

DATE OF PUBLICATION
13.04.2024



THE LEGAL VIDYA

ISSN (O) : 2583 - 1550

VOLUME 5, ISSUE 1
THELEGALVIDYA.IN

—

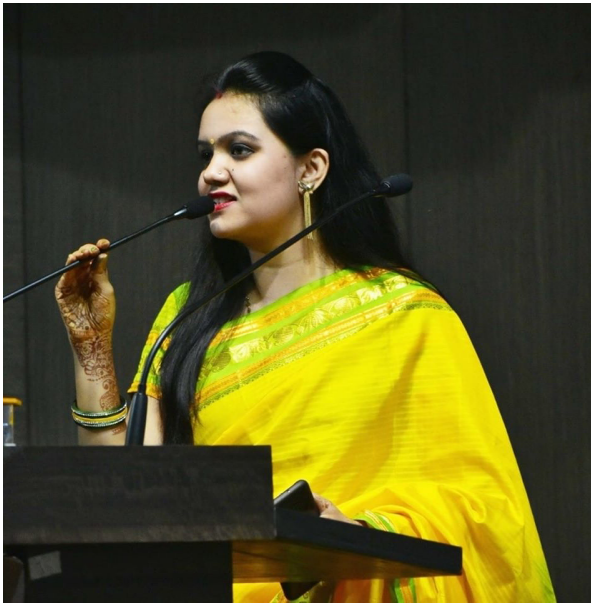


Disclaimer

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Founder-cum-Publishing Editor of The Legal Vidya. The views expressed in this publication are purely personal opinion of authors and do not reflect the views of the Editorial Team of The Legal Vidya.

Though each and every effort is made by the Editorial Team of The Legal Vidya to ensure that the information published in Volume 3 Issue 2 is accurate and appropriately cited/referenced, neither the Editorial Board nor The Legal Vidya shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

EDITORIAL BOARD



MS. SHIVANGI SINHA **EDITOR-IN-CHIEF**

Assistant Professor, New Law College, BVDU, Pune

“Ma’am is an Assistant Professor in Bharati Vidyapeeth New Law College, Pune. She has been a former Advocate at the Jharkhand High Court and has her specialisation in Corporate Laws. Ma’am has numerous publications and is an ardent researcher. With an inclination towards researching and writing upon Grey areas of Law, ma’am believes students shall look into matters which would help the existing and upcoming lawyers in a practical manner. In her opinion, students should be focused on prioritizing things in life. They should do things with full zeal and vigour. Her message for the students is something which she herself preaches, ‘Live Your Today.’”

MR. ANKIT AWASTHI

Assistant Professor

Hidayatullah National Law University, Raipur

“Sir is an Assistant Professor in Hidayatullah National Law University, Raipur. Through his teachings, he wishes to instil in students the skill to extract relevant material from the numerous resources available these days. Sir feels it is important for students to research in the field of law which have contemporary relevance.

Sir wishes the students to put in efforts to provide an InfoBase which would be a guiding force to all the researchers.”



DR. AVNISH BHATT

Assistant Professor, Xavier Law School

“Sir firmly believes that key factors for a student to excel in any profession is honesty, transparency and hard work. Law being a dynamic field, various areas of research are open to students. Students shall be creative and think out of the box while deciding their research topic. With the right amount of creativity and intellect, one can master the art of writing.

MS. RICHA DWIVEDI*Assistant Professor, Symbiosis Law School, Pune*

“During her tenure as an academician she comes across students with brilliant ideas but what lacks is the research. She emphasises on the importance of substantiating views as a student of law and not just opining. In Ma’am words research itself suggests searching the already searched. Therefore, the research of the students shall reflect their interest in the topic. She strongly believes that a topic to be researched upon shall have contemporary relevance.”

**MS. NUPUR KHANNA***Assistant Professor, Christ Academy Institute of Law*

“Ma’am is an Assistant Professor in Christ Academy Institute of Law. She believes that for someone to excel in a professional course like Law one is expected to focus not only on the textbook knowledge but should also focus on shaping their overall personality by participating in extracurricular activities. As per ma’am most of the students are of the view that they can take benefit only from Moot Courts, competitions, however, any activity in which you participate will help you in your professional development. Just like learning calligraphy helped Steve jobs in creating apple’s typography.

Ma’am urges the young researchers to focus on the topics which are innovative and most importantly any field which interests their legal acumen.

Ma’am says that that research is at a very nascent stage in India, especially in the field of law and wishes to students that they should start focusing on improving their research skills and publishing quality papers.”

ABOUT US

The Legal Vidya is a student(s) initiative run online journal (Two Issues Per Year) started in 2020 with the aim of reaching youths of the nation, budding lawyers, students and academicians to bring forth the legal knowledge at your fingertips.

We are here to provide you with a lucid way of learning law with the help of daily blogs pertaining to the latest/other legal issues going on in the country.

We also provide legal advice and needed legal awareness to the masses with a pioneering objective of reaching the underprivileged and serving the idea of Free Legal Aid to them. (Article 39A of the Constitution of India).

We would be appraised to welcome blogs from the readers too. Readers can submit their blogs at thelegalvidya@gmail.com.

Frequency Of Publication: Two Issues Per Year

Language: English

Start Year: 2020

Format Of Publication: Online

THE LEGAL VIDYA
ISSN (O) : 2583 – 1550

Open Access Law Journal

This is an Open Access article distributed under the terms of the Creative Commons Attribution- Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

The Legal Vidya
Volume 5 Issue 1, April, 2024, Page Nos. 72 to 107

SEX WORK IN INDIA : MORALITY V. LEGALITY

Ms. NIKITA SHUKLA

Student, Unitedworld School of Law, Karnavati University, Gandhinagar

Abstract: *The discussion on the legality and morality of sex work in India is intricate and multifaceted. This abstract investigates the conflicting viewpoints and legal structures surrounding sex work, analysing their implications for individuals engaged in the industry. While some advocate for the legalization of sex work to safeguard workers' rights and health, others argue for its continued criminalization on moral and societal grounds. Despite laws permitting individual and private sex work, comprehensive regulatory frameworks are lacking, leaving sex workers susceptible to exploitation, violence, and social stigma. This abstract explores the obstacles faced by sex workers in accessing essential services and rights, such as healthcare, social assistance, and legal protection. It also examines how societal attitudes and cultural norms shape the perception and treatment of sex workers, emphasizing the necessity for inclusive policy reforms and societal acceptance. By scrutinizing the intersection of morality and legality concerning sex work in India, this paper seeks to illuminate the complexities of the issue and advocate for a more just and rights-oriented approach to addressing the needs and rights of sex workers.*

Keywords: *Sex worker, Immortal Traffic Prevention Act, Prostitution, Human rights, Indian Penal Code.*

INTRODUCTION

BACKGROUND

Victor Hugo once said, "Slavery still exists, but now it applies to women and its name is prostitution." It indicates women's deprivation. Despite the constitutional guarantee of the right to equality, certain professions and circumstances still fail to uphold true equality. Women that prostitute themselves are exploited and do so to make ends meet¹. The Immoral Traffic (Prevention) Act, 1956 makes clear that "prostitution" refers to the sexual exploitation or mistreatment of individuals for profit². According to the 'International Encyclopedia of the Social Sciences,' "Prostitution is granting of sexual access on a relatively indiscriminate basis for payment either in money or in goods, depending on the complexity of the local economic system³."

Prostitution is defined as non-selective sexual activity that is performed in return for money or other tangible things. In the 21st century, prostitution encompasses sexual activities exchanged for money or other goods, not limited to just women but also involving men and transgender individuals, albeit less frequently. India has a longstanding history with prostitution, dating back to references in the Rig Veda. During medieval times, various forms of sex work, such as the performances of Tawaifs for the aristocracy and the devdasi system, were prevalent in Indian society.

In India, prostitution has long been a practice. Numerous apsaras, or Hindu mythological stories, make mention to sex workers. Before the arrival of the British, Hindus practiced the devdasi system, wherein they would give up their female child as a symbol of their loyalty to God. Devdasi literally means "devoted to the god," signifying that they were wed to God and not compelled to wed human beings. These were women who had achieved sexual liberation and were talented in many artistic fields, such as classical dance and music. Conversely, colonialism introduced an oppressive and exploitative structure. The British started to mirror the limitations of their own society on these women, who transformed the basic ideas of femininity, art, and culture into concepts like bhakti and devotion. Furthermore, these women started to suffer abuse at the hands of temple priests as colonialism and feudalism came to an end. They run the risk of being impoverished and sexually exploited as a result. These represent the initial phases of prostitution, preceding its transformation into providing sexual services to a wider clientele, eventually being recognized as sex work. Despite its enduring presence in India, the legal status of this profession has consistently been a subject of contention.

¹ Anushka Ambli, "Legalization of prostitution in India", (International Journal of Legal Developments and Allied Issues, 2018) <<https://thelawbrigade.com/wp-content/uploads/2019/05/Anushka.pdf>> accessed on 10th January, 2024

² The Immoral Traffic Prevention Act, 1956, Sec. 2(f)

³ Akwinder Kaur, "A sociological perspective on India's journey of legalizing prostitution: An illicit to a lawful activity," International Journal of Science and Research Archive, 2023. <https://ijsra.net/sites/default/files/IJSRA-2022-0326.pdf>, accessed on 10th January, 2024

In India, the prostitution industry generates an annual revenue of Rs. 40,000 crores, with 30% of sex workers being young individuals. Exploiters rake in a staggering Rs. 11,000 crores. Research indicates that India harbours approximately 10 million individuals engaged in sex work, with a concentration of 100,000 in Kamathipura, Mumbai, the largest sex industry hub in Asia. Moreover, around 3,000 to 5,000 young people are involved in the sex trade across India, with Bangalore and five other major cities accounting for 80% of the total. The figures highlight the need for the state to intervene to prevent such underhanded behaviour⁴.

