quarterly* (Oct. 31, 2022) [10.18061/dsq.v42i2.9116](https://doi.org/10.18061/dsq.v42i2.9116).

⁷⁴ Niina Vuolajärvi, Governing in the Name of Caring—the Nordic Model of Prostitution and its Punitive Consequences for Migrants Who Sell Sex, *Sexuality Research and Social Policy*, 16(2), pp.151-165 (2018) <https://doi.org/10.1007/s13178-018-0338-9>.

for whom it is an issue of survival but the model's push for de-criminalization of sellers and support services is to reduce harm and put in place options out of exploitation. This approach puts legal practice in line with the aim of breaking down oppressive systems which goes beyond moral judgment to put in place practical and humane solutions that focus on the long term dignity and human rights of what is perhaps India's most marginalized community which is the aim toward the end of the sex trade itself.

Such a reformation would be a large step toward a more equitable and humane legal structure in India which truly upholds the dignity and autonomy of all individuals by looking at the base causes of exploitation and working towards a society which does not see sex work as a necessary evil. This requires not only amendment of laws but also the application of holistic social welfare activities, the economic empowerment of women and men, and a vigorous effort challenging societal norms upholding women's inequality and human commodification.

It is crucial for the Indian Parliament to hurriedly amend existing laws so as to draw a distinct line between trafficking and consensual adult sex work, as blurry criminal definitions feed into the reinforcement of stigma, criminalisation, and abuse of consensual sex workers' human rights. As explicitly stated by the Justice Verma Committee, "Section 370 ought not to be interpreted to permit law enforcement agencies to harass sex workers who undertake activities of their own free will, and their clients,"⁷⁵ thus underlining the need for non-coerced sex work and trafficking to be legislated differently. Similarly, the Parliamentary Standing Committee, 2018 has recognized the pitfalls of conflating these two issues and urged for legal reforms that guarantee protection to adult sex workers while maintaining stringent penalties for trafficking which were overlooked in the drafting of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018.⁷⁶ Legislative clarity on this front is fundamental to ensure both effective anti-trafficking action and the safeguarding of sex workers' constitutional rights.

It is also crucial to put forward alternative perspectives which in turn will change what the public think of sex work which we should see as a issue of agency and choice. We may also create forums which are safe for discussion and info sharing which in turn will help do away

⁷⁵ Rakhi Chakrabarty, *Section 370 not for sex work: Verma Panel*, The Times of India (Feb. 12, 2013) <https://timesofindia.indiatimes.com/india/section-370-not-for-voluntary-sex-work-verma-panel/articleshow/18455924.cms>.

⁷⁶ Shreya Ila Anasuya, *Experts Oppose Proposed Anti-Trafficking Bill, Ask for It to Be Sent to Standing Committee*, The Wire (July 19, 2018) <https://thewire.in/law/experts-oppose-proposed-anti-trafficking-bill-ask-for-it-to-be-sent-to-standing-committee>.

with stigma. Also we should put out community based awareness campaigns which promote that which is informed by empathy and understanding. In these issues we do well to include the marginalized voices which in turn will see that policies which are put forth are relevant.

Conclusion

The long path of prostitution in India shows changing ideas, evolving laws along with complex social meanings. As an example, in ancient and medieval periods, courtesans and devadasis often held respected places; they were actually quite integrated into art, culture in addition to ritual life. Over time, those places changed. Newer moral ideas plus reform movements introduced bad ideas, slowly removing earlier forms of acceptance and safety.

The colonial period also changed the situation. Legal papers, such as the Contagious Diseases Act, brought in a system of rules and watchfulness. This created a story that put sex work with ideas of wrong behavior but also social danger, not with work or a way to live. After independence, new laws, particularly the Immoral Traffic (Prevention) Act, 1956 (ITPA), have continued this way. A framework that punishes many parts of sex workers' economic activity while leaving their personhood inadequately protected.

Current conditions for sex workers are to be found in this historical legacy. Ongoing legal uncertainty and social stigmatization are added to by economic exposure and long-standing stigma. The ITPA, far from explicitly prohibiting sex work per se, prohibits integral related conduct, thereby guaranteeing that sex workers are frequently subject to harassment, restricted legal remedy, and low social standing. This set of arrangements makes it harder to promote rights-based safeguards and obstructs avenues to economic empowerment. As such, any public interrogation of the law of prostitution needs to be sensitive to these multi-faceted origins.

Reform requires a paradigm shift: from an ethical and retributive approach, Indian law should acknowledge sex work as a source of labor that is entitled to the same protection and remuneration as any other worker. It is only by way of such sweeping legislative and societal transformation that the inherent contradictions in India's prostitution laws can be addressed, towards creating a legal climate prioritizing autonomy, dignity, and justice for some of the most marginalized people in Indian society. Such changes would be in line with international human rights standards and humane approach to the issue of prostitution in India.

While India has witnessed great progress via judicial interpretations and landmark cases which have brought to light the issues of sex workers' dignity and rights, these advances must be looked at in the larger picture of systemic exploitation and patriarchy. Although in cases like *Budhadev Karmaskar v. State of West Bengal* (2011) which put out that sex workers do in fact have a right to life, personal liberty and welfare, the base of sex work in India which is a result of very serious socio-economic issues. This in fact challenges the idea of what free will and choice really look like. While the Supreme Court has put forth a very progressive legal structure, the full play out of that structure is dependent on the legislative and executive branches as well as civil society to put in the work to overcome systemic issues and ensure that the right to dignity is a lived reality for all sex workers in India. Also the preponderance of sex work in the informal sector which accounts for 92% of all labor force suggests that many which enter this trade do so out of poverty, caste based discrimination and lack of other options.

Judgment on sex workers' rights is in a state of evolution which is of a more complex issue regarding sex work. Some courts put forward the right to do what they wish and the requirement for legal protections, but the enforcement of the ITPA goes against that. Also the law's black and white view of sex workers as either very sorry victims that need saving or deviant elements that deserve punishment plays out in the judiciary which in turn supports a system of oppression. Also we see in the legal discussion of sex work a moral stance which puts law enforcers in the role of protectors of social values which in practice leaves sex workers more at risk which isn't true protection at all.

In the past which saw the development of India's prostitution laws, a trend of oppression which in turn was made worse by legal vagaries and social outlook. The ITPA's rules which we have seen play out a role in the criminal justice approach that may be said to fail sex workers' protection which in turn plays a role in the sex worker's stigmatization and marginalization. Also while we do see some judicial success which is toward the sex workers' rights we put forward that the large scale legal and social setting which we have today still works against such progress. This is a issue which puts forth the case for total legal overhauls which not only will de criminalize consensual sex work but also will address the system wide issues which put people into this trade.

From a perspective of abolitionism what sex work, even presented as consensual, is a institution which reinforces patriarchal exploitation through the commodification of the body. This

position is put forth by radical feminist analysis in India which presents sex work as a form of economic slavery which choice in such a setting is very often a result of poverty and not true autonomy. Thus a legal framework that seeks to dismantle this exploitative system, rather than legitimize it, is imperative.