The perception of sex workers as perpetrators rather than victims of crime largely stems from the legal system, law enforcement, and judiciary personnel. Insufficient attention has been given to the risks of rape, violence, and trauma inflicted by clients on sex workers. Additionally, diseases resulting from poor menstrual and sexual hygiene, notably HIV/AIDS and cervical cancer, often go untreated due to the stigma associated with the profession. The misconception surrounding the illegality of sex work is the root cause of the challenges faced by sex workers in India. The moral judgment of any occupation should not influence the establishment of vocational hierarchies. India, as a democratic nation, enshrines in its constitution the rights to justice, equality, and freedom for all. Regrettably, "equal opportunity" has not been available to sex workers in any way due to institutional restrictions. This flagrant disrespect for human rights and decency needs to stop.

Like a coin's two sides, legalization of prostitution has advantages and disadvantages. Among its benefits are providing continuity in government, establishing governmental equality, ensuring greater security compared to other forms of governance, and promoting a higher level of neutrality. However, some drawbacks include its varying degrees of authority application, concentration of political power among the populace, lack of assurance regarding governance standards, and potential hindrance to essential social development. By examining the implications of both scenarios in the light the current circumstances, a set of laws can be created to meet the requirements.

RESEARCH QUESTIONS

1. What are the legal and moral challenges and exploitation faced by the sex workers in the society?
2. Whether present laws are adequate to evaluate the effectiveness of existing legal system for regulation of sex work in India?
3. Whether prostitution should be legalised in India or not?

RESEARCH OBJECTIVES

Through this research, the researcher wishes to achieve the following objectives:

⁴ Anushka Ambli, "Legalization of prostitution in India", (International Journal of legal developments and allied issues,2018) <<https://thelawbrigade.com/wp-content/uploads/2019/05/Anushka.pdf>> accessed on 10th January, 2024.

1. To examine the legal aspects of sex work in India critically
2. To review the status of sex workers in India
3. To examines the legal and moral issues faced by sex workers in the society
4. To interpret and envision the lacunae in the existing framework
5. To understand the rights provided to the sex workers in constitution and human rights
6. To study judicial response to sex work in India.

The paper attempts to lay down the advancements in the laws related to sex work in India with time. The paper also critically evaluates the legal framework and its loopholes. The historical and present status of sex work has been discussed in the paper, while also addressing the key aspects of its impact and effects.

Finally, the paper answers the question of whether prostitution should be legalised in India or not and whether the current framework is effective enough to govern sex work in India. The paper also provides some recommendation on how can we protect the rights of the sex workers.

RESEARCH METHODOLOGY

To gain deeper insights into the subject of legalizing prostitution, **doctrinal research** was undertaken. This research method involved examining qualitative data sources such as articles, court judgments, websites, and law journals. These materials were sourced from online databases including JSTOR, Hein Online, and SCC Online. By referencing these diverse sources, the research incorporated opinions from various researchers and social scientists, aiding in drawing conclusions. This method offers several advantages, including a comprehensive analysis of the topic and the identification of potential loopholes and ambiguities. Given its focus on analysing existing data and legal frameworks, doctrinal research is well-suited for examining the impact and benefits of legalizing prostitution.

SCOPE OF STUDY

The Study focuses particularly concerning the interplay between morality and legality. over the legal regulations related to sex work in India. The researcher aimed at highlighting the history of sex work and enlightens the previous legislation that governed sex work in India. It involves examining the historical, cultural, and societal attitudes towards sex work, exploring the existing legal framework governing sex work, and assessing its implications on the rights and well-being of sex workers. Additionally, the scope encompasses analysing the enforcement and effectiveness of relevant laws and policies, considering the socio-economic factors driving individuals into sex work, and evaluating the impact of criminalization or decriminalization on public health, human rights, and social justice. Furthermore, understanding the ethical dimensions, including the moral debates surrounding sex work and the ethical responsibilities of policymakers and stakeholders, is essential. Overall, this study aims to provide insights into the complex and often contentious dynamics between morality and legality in the context of sex work within the Indian society.

LAWS RELATED TO SEX WORK

- Evolution of Sex Work in India

In earlier times, the Devadasi system was prevalent, wherein Hindu families dedicated their daughters to temple service, granting them the privilege to dance and participate in religious rituals. During the Mughal era, the practice of prostitution existed without significant criticism or exclusion. Courtesans, known as 'tawaifs', resided in designated areas of cities known as "kothas" or "bazaars." These women excelled in various arts such as music, dance, poetry, and conversation, attracting elite clientele including merchants, aristocrats, and members of the royal court. Historically, prostitutes enjoyed a status akin to executives and received patronage from royalty, granting them considerable influence in political matters. However, shifts in religious and political landscapes over centuries led to a decline in their societal value. With the dissolution of princely kingdoms and the zamindari system following independence, tawaifs lost their royal support and clientele. Consequently, the tawaif tradition gradually waned, and descendants of these women turned to pub dancing in urban centers as their former prestige diminished in the post-independence era⁵.

During the colonial period in India under British rule, the establishment and regulation of brothels were integral components of colonial policies. The British authorities introduced systems to control and manage prostitution, primarily for the benefit of British military personnel, government officials, and European settlers. Social dynamics, economic interests, and colonial objectives intersected to shape the development of brothels during this time⁶.

Subsequently, there emerged instances where individuals resorted to selling their spouses and offspring for either sexual favors or financial gain, exacerbating the issue of trafficking. At one point, the proliferation of brothels became notable, with either a male or female figure serving as the proprietor, overseeing a cohort of girls tasked with enticing men for sexual encounters.

This period coincided with a lack of awareness concerning sexual health and contraception. Women engaged in sex work often operated without access to condoms or other forms of contraception, resulting in unintended pregnancies. Furthermore, this environment facilitated instances of coerced sexual activities and the trafficking of women and even children as young as six years old into the

⁵ Bhattacharji, Sukumari. "Prostitution in Ancient India." (1987) 15(2), Social Scientist, pp. 32-61 <https://doi.org/10.2307/3520437>. Accessed on 12th January, 2024

⁶ Ibid

sex trade. Consequently, numerous red-light districts emerged across India, particularly concentrated in the northern regions⁷.

Prostitution came under stringent regulation through the implementation of Contagious Diseases Acts (CDA) (now repealed) across various British territories, including India. These laws, enacted in the mid-19th century, aimed at curbing sexually transmitted diseases (STDs) among the European population, particularly the military. However, the focus primarily lay in safeguarding the health of British men rather than addressing the welfare or rights of the women involved.

Over time, movements opposing the regulatory system gained momentum, highlighting concerns about the exploitation of women, human rights violations, and the perpetuation of social inequality. Social reform movements within the colonial government and among indigenous Indian communities contested the practice of regulated prostitution in the late 19th and early 20th centuries⁸.

Ultimately, the regulatory framework began to unravel, leading to the abolition of the Contagious Diseases Acts in various colonies. It is important to acknowledge that prostitution persisted in diverse forms and underwent changes in response to social, economic, and political shifts⁹.

Today, sex workers continue to face numerous challenges, with their fundamental human rights often violated, and they are frequently dehumanized. Prostitution remains stigmatized and perceived as an immoral profession. Ironically, many of those who utilize these services are also among those who most frequently infringe upon the basic rights of sex workers. This underscores the pervasive violence and degradation experienced by sex workers in their line of work¹⁰.

- Current Law in India

The legal structure in India has proven insufficient in protecting the rights and welfare of those involved in prostitution and sex work. Not only does it take a moralistic position, but it also demonstrates ambiguity, leaving sex workers vulnerable to exploitation by law enforcement, government officials, and opportunistic criminals.

The key legislation concerning individuals engaged in sex work is the ***Immoral Traffic (Prevention) Act (ITPA) of 1986***, which focuses on combating human trafficking in India and prohibits several facets of sex work, including operating brothels and soliciting in public.

⁷ Roshni S, "Prostitution in India and its legality" (Prime Legal, 2023) <<https://primelegal.in/2023/03/06/prostitution-in-india-and-its-legality/#:~:text=EVOLUTION%20OF%20PROSTITUTION%20IN%20INDIA,treated%20as%20mere%20sex%20objects>> Accessed on 13th January, 2024.

⁸ *History of Prostitution in India: Analytical Essay*, (Edubirdie. Retrieved, 2022) <<https://edubirdie.com/examples/history-of-prostitution-in-india-analytical-essay/>> Accessed on 13th January, 2024

⁹ Ibid

¹⁰ Ibid

Furthermore, it grants authorities the authority to forcibly remove sex workers from their homes under the guise of public interest¹¹.

Despite its purported aim of safeguarding sex workers, the ITPA is often wielded against them. Although the act does not outrightly criminalize prostitution, law enforcement frequently abuses its clauses to target and intimidate sex workers. The vague wording surrounding the prohibition of "public solicitation" presents a significant issue, with police officers commonly fabricating charges of solicitation and then subsequently extorting bribes or sexual favours¹².

The Immoral Traffic Prevention Act of 1956 serves as the primary legal framework governing prostitution in India. Under section 3¹³ of this Act, individuals can face imprisonment for two to three years, as well as fines, for maintaining brothels or allowing premises to be used for such purposes. Section 5¹⁴ imposes more severe penalties, with imprisonment ranging from three to seven years along with fines, for procuring individuals for prostitution without their consent. Section 7¹⁵ of the Act prohibits prostitution in or near public places. However, the Act does not address concerns such as child trafficking and the violence perpetrated by clients against women. In the case of *Smt. Afjal vs State of U.P.*¹⁶, the accused, who operated a brothel and exploited minor girls for prostitution, was found guilty under the provisions of the Act, leading to the rescue of the minors¹⁷. Additionally, The Indian Penal Code contains provisions related to prostitution. Section 366 Clause (A) addresses the procurement of minors for illicit sexual activities, while Clause (B) pertains to importing girls from other countries for prostitution purposes. In the case of "*Fateh Chand v. State of Haryana*"¹⁸, an individual was charged under Section 366 for procuring a minor girl for prostitution. Sections 372¹⁹ and 373²⁰ of the IPC prohibit the sale or disposal of minors for prostitution and the purchase or hiring of minors for the same, respectively²¹.

However, these laws do not specifically penalize clients or brothel operators for subjecting prostitutes to violence. Furthermore, there are no requirements for condom use or provisions for the healthcare of sex workers, resulting in the spread of HIV/AIDS and unintended pregnancies, which in turn contribute to population growth²².

¹¹https://www.ohchr.org/sites/default/files/libdocs/HRBodies/UPR/Documents/Session1/IN/SANGRAM_IND_UPR_S1_2008_Sampad aGraminMahilaSanstha_uprsubmission_JOINT.pdf

¹² Yuktha Suresh, "Legalization of Prostitution in India and its Impact on the Exploitation and Violence Against Women," (2021) 4(2) IJLMH, Page 961 - 968 <https://ijlmh.com/paper/legalization-of-prostitution-in-india/#>, accessed on 13th January, 2024

¹³ The Immortal Traffic Prevention Act, 1956, Sec.3

¹⁴ The Immortal Traffic Prevention Act, 1956, Sec.5

¹⁵ The Immortal Traffic Prevention Act, 1956, Sec. 7

¹⁶ *Smt. Afjal v. State of U.P.*, 2012 (77) ACC 7 (HC)

¹⁷ Ibid

¹⁸ *Fateh Chand v. State of Haryana*, (1977) 2 SCC 670

¹⁹ The Indian Penal Code, 1860, Sec.372

²⁰ The Indian Penal Code, 1860, Sec. 373

²¹ Ibid

²² Ibid

- Immortal Traffic Prevention Act, 1956

The Suppression of Immoral Traffic in Women and Children Act, 1956, received assent on December 30, 1956, and was applied nationwide. The purpose of this act was to combat immoral trafficking in women and children, in accordance with India's commitment to the United Nations International Convention for the Suppression of Traffic in Persons and of the Exploitation of Others, signed in New York on May 9, 1950. Subsequent amendments not only altered the name of the act but also amended its preamble, renaming it The Immoral Traffic (Prevention) Act, 1956 (referred to as ITPA hereafter), making it an act aimed at preventing immoral trafficking.

The ITPA underwent two amendments in 1978 and 1986, respectively, making the legislation more gender-neutral. It aims to curb immoral trafficking and prostitution in India and comprises 25 sections and one schedule.

“In addition to ITPA, various other legislative measures such as the Indian Penal Code, 1860, the Constitution of India, 1950, the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJA), and state laws have been enacted to address issues related to prostitution and trafficking. The act does not explicitly criminalize prostitution itself but deems activities such as maintaining brothels, living off the earnings of prostitution, pimping, soliciting, seducing individuals for prostitution, and engaging in prostitution in public areas as offenses punishable under the act. Therefore, if prostitution is conducted independently or voluntarily, it does not constitute an offense. This article discusses the various roles and aspects of institutions under the purview of this act.

Legislation aims to address issues by formalizing laws in written form. The resulting impact of such legislation can either resolve the problem or potentially exacerbate it, underscoring the importance of a thorough comprehension. Therefore, this section of the paper offers a simplified explanation of the provisions outlined in the Act, hereafter referred to as simply "the Act."

Meaning of Brothel, Prostitution and Trafficking:

According to the ITPA, “brothel” and “prostitution” is defined under section 2(a) and 2(f) respectively. Definition of “trafficking” is defined under section 5 of ITPA, 1956.

A brothel²³ includes “any:

1. house or any portion of any house;
2. room or any portion of any room;
3. conveyance or portion of any conveyance;
4. place or portion of any place;

²³ The Immortal Traffic Prevention Act, 1956, Sec. 2(a)

for purpose of:

- sexual exploitation or;
- abuse for the gain of another person or;
- for the mutual gain of two or more prostitutes.”

The Act categorizes any space, be it a small room, hut, or any other location where prostitution activities take place, as a brothel. What is crucial is the commercial aspect of providing sexual services at these premises, irrespective of their size or whereabouts. Determining whether a location is utilized for commercial exploitation or abuse is crucial. The classification of a place as a brothel hinge on factual inquiry, including whether a single instance of its use can meet the criteria. Importantly, this determination is heavily influenced by the surrounding circumstances and the individual responsible for maintaining the premises.”

The criteria for declaring a person as a ‘prostitute’ is construed from the definition of prostitution²⁴. It means “the sexual exploitation or abuse of persons for commercial purpose.” Accordingly, two things to be remembered are:

1. the occurrence of exploitation or abuse of a person for sex, and
2. such a person engaging in this activity does it for commercial gain.”

The definition of “trafficking²⁵” is defined under Section 5 of ITPA. Section 5 of the immoral traffic prevention act discusses obtaining, taking, and even inducing a person for the purpose of prostitution.”

Section 5 of the ITPA defines trafficking as “any attempt to procure, take, or cause a person to engage in prostitution”. As a result, the ITPA has given the term “trafficking” a broad definition. Human trafficking, an organized criminal activity spanning international boundaries, encompasses a spectrum of human rights abuses, including commercial sexual exploitation, forced labour, and organ trafficking.¹ Its evolution into increasingly intricate and diverse forms underscores the need for revising laws and strategies aimed at its eradication and regulation. Regrettably, there has been a distressing rise in the involvement of children, particularly girls, in these activities²⁶.

According to the 2012 Report by the United Nations Office on Drugs and Crime (UNODC), the percentage of minor girls trafficked rose from 13% in 2006 to 17% in 2009. The report also indicates that trafficking for commercial sexual exploitation constitutes 57-62% of all trafficking victims. To

²⁴ The Immortal Traffic Prevention Act, 1956, Sec. 2(f)

²⁵ The Immortal Traffic Prevention Act, 1956, Sec. 5

²⁶ Kiran Bhatti, ‘A review of Immortal Prevention Traffic Act 1956’, (Centre for policy research, 2017) <https://cprindia.org/wp-content/uploads/2022/01/A-Review-of-the-Immortal-Traffic-Prevention-Act-1986_Final-Edit.pdf> Accessed on 14th January, 2024

address this escalating threat, the United Nations Convention against Transnational Organized Crime established the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). This protocol offers an international legal framework to combat trafficking globally. Countries such as India, which have ratified the protocol, are obligated to adjust their domestic laws accordingly to address the issue at the national level²⁷.

In the latest Global Report on Trafficking in Persons 2016, published by the UNODC, a notable shift has been observed in the profile of detected trafficking victims. While women still constitute most detected victims, there has been an increase in the proportion of children and men among the total number of victims compared to a decade ago. In 2014, children accounted for 28% of detected victims. These changes suggest an evolution in the conventional understanding of trafficking. Previously, trafficking was primarily perceived to involve women trafficked from distant locations into affluent countries for sexual exploitation²⁸.

LEGAL AND MORAL ISSUES FACED BY SEX WORKERS IN INDIA

WHAT ARE THE FACTORS THAT LEAD TO PROSTITUTION?

Sex work in India is a multifaceted and intricate phenomenon influenced by numerous social, economic, and cultural dynamics. With a history spanning centuries, the evolution of sex work in India is intertwined with concepts of caste, gender, poverty, and colonialism. Despite the absence of explicit illegality, the presence of laws and societal norms poses considerable obstacles to the safety, welfare, and autonomy of sex workers.

The reasons individuals enter prostitution in India are varied and intertwined, reflecting larger social and economic disparities. Poverty and financial hardship serve as key motivators, pushing marginalized individuals, especially women, transgender individuals, and Dalits, towards sex work as a means of sustaining themselves. Limited access to education, job prospects, and community support networks further heighten susceptibility to exploitation and coercion within the sex trade. Some of the major factors that lead to prostitution are:

Economic Factors:

- **Poverty:** Insufficient access to fundamental necessities like food, housing, and healthcare can drive individuals to engage in sex work as a means of staying alive. The absence of financial stability renders them susceptible to exploitation.

²⁷ Ibid

²⁸ Ibid

- **Limited Employment Opportunities:** Lack of education, formal skills, discrimination, and structural barriers can restrict access to viable jobs with liveable wages. Sex work may appear as the only option for some.
- **Debt:** Accumulated debt from medical bills, education, or unexpected expenses can create a desperate situation, leading individuals to resort to sex work in extreme cases.

Social Factors:

- **Family Dysfunction:** Adverse childhood experiences, including abuse, neglect, and broken family structures, increase vulnerability to exploitative environments and make it difficult for individuals to build healthy relationships or secure stable economic support.
- **Homelessness/Displacement:** Displacement because of conflict, migration, or natural disasters can increase vulnerability and exposure to exploitative conditions, where sex work becomes a means of basic survival.
- **Social Stigma and Marginalization:** Discrimination based on gender, sexual orientation, caste, or ethnicity can push individuals to the margins of society, limiting their opportunities and increasing their susceptibility to enter sex work.
- **Cultural Practices:** In some cultures, early marriage, dowry practices, or social obligations can create financial burdens and limited autonomy, creating circumstances where sex work appears as an option.

Trafficking and Exploitation:

- **Coercion and Trafficking:** A significant portion of sex work occurs under conditions of coercion or trafficking. Deception, force, and the abuse of power are used to recruit people into sex work. This form of exploitation involves severe violations of human rights and freedoms.
- **Control by Pimps or Brothel Owners:** Many sex workers face exploitative situations where pimps or brothel owners control their earnings, movements, and access to necessities. This perpetuates a cycle of dependency and abuse.

Personal Factors²⁹:

- **Substance Abuse:** Drug addiction can create situations where individuals feel forced into sex work to support their habit. Additionally, it can impair judgment and increase vulnerability to exploitation.

²⁹ Richard Branson, '10 causes of prostitution', (International Union of sex workers, 2023). <<https://www.iusw.org/10-causes-of-prostitution/>> Accessed on 12th February, 2024

- **Mental Health Issues:** Psychological distress and trauma can contribute to poor decision-making and limited coping mechanisms, making it more difficult to navigate difficult circumstances and resist exploitation.
- **Limited Agency and Lack of Choices:** Sometimes, individuals may feel that sex work is their only option due to limited personal agency, lack of awareness about alternatives, or inadequate social support systems.

Additional Considerations:

- **Media Representation:** The portrayal of sex work in media can create false expectations and perpetuate stereotypes, potentially leading to harmful notions and exploitation for some.
- **Demand Side:** There would be no market for sex work if not for the demand side. Examining the involvement of clients and the underlying drivers of demand for paid sex is a vital aspect of addressing prostitution.
- **Legal Frameworks:** The criminalization of sex work, exemplified by legislation like the ITPA in India, frequently compounds the vulnerabilities experienced by sex workers, impeding their ability to access healthcare, legal assistance, and social services.

CHALLENGES AND EXPLOITATION FACED BY SEX WORKERS IN THE SOCIETY

Sex workers in India encounter a multitude of hurdles and instances of exploitation, arising from the intricate interaction of social, economic, and legal dynamics. Despite efforts by advocacy groups and civil society organizations to address these issues, sex workers remain marginalized and vulnerable, with their rights and dignity often disregarded.

Certainly, here are the challenges and forms of exploitation faced by sex workers in India:

- **Stigma and Discrimination:** “Sex workers encounter widespread societal prejudice and bias, resulting in their isolation, marginalization, and restricted access to vital resources. Cultural norms deeply ingrained in attitudes towards sex and sexuality further alienate sex workers, casting them as morally reprehensible and expendable individuals within society. This stigma not only shapes public perceptions of sex workers but also colors their interactions with healthcare professionals, law enforcement agents, and other service providers. Discrimination often hampers their ability to obtain healthcare, housing, education, and job prospects, intensifying their susceptibility and social exclusion³⁰.
- **Criminalization:** Although prostitution itself is not deemed illegal in India, certain elements of sex work fall under the purview of legislation such as the Immoral Traffic (Prevention) Act of 1956. This legal

³⁰ Dianne Nogrum, ‘International sex workers day 2020: Problems and challenges sex workers face everywhere’, (India.com, 2020) <<https://www.india.com/festivals-events/international-sex-workers-day-2020-problems-and-challenges-sex-workers-face-everywhere-4046995/>> Accessed on 14th February, 2024

framework drives sex work into the shadows, leaving sex workers susceptible to exploitation and mistreatment. The criminalization of specific aspects of sex work, as outlined in laws like the Immoral Traffic (Prevention) Act of 1956 (ITPA), amplifies the vulnerability of sex workers by impeding their access to legal protections and avenues for redress. Sections 3 and 4 of the ITPA, which target the operation of brothels and deriving income from prostitution respectively, frequently lead to the harassment, arrest, and prosecution of sex workers themselves. This criminalization fosters an underground sex industry, heightening the risks of violence, exploitation, and trafficking³¹ faced by sex workers.

- **Violence and Exploitation:** “Sex workers frequently endure physical and sexual violence, ranging from rape and coercion to assault and harassment, inflicted by clients, brothel owners, and individuals in positions of authority. Their reluctance to seek justice and protection stems from the fear of reprisal, societal stigma, and a lack of trust in law enforcement. This pervasive cycle of violence and impunity further marginalizes sex workers, rendering them vulnerable to exploitation and abuse. Additionally, sex workers may be coerced into unsafe sex practices, including unprotected sex, due to financial pressures, lack of negotiating power, and limited access to condoms and other forms of protection³².
- **Health Risks:** “Sex workers in India confront substantial health risks, including high rates of HIV/AIDS and other sexually transmitted infections (STIs). Despite the documented prevalence of these health concerns, stigma, discrimination, and criminalization impede their ability to access essential HIV prevention, testing, treatment, and care services. Additionally, sex workers encounter formidable obstacles in obtaining healthcare services, exacerbating their vulnerability to health-related issues. Many sex workers fear seeking healthcare due to potential judgment, mistreatment, or legal repercussions, leading to untreated health conditions and increased vulnerability to disease³³.
- **Economic Exploitation:** Numerous sex workers encounter economic exploitation, marked by inadequate wages, debt bondage, and manipulation by brothel proprietors, pimps, and intermediaries. Their restricted access to alternative sources of income and social networks confines them within cycles of impoverishment and exploitation. Often, sex workers are compelled to surrender substantial portions of their earnings to brothel owners or intermediaries, resulting in indebtedness and an inability to extricate themselves from exploitative circumstances. Additionally, the absence of alternative means of livelihood and support systems frequently ensnares sex workers in a perpetual cycle of poverty and exploitation, leaving them with scant avenues for liberation or empowerment³⁴.
- **Child Sex Work:** Child sex workers face additional vulnerabilities, including forced entry into the sex industry, exploitation by traffickers and pimps, and limited access to education, healthcare, and social services. Despite legal

³¹ Ibid

³² Thilagavati K., ‘Legal status of sex work in India’, (Juriscenter, 2023) <<https://juriscentre.com/2023/07/17/legal-status-of-sex-work-in-india/>>Accessed on 14th February, 2024

³³ https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session1/IN/SANGRAM_IND_UPR_S1_2008_SampadaGraminMahilaSanstha_uprsubmission_JOINT.pdf

³⁴ Nitashu Natu, ‘Story of abuse that sex workers face everyday,’ (Times of India, 2023). <<https://timesofindia.indiatimes.com/india/why-sex-workers-are-putting-their-health-and-safety-at-risk/articleshow/98475350.cms>>Accessed on 14th February, 2024

provisions prohibiting child trafficking, enforcement efforts are often inadequate leaving child sex workers vulnerable to abuse and exploitation³⁵.

- **Lack of Legal Protections:** The criminalization of certain aspects of sex work, coupled with discrimination within the legal system, often leaves sex workers without adequate legal protections and avenues for redress against exploitation and abuse³⁶.
- **Restricted access to education and employment opportunities:** Stigma, discrimination, and a lack of educational opportunities impede sex workers' ability to access schooling and pursue alternative employment, thus perpetuating cycles of poverty and exploitation.
- **Social Marginalization:** Sex workers encounter social marginalization and are often excluded from mainstream society, resulting in restricted access to housing, healthcare, education, and other vital services³⁷.
- **Trafficking and Forced Labor:** Certain individuals engaged in sex work are subjected to trafficking and forced labour, manipulated into the sex trade through deceit, fraudulent means, or coercion. Trafficking victims often endure exploitation, violence, and abuse with little recourse for escape or justice³⁸.

These challenges and instances of exploitation emphasize the pressing requirement for holistic, rights-centred interventions aimed at rectifying structural disparities and enabling sex workers to secure their rights, dignity, and welfare.

“In summary, sex workers in India confront a diverse array of challenges and instances of exploitation, including stigma, discrimination, criminalization, violence, coercion, and economic exploitation. Effectively tackling these issues demands a multifaceted strategy that targets the underlying causes of exploitation, champions gender equality, safeguards the rights and dignity of sex workers, and guarantees access to comprehensive healthcare, legal safeguards, and social support services. It is only through collective action to address these systemic inequities and empower sex workers that we can forge a fairer and more equitable society where every individual can live with dignity, autonomy, and dignity.”

LEGAL CHALLENGES FACED BY SEX WORKERS

The legal hurdles encountered by sex workers in India are intricate, influenced by a combination of laws, regulations, and societal perceptions that affect their rights, safety, and welfare. Although sex work is not expressly prohibited in India, several legal measures criminalize certain aspects of the industry, thereby exacerbating the

³⁵ Sehgal N, Patni CB. 'Covid-19 and female sex workers in India: a journey of brutal reality'. (2023) 3(3) SN Soc Sci. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9987386/>, accessed on 14th February, 2024

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

marginalization and precariousness experienced by sex workers. Here are some of the primary legal obstacles confronted by sex workers in India:

1. Criminalization: The Immoral Traffic (Prevention) Act of 1956 (ITPA) prohibits several elements of sex work, such as solicitation, managing brothels, and benefiting from earnings derived from prostitution. This prohibition pushes sex work into clandestine realms, heightening the susceptibility of sex workers to exploitation, violence, and mistreatment. Furthermore, Section 377 of the Indian Penal Code criminalizes "unnatural offenses," a provision historically employed to discriminate against and persecute LGBTQ+ individuals, including transgender individuals engaged in sex work³⁹.

2. Police Harassment and Abuse: Sex workers frequently encounter harassment, abuse, and extortion from law enforcement authorities. Raids conducted by the police on brothels and solicitation areas can lead to unjust arrests, violence, and seizure of their income. Fearful of retaliation or additional mistreatment, sex workers may hesitate to report offenses or seek help from law enforcement agencies⁴⁰.

3. Lack of Legal Protections: Sex workers frequently find themselves without legal safeguards and avenues for addressing exploitation and abuse. Discrimination entrenched within the legal apparatus, spanning from judges to law enforcement personnel, can lead to unjust treatment and the denial of rights for sex workers engaged in legal processes. Limited access to legal aid and representation further hampers sex workers' ability to seek justice.

4. Inadequate Health and Safety Regulations: The absence of industry-specific health and safety standards within the sex trade heightens the susceptibility of sex workers to health hazards such as HIV/AIDS and other sexually transmitted infections (STIs). With restricted availability of condoms, healthcare provisions, and occupational safety protocols, these risks are compounded.

5. Lack of Recognition as Workers: Sex workers are often denied recognition as legitimate workers under labour laws, depriving them of protections and benefits afforded to other workers. This lack of recognition perpetuates their vulnerability to exploitation, abuse, and discrimination within the workplace.

6. Child Sex Work and Trafficking: Child sex workers encounter distinct legal hurdles and vulnerabilities, such as coerced involvement in the sex trade, exploitation by traffickers and procurers, and restricted access to education, healthcare, and social welfare facilities. Despite legislative measures aimed at curbing child trafficking and exploitation, enforcement remains largely insufficient.

To tackle these legal obstacles effectively, there is a need for extensive legal overhauls that acknowledge the rights and dignity of sex workers, decriminalize certain aspects of sex work, and ensure access to legal safeguards, representation, and social services. Only through dedicated endeavors to address these legal hindrances can sex workers in India attain their rights, dignity, and welfare.

³⁹ Akash Khan & Rajeshwari Singh, 'Legal aspects related to prostitution in India,' (iblog pleaders, 2020) <<https://blog.ipleaders.in/legal-aspects-related-to-prostitution-in-india/>>accessed on 16th February, 2024

⁴⁰ Ibid

PROTECTING THE RIGHTS OF SEX WORKERS

SHOULD PROSTITUTION BE LEGALIZED TO UPHOLD THE PRINCIPLES ENSHRINED IN ARTICLES 14, 19 AND 21 OF THE INDIAN CONSTITUTION?

In Furtherance of Article 14 of Constitution of India:

Equality stands as a fundamental pillar of Indian democracy, deeply ingrained in the principles of the Constitution. The doctrine of equality before the law is an essential component of the Rule of Law, which permeates every aspect of the Indian legal system⁴¹. “**Article 14** underscores the principle that individuals in similar circumstances should be treated equally, while acknowledging that treating unequals in the same manner may lead to manifest injustice⁴².” The Constitution firmly upholds the concept of equality, to the extent that even a Constitutional amendment violating the right to equality would be deemed invalid⁴³. Both Parliament and state legislatures are bound by the principle of equality, which requires them to address existing social and economic inequalities through affirmative action. This includes giving preference to socially and economically disadvantaged individuals or imposing handicaps on those who are more advantaged, in order to achieve genuine equality. Affirmative action is necessary to ensure equal protection under the law, which entails providing facilities and opportunities to those who are unequally placed. The essence of Article 14 lies in the principle that “*the law must apply equally to all individuals in similar circumstances*⁴⁴.” Equality before the law is intrinsic to the concept of the rule of law, ensuring a fair and just society⁴⁵. The principle of equality also demands that legislation be reasonable and fair, with reasonableness assessed in relation to the objectives of the legislation rather than moral considerations.⁴⁶

The legalization of prostitution in India, in furtherance of Article 14 of the Constitution, presents a compelling case for upholding the principles of equality and non-discrimination. Article 14 guarantees the right to equality before the law and equal protection of the laws to all persons, ensuring that individuals are treated fairly and without prejudice. Legalizing prostitution can contribute to fulfilling these constitutional principles by affording sex workers legal recognition and protection under the law, thus mitigating the inequalities and injustices they face.

Currently, the criminalization of prostitution in India results in the marginalization and stigmatization of sex workers, depriving them of basic rights and subjecting them to discrimination and abuse. By legalizing prostitution, the government can recognize sex work as a legitimate occupation and extend legal protections to those engaged

⁴¹ *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 S.C.C. 34

⁴² *Indira Sawhney v. Union of India* (1993), A.I.R. 1993 S.C. 477

⁴³ *Keshavananda Bharati v. State of Kerala* (1973), A.I.R. 1973 S.C. 1461

⁴⁴ *M. Nagaraj vs. Union of India*, (2006) 8 SCC 212, 270 (para 106): (2006) 8 SLT 1

⁴⁵ *Dalmia Cement (Bharat) Ltd. vs. Union of India*, (1996) 10 SCC 104 (para 18)

⁴⁶ *Anuj Garg vs. Hotel Association of India*, (2008) 3 SCC 1, 15 (paras 37 and 38)

in it. This would ensure that sex workers are afforded the same rights and opportunities as other citizens, without fear of prosecution or discrimination.

Legalization would also help address the systemic inequalities that sex workers face, particularly women and marginalized communities. Many sex workers are forced into the profession due to poverty, lack of education, or social marginalization. By legalizing prostitution, the government can empower sex workers to assert their rights and access essential services, such as healthcare and legal assistance. This would contribute to greater social inclusion and economic empowerment for marginalized communities, in line with the principles of equality and non-discrimination enshrined in Article 14.

Furthermore, legalizing prostitution can help combat gender-based violence and discrimination by challenging patriarchal norms and attitudes towards sex work. Criminalization often perpetuates violence and exploitation against sex workers, as they are forced to operate in the shadows without legal protection. Legalization would enable the government to regulate the sex industry, implement health and safety standards, and provide support services to sex workers, reducing their vulnerability to abuse and exploitation.

Additionally, legalizing prostitution can contribute to broader efforts to promote gender equality and women's empowerment. Many sex workers are women who face discrimination and marginalization both within society and the legal system. By legalizing prostitution, the government can empower women to assert control over their bodies and sexuality, challenging traditional gender roles and norms. This would align with the constitutional mandate to ensure equality and non-discrimination for all citizens, regardless of gender.

In conclusion, the legalization of prostitution in India, in furtherance of Article 14 of the Constitution, holds significant potential to advance the principles of equality and non-discrimination. By affording sex workers legal recognition and protection under the law, legalization can help mitigate the inequalities and injustices they face, promote gender equality, and empower marginalized communities.

In Furtherance of Article 19 (1)(G) of Constitution of India:

Article 19(1)(G) of the Constitution guarantees “freedom of profession, trade, and business, ensuring that every citizen has the right to choose their own employment or engage in any trade.” This fundamental right is intended to be as comprehensive as possible, encompassing all avenues and methods by which a person earns their livelihood. If a statutory provision affects a person's right to conduct their business, they have the right to challenge it through legal action. Access to justice is a fundamental human right, ensuring that individuals have recourse when their rights are infringed upon or their liberty is threatened. Decency and morality extend beyond sexual

morality and encompass actions that align with current standards of behaviour or propriety⁴⁷. Determining whether an action undermines decency or morality depends on its probable effects on the intended audience.

Any imposition that restricts a citizen's right to engage in an occupation, trade, or business must be deemed invalid⁴⁸. Such restrictions can be imposed through subordinate legislation, executive orders, circulars, or policy decisions in accordance with Article 162 of the Constitution or other legal provisions⁴⁹. However, for a restriction to be considered reasonable under Article 19(6), both the law itself and any orders made under it must meet the test of reasonableness⁵⁰. A restriction imposed under Article 19(6) must be proportionate to the danger posed. The term "occupation" encompasses a wide range of activities, including regular work, professions, jobs, principal activities, employment, business, or any calling in which an individual is engaged. The inclusion of four analogous and overlapping words in Article 19(1)(G) aims to make the guaranteed right as comprehensive as possible, encompassing all avenues through which a person may earn a livelihood. The freedom guaranteed under Article 19(1)(G) is invaluable and cannot be infringed upon without established grounds in the public interest. Complete prohibition of any professional activity must be justified by strong reasons and aimed at achieving a legitimate objective, as failure to impose such prohibition may jeopardize or seriously impact the interests of the public. Otherwise, it would not constitute a reasonable restriction⁵¹.

To ascertain the reasonableness of total prohibition, the court must weigh the direct impact on the citizen's fundamental right against the broader social interest being pursued⁵². An occupation is an activity undertaken by an individual as a means of livelihood or a personal mission. In the current scenario, where sex work is legal, sex workers have a fundamental right under Article 19(1)(G) to engage in this profession, as it constitutes their means of livelihood, often driven by circumstances of abject poverty.

Currently, the criminalization of prostitution in India restricts the ability of individuals to freely choose sex work as a means of livelihood. This violates their fundamental right under Article 19(1)(G) to practice the profession of their choice. By legalizing prostitution, the government would recognize sex work as a valid occupation and afford sex workers the same rights and protections as workers in other industries. This would enable individuals to make informed choices about their employment and exercise their right to pursue their chosen profession without fear of legal repercussions.

⁴⁷ *Ramesh Yeshwant Prabhuo vs. Prabhakar Kashinath Kunte*, (1996) 1 SCC 130 (paras 28 and 29); AIR 1996 SC 1113, relying on *Kneller (Publishing, Printing and Promotions) Ltd vs. Director of Public Prosecutions*, (1972) 2 All ER 898, at 905; (1972) 3 WLR 143.

⁴⁸ *Yasin Mohammad v. Town Area Committee*, A.I.R. 1952 S.C. 115

⁴⁹ *State of Bihar v. Project Uchcha Vidya, Sikshak Sangh*, (2006) 2 S.C.C. 545

⁵⁰ *Oudh Sugar Mills v. Union of India*, A.I.R. 1970 S.C. 1970.

⁵¹ *B.P. Sharma vs. Union of India*, (2003) 7 SCC 309; *U.P. Power Corporation Ltd. vs. Sant Steels & Alloys (P.) Ltd.*, (2008) 2 SCC 777, 802 (para 32).

⁵² *Indian Handicrafts Emporium vs. Union of India*, (2003) 7 SCC 589, 605 (para 38); AIR 2003 SC 3240

Legalization would also contribute to promoting economic freedom and empowerment for sex workers. Many individuals turn to sex work out of economic necessity, often due to poverty, lack of education, or limited employment opportunities. By legalizing prostitution, the government can create a legal framework that supports the rights and welfare of sex workers, including access to healthcare, social services, and legal protections. This would enable sex workers to work safely and openly, negotiate fair wages, and access essential services to improve their living conditions.

Additionally, legalizing prostitution can help combat human trafficking and exploitation by enabling the government to monitor and regulate the sex industry effectively. Criminalization often exacerbates the vulnerabilities of sex workers, making them more susceptible to exploitation and coercion by traffickers and criminal networks. Legalization would allow the government to implement measures to prevent trafficking, protect the rights of sex workers, and hold perpetrators accountable for their actions.

In conclusion, legalizing prostitution in India, in furtherance of Article 19(1)(G) of the Constitution, is essential for upholding individual freedoms, promoting economic empowerment, and enhancing public health and safety. By recognizing sex work as a legitimate profession and affording sex workers the same rights and protections as workers in other industries, legalization can contribute to creating a more just and equitable society for all. However, it is crucial that legalization be accompanied by comprehensive regulations and safeguards to protect the rights and well-being of sex workers and prevent exploitation and abuse.

In Furtherance of Article 21 of Constitution of India:

Article 21, a cornerstone provision of the Constitution and integral to the framework of fundamental rights, holds a significant position within the constitutional scheme. This article stipulates that “no individual shall be deprived of their life or personal liberty except in accordance with the established legal procedure.” The fundamental right to personal liberty, inherent in this provision, is of utmost importance to every citizen. It encompasses the right to live with human dignity and serves as a safeguard against any form of torture or assault perpetrated by the State or its agents⁵³. The right to life, as articulated in Article 21, extends beyond mere survival or existence akin to that of an animal. It encompasses the right to live with dignity and encompasses all aspects of life that contribute to its meaningfulness, completeness, and value.

The right to live with dignity, an essential aspect of the right to life guaranteed under Article 21 of the Constitution, encompasses not only physical existence but also the quality of life. Any statutory provision conflicting with this right must be deemed unconstitutional and beyond the scope of Part III of the Constitution. Article 21 embodies the principle of distributive justice, aiming to rectify economic inequalities and injustices stemming from unequal

⁵³ *Munshi Singh Gautam vs. State of M.P.*, (2005) 9 SCC 631, 637 (para 4); AIR 2005 SC 402

transactions in society. This may entail the State's efforts to reduce inequalities, as justice cannot be achieved without equality, as guaranteed by Article 14. The concept of a welfare state hinges on dispensing social justice, which is vital for achieving the constitutional goals. The absence of a doctrine of 'State necessity' under Article 21 in India necessitates that any deprivation of life or personal liberty be scrutinized by the court to ensure the legality and fairness of the procedure prescribed by law. *“Any law depriving an individual of their livelihood must withstand the scrutiny of Articles 14, 19, and 21, requiring that the prescribed procedure be just, fair, and reasonable, free from arbitrariness, oppression, or vagueness⁵⁴.”*

The enjoyment of a quality life lies at the core of the right guaranteed under Article 21. The right to reputation is considered an integral part of the right to life under Article 21, and any infringement upon the means of livelihood would invoke Article 21's protection. Therefore, the state's actions must be grounded in reasonableness and cannot deprive individuals of their basic human rights, particularly those afforded under Article 21. It is fundamental for women to be treated with decency and dignity, and any search conducted by someone other than a female officer would violate this principle⁵⁵.

The legalization of prostitution in India, in furtherance of Article 21 of the Constitution, presents a compelling argument for upholding the right to life and personal liberty of individuals engaged in sex work. Article 21 guarantees that no person shall be deprived of their life or personal liberty except according to the procedure established by law. This fundamental right encompasses the right to live with dignity and includes protection against exploitation, violence, and discrimination. By legalizing prostitution, the government can ensure that sex workers are afforded these constitutional protections and have access to essential rights and services.

Legalizing prostitution can contribute to enhancing the dignity and autonomy of sex workers by recognizing their right to choose their profession without fear of prosecution or stigma. Article 21 encompasses the right to live with human dignity, which includes the right to make autonomous choices about one's life and livelihood. Criminalization often denies sex workers the agency to make informed decisions about their work and exposes them to coercion and exploitation. Legalization would empower sex workers to assert control over their bodies and sexuality, thereby upholding their inherent dignity and autonomy.

Article 21 guarantees the right to health and medical aid, which encompasses the right to access healthcare services without discrimination or barriers. Criminalization often impedes sex workers' access to healthcare and exposes them to greater health risks, including HIV/AIDS and other sexually transmitted infections. Legalization

⁵⁴ *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248; *Inderjeet vs. State of U.P.*, AIR 1979 SC 1867: (1980) 1 SCC 255

⁵⁵ *State of Punjab vs. Baldev Singh*, (1999) 6 SCC 172 (para 13): AIR 1999 SC 2378

would enable sex workers to access healthcare services without fear of stigma or discrimination, thus safeguarding their right to health and well-being.

Furthermore, legalizing prostitution can contribute to promoting social justice and gender equality by challenging the stigma and discrimination faced by sex workers, many of whom are women and marginalized individuals. Article 21 embodies the principle of distributive justice, which seeks to remove economic inequalities and rectify injustices in society. By legalizing prostitution, the government can address the systemic inequalities and discrimination faced by sex workers and ensure their full participation in economic and social life.

In the case of '*Unni Krishnan vs. State of A. P.*⁵⁶', the Supreme Court affirmed that the "*Right to health and medical aid of workers*" is encompassed within the scope of Article 21, given the broad interpretation of the term 'personal liberty'. Applying this principle, sex workers should be entitled to health insurance and their medical well-being should be prioritized. Hence, legalization and regulation of prostitution should be considered from the perspective of Article 21 of the Constitution of India.

In conclusion, the legalization of prostitution in India, in furtherance of Article 21 of the Constitution, is essential for upholding the rights and dignity of sex workers and promoting social justice and gender equality. By recognizing sex work as a legitimate occupation and providing legal protections and support services to sex workers, legalization can ensure that they are able to live with dignity, autonomy, and security. Ultimately, legalizing prostitution is not only a matter of upholding constitutional principles but also a step towards creating a more just and inclusive society for all.

HUMAN RIGHTS OF SEX WORKERS IN INDIA

Sex workers in India, like all individuals, are entitled to fundamental human rights protection under various laws and international conventions. Despite the stigmatization and marginalization, they often face, several legal frameworks aim to safeguard their rights. The Constitution of India, in its preamble and various articles, guarantees rights such as liberty, equality, and dignity to all citizens, irrespective of their occupation or social status. Article 15⁵⁷ prohibits discrimination based on religion, race, caste, sex, or place of birth, while Article 23⁵⁸ specifically addresses trafficking and exploitation, aiming to eradicate such practices, including in the context of sex work.

The Immoral Traffic (Prevention) Act, 1956, enacted by the Central Government, is a significant legislative measure aimed at combating organized trafficking, particularly in the context of prostitution. This law provides a legal framework to inhibit and abolish the commercial vice of trafficking individuals for the purpose of prostitution,

⁵⁶ *Unni Krishnan, J.P. vs. State of A.P.*, (1993) 1 SCC 645: AIR 1993 SC 2178

⁵⁷ Constitution of India, Art.15

⁵⁸ Constitution of India, Art. 23

recognizing the vulnerability of sex workers to exploitation and abuse. Additionally, other statutes such as the “*Protection of Civil Rights Act of 1955* and the *Protection of Human Rights Act of 1993*” contribute to the protection of human rights, including those of sex workers, by addressing various forms of discrimination and exploitation⁵⁹. In a notable case, the Bombay High Court ruled that “*Engaging in prostitution is not deemed criminal; adult women possess the right to select their profession*” and cannot be apprehended without their consent. The Immoral Traffic (Prevention) Act of 1956 does not classify prostitution as a criminal offense⁶⁰.

In a landmark judicial pronouncement, the Supreme Court of India underscored the fundamental right to life guaranteed under Article 21 of the Constitution, affirming its applicability to sex workers. In the case of *Budhadev Karmaskar v. State of West Bengal*⁶¹, the Court recognized the inherent dignity and agency of sex workers, directing the State to formulate rehabilitation recommendations tailored to the needs of sex workers who wish to exit the profession voluntarily. This directive highlights the importance of respecting the autonomy and choices of sex workers while ensuring their access to alternative livelihood options and social support systems⁶².

Furthermore, international conventions such as the *International Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others*, to which India is a signatory, emphasize the global commitment to combatting trafficking and exploitation, including within the sex industry⁶³. These conventions provide a framework for cooperation between nations to address transnational issues related to human trafficking and ensure the protection of the rights of all individuals, including sex workers.

Despite the legal protections in place, challenges persist in the effective implementation and enforcement of these laws, particularly due to societal stigma, institutional barriers, and the clandestine nature of sex work. Sex workers often face discrimination and violence, both from law enforcement authorities and broader society, which impedes their access to justice and essential services. Moreover, the lack of comprehensive social and economic support programs further exacerbates their vulnerability to exploitation and abuse⁶⁴.

Ensuring the protection of human rights is a fundamental duty of the state and is crucial for the well-being of its citizens. Overlooking violations of human rights, such as discrimination in accessing healthcare and education, exploitation at work, wage theft, and similar injustices, can significantly hinder the overall welfare and development of the state. Furthermore, discriminatory practices by law enforcement agencies against minority groups can drive these communities underground, exposing them to further abuse and violations. Despite the

⁵⁹ Aayushi bhopche, ‘Protection of human rights of sex workers,’ (National Journal for legal Research and Innovative Ideas, 2022) <https://www.njlrii.com/2022/01/protection-of-human-rights-of-sex.html#google_vignette> accessed on 19th February, 2024

⁶⁰ Ibid

⁶¹ *Budhadev Karmaskar v. State of West Bengal*, (2011) 11 SCC 538

⁶² <https://thediplomat.com/2022/06/indias-supreme-court-recognizes-sex-work-as-a-profession/>

⁶³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-suppression-traffic-persons-and-exploitation>

⁶⁴ Aradhaya Dixit, ‘Sex work as a “Profession” and the challenges’, (Legal vidhiya, 2022) <<https://legalvidhiya.com/sex-work-as-a-professionand-the-challenges/>> accessed on 21st February, 2024

existence of numerous laws, their poor implementation in India has prevented various marginalized groups, including women and those belonging to subordinate castes and tribes, from fully benefiting from the promised equality in healthcare and education⁶⁵.

Indian women, in particular, bear the brunt of discrimination and human rights violations in areas such as education, health, and employment, leading to lower literacy rates and earning potentials compared to men⁶⁶. Sex workers, being among the most vulnerable groups, face even greater challenges within this already marginalized community. Many sex workers are coerced into the profession, often at a young age, making them highly susceptible to various forms of violence and exploitation, both physical and economic. Studies conducted in regions like the Sangli district of Maharashtra and villages in Nepal have revealed that a significant portion of sex workers were initiated into the trade before the age of 14, with family members often being complicit in their exploitation. Despite the illegality of child sex work, it remains prevalent in India, with over 40% of sex workers estimated to be children⁶⁷.

Moreover, sex workers encounter harassment and abuse from law enforcement agencies themselves. Instead of ensuring their safety and protection, police frequently subject sex workers to unwarranted arrests, extortion, and detention, causing further trauma and distress. Despite the Immoral Trafficking Prevention Act of 1986 stipulating that independent and private sex work is not inherently illegal, police often disregard this legislation and target sex workers arbitrarily, demanding bribes for their release⁶⁸. Given the societal stigma attached to sex work, sex workers are particularly vulnerable to such abuses and violations, further exacerbating their marginalization and vulnerability.

While legal frameworks exist to protect the rights of sex workers in India, concerted efforts are needed to ensure their effective implementation and enforcement. Upholding the principles of dignity, equality, and autonomy, it is imperative to address the systemic barriers and societal attitudes that perpetuate discrimination and marginalization. By recognizing the agency and rights of sex workers, and providing them with adequate support and protection, India can move towards a more inclusive and rights-based approach to address the complex issues surrounding sex work.



⁶⁵ Ibid

⁶⁶ S. Gruskin and D. Tarantola, "HIV/AIDS, Health, and Human Rights," in: P. Lampthey, H. Gayle, and P. Mane (eds.), HIV/AIDS Prevention and Care Programs in Resource- Constrained Settings https://pdf.usaid.gov/pdf_docs/pnacy892.pdf, accessed on 22nd February, 2024

⁶⁷ Ibid

⁶⁸ J. D'Cunha, *The Legalization of Prostitution: A Sociological Inquiry into the Laws Relating to Prostitution in India and the West* (Bangalore, India: Wordmakers, 1991)

WHETHER PROSTITUTION SHOULD BE LEGALIZED IN INDIA?

The debate over whether prostitution should be legalized has undergone moral, medical, and legal scrutiny. As previously mentioned, individual and private prostitution is legal in India, but there is a pressing need for regulation, particularly with regards to brothels and related activities. Despite laws against brothel establishment and pimping, these practices persist, often exploiting women. Bribery within law enforcement further complicates the issue, rendering police raids ineffective due to the influence of supply and demand dynamics. Government oversight of brothels would address supply and demand issues and eliminate the need for intermediaries. Allowing prostitutes to operate discreetly would enable them to earn a livelihood without public scrutiny⁶⁹.

Decriminalizing prostitution would streamline governance and help combat forced prostitution of women and children. The current system makes it challenging to ascertain the consent of women involved in prostitution. Bringing prostitution within the legal framework would facilitate better control of criminal activities and aid victims. Regulation would also enable the removal of minors from the profession and help combat pedophilia.

Sexual violence and assault against prostitutes often occur with the tacit approval of brothel owners, who may receive additional payment to allow such acts. Prostitutes are left vulnerable with little recourse. Government oversight would replace these exploitative middlemen, thereby reducing violence against women in the sex industry⁷⁰.

While these measures may not completely eradicate exploitation, regulation necessitates active police involvement to dismantle illegal operations and prevent corruption. Effective regulation of prostitution has the potential to significantly mitigate social ills such as exploitation and violence in the sex industry.

CASE LAWS RELATED TO SEX WORK IN INDIA

*KAJAL MUKESH SINGH & ORS. V. STATE OF MAHARSHTRA (2021)*⁷¹:

Facts of the case:

Police received a tip from an informant, possibly a police constable, about Nizamuddin Khan who allegedly operates a prostitution ring out of a guest house in Malad, Mumbai. Two undercover officers pretended to be clients

⁶⁹ Yuktha Suresh, 'Legalization of Prostitution in India and its Impact on the Exploitation and Violence Against Women' (2021), 4 (2) IJLMH Page 961 - 968, DOI: <http://doi.org/10.1732/IJLMH.26226>, accessed on 01st March, 2024

⁷⁰ Ibid

⁷¹ *Kajal Mukesh Singh & ors. V. State of Maharashtra*, AIR ONLINE 2020 BOM 2489

seeking Khan's services. Khan arranged for a prostitute to meet them at the guest house. Upon confirmation, the police raided the location, arresting Khan and taking the women (assumed to be prostitutes) into custody.

The court challenged the treatment of rescued women:

- A judge ordered an investigation into the women's ages and health.
- While in temporary care with an NGO, it was revealed they belonged to a community where prostitution is traditional.
- Their parents approved, but the judge refused to return them due to concerns about exploitation.
- Both lower courts' decisions to hold the women for a year were appealed.

The High Court Ruled:

- The women weren't criminals and shouldn't have been detained so long.
- The law allows for a maximum of 3 weeks in custody without a final decision.
- If deemed necessary, they should be placed in a special shelter with a social work panel, including women.

The Court Emphasized:

- Prostitution itself is not a crime; profiting from it, forcing someone into it, or running a brothel is.
- There was no evidence of these crimes by the women.
- They have basic rights, including choosing their profession and living location.
- Their consent should have been obtained before placing them in a care facility.

Outcome:

- The court rulings were overturned, and the women were released.

*BUDHADEV KARMASKAR V. STATE OF WEST BENGAL (2011)*⁷²:

The landmark case of Budhdev Karmaskar v. State of West Bengal laid the foundation for recognizing the right of sex workers to live with dignity. For the first time, justice for sex workers was brought into question, shedding light on their true status in society and the discrimination they face. This ruling, coupled with the conviction of the

⁷² *Budhadev Karmaskar v. State of West Bengal*, (2011) 11 SCC 538

accused, affirmed the constitutional right of sex workers to dignity under Article 21 of the Indian Constitution. The Supreme Court emphasized that sex workers are integral members of society and deserve equal treatment. They asserted that individuals should not be stigmatized or marginalized based on their profession, acknowledging the rightful place of sex workers in society.

Facts of the case:

- During the night of September 17th, 1999, a horrific incident unfolded in the red-light area of Kolkata. Shrimati Chayay Rani Pal, also known as Buri, a 45-year-old prostitute, was brutally murdered by Budhdev Karmasker. The tragic event occurred at the victim's residence on Jogen Dutta Lane.
- The victim was asleep near the staircase outside her room when the accused, Budhdev, tripped her and launched a vicious assault. He kicked her repeatedly, causing her to bleed profusely. He also dragged her by her hair and slammed her against the wall multiple times, resulting in bleeding from her ears, nose, and head.
- Asha Khatun, the sole witness present at the scene, raised an alarm, prompting other residents to gather and witness the savage attack. As soon as the crowd assembled, the accused fled the scene, but was apprehended by the police within five hours of his escape.

Issues Raised:

1. How article 21 and the meaning of life to live with dignity must be applied for sex workers and their offsprings?
2. How to rescue and provide the sex workers for a safer environment?
3. How to protect sex workers from these kinds of people who look down to them?

Judgement:

- The appeal lodged by the defendant was dismissed by the esteemed High Court of Kolkata. The argument challenging the admissibility of the eyewitness's testimony was rejected, and the statements were deemed valid and considered in the proceedings.
- Asha Khatun's statements were given significant weight, especially as she revealed an underlying animosity between the victim and the accused, leading to frequent altercations. It was established that the defendant tripped over the deceased while she was sleeping near the staircase, triggering the confrontation.
- The court found merit in the severity of the injuries inflicted by the defendant, as corroborated by the post-mortem report prepared by the attending physician. The injuries sustained by the defendant were deemed sufficient to result in the victim's death under normal circumstances.
- Moreover, the court expressed dissatisfaction with the absence of an explanation for the injury near the defendant's left eye, particularly considering the defense's stance of complete denial.

- The Supreme Court affirmed that sex workers are entitled to the same dignity and rights guaranteed by Article 21 of the Constitution as any other individual. A key focus of the Court was to combat sex trafficking, assist sex workers desiring to exit the trade, and ensure improved living and working conditions for those opting to remain in the industry.
- Recognizing the necessity of severing the connections between traffickers, sex workers, and their families, the Court emphasized that rescue efforts would be ineffective without addressing this linkage. Additionally, the Court directed NGOs and state governments to establish helpline numbers to address concerns and provide legal assistance to individuals in need.

DELHI V. PANKAJ CHAUDHARY & ORS. (2009)⁷³:

Facts of the case:

The appellant, residing as a neighbor to the respondents/accused, experienced a harrowing incident when the accused entered her dwelling and demanded a bidi. Upon her refusal, they proceeded to cut off the electricity and forcibly disrobed her, committing rape. When she raised an alarm, her mother intervened, prompting the accused to flee. The appellant was promptly taken to the hospital, and the police promptly registered an FIR. The accused faced charges under section 376(2)(g) of the IPC, resulting in conviction by the trial court. Subsequently, the accused filed a petition under section 391 of the CrPC before the High Court, which ruled in favor of the accused on appeal. Consequently, the appellant sought recourse through an appeal to the Supreme Court. The accused asserted that the appellant was habituated to sexual intercourse.

Issue raised:

Whether a man can rape a woman if such woman is habitual to sexual intercourse?

Judgement:

- The Delhi High Court's decision to acquit four individuals accused of involvement in a gang rape was overturned, and the lower court's verdict was upheld.
- Despite the accused's acquittal due to the alleged rape occurring while the women were in police custody, the Delhi High Court affirmed that no woman can be subjected to rape, regardless of her moral character.
- The Court emphasized that women are entitled to the same protection from harassment as any other citizen and criticized the High Court for favouring the respondent's arguments over the women's allegations. Additionally, the Court barred the testimony of police officers and dismissed perjury charges against them.

⁷³Delhi v. Pankaj Chaudhary & ors., (2019) 11 SCC 575

- It underscored that even if a woman's sexual behaviour is well-documented, it does not justify exploitation or questioning her character. Such women retain the right to refuse consent to sexual activity.
- The court upheld the trial court's previous ruling, sentencing the accused to 10 years in prison.
- The Supreme Court relied on the case of *State of Maharashtra & Anr. v. Madhurkar Narayan Mardikar*⁷⁴ wherein, it was held that every woman is entitled to privacy and no person has a right to violate that.

*GAURAV JAIN V. UNION OF INDIA (1997)*⁷⁵:

Facts of the case:

A Public Interest Litigation (PIL) was initiated in the Supreme Court of India by an advocate petitioner after coming across an article titled "A Red-Light Trap: Society gives no chance to prostitutes' offspring," published on July 11, 1988, in the magazine 'India Today.' The petitioner sought the establishment of specialized educational facilities for children (commonly referred to as "fallen women" by the Court) of prostitutes up to the age of sixteen to deter them from adopting a lifestyle perceived as depraved and unethical.

However, on November 15, 1989, the Court issued an order expressing its perspective. It opined that creating separate educational institutions and hostels would lead to the isolation of the children of prostitutes, which would not be conducive to their well-being or the welfare of society at large. While the Court did not endorse the request for segregated facilities, it emphasized the importance of providing adequate accommodation in reformatory homes and hostels to facilitate the separation of prostitutes' children from their mothers.

Issues raised:

- What are the rights of the prostitutes' children and what should be the course of action to separate the children from their mother and other such people so as to provide them safety and ensure their rehabilitation in the nation's mainstream?
- What strategy should be formulated to eliminate prostitution?

Judgement:

The Court issued comprehensive directives concerning the rescue and integration of prostitutes and their offspring into society. These directives included:

- Recognizing women engaged in prostitution as victims of adverse socio-economic circumstances rather than offenders, with a focus on fostering their economic independence through self-employment and vocational training.
- Mandating the establishment of juvenile homes to ensure the rehabilitation and safety of the children.

⁷⁴ *State of Maharashtra & Anr. v. Madhurkar Narayan Mardikar*, (1991) 1 SCC 57

⁷⁵ *Gaurav Jain v. Union of India*, (1997) 8 SCC 114

- Calling for the formation of a committee to examine the issue and devise schemes for the empowerment of the victims.

However, Justice Wadhwa dissented from Justice Ramaswamy's opinion on one aspect. He noted that the focus of the petition was the rehabilitation of the prostitutes' children rather than the eradication of prostitution or the rehabilitation of the prostitutes themselves.

Subsequently, a review petition was filed, which was transferred to a larger three-judge bench compared to the original case. The review petition overturned the initial judgment regarding directives aimed at eradicating prostitution. However, the guidelines established for the children of prostitutes in the initial case were upheld in the review petition as well.”

STATE OF MAHARASHTRA & ANR. V. MADHURKAR NARAYAN MARDIKAR (1991)⁷⁶

Facts of the case:

- The respondent, serving as a Police Inspector at the Bhiwandi Town Police Station in District Thana of Maharashtra, visited a woman's house alone at night in his uniform and demanded sexual intercourse. When she refused and cried out, her husband and neighbours gathered outside and called the Police Station. Upon arrival, the respondent accused the woman of abusing him and ordered her to be taken to the Police Station.
- The woman filed a written complaint, leading to a preliminary inquiry and the preparation of a charge sheet against the respondent for attempting forcible and illicit intercourse and fabricating documents to falsely claim a prohibition raid was conducted in the area at the time of the incident.
- A Departmental Inquiry recommended the respondent's dismissal, a decision concurred with by the Inspector-General of Police, who issued a dismissal notice after the respondent's response.
- The respondent appealed the decision, partly succeeding, prompting him to petition the High Court via a writ petition. The Division Bench overturned the removal order, citing a lack of evidence to establish guilt on the charges. Dissatisfied, the State of Maharashtra appealed to the Supreme Court through a Special Leave Petition (SLP) under Article 136 of the Constitution.

Issues Raised:

- Whether the order of the High Court to restore the police officer to service against the order of the appellate authority sustainable?

Judgement:

⁷⁶ State of Maharashtra & Anr. V. Madhurkar Narayan Mardikar, (1991) 1 SCC 57

- The Court granted the appeal and annulled the High Court's order, reinstating the removal from service directed by the appellate authority, as it was deemed untenable. The Inquiry Officer failed to perceive any conceivable reason or motive for the woman to falsely implicate the respondent, as argued by him.
- Additionally, no incriminating evidence was discovered by the police at her residence. Therefore, the respondent's assertions fail to provide any basis for concluding that he was falsely implicated in the matter. Moreover, the evidence presented by the woman lacked substantial corroboration from independent sources in crucial aspects.
- Court laid down certain principles:
 - The right to privacy enables an individual to protect themselves in an instance of a violation of the same.
 - Equal protection of the law is granted to women.
 - Evidence provided by a woman cannot be dismissed on her mere unchastity and entire facts and circumstances are to be taken into consideration.”

CONCLUSION

NAVIGATING THE COMPLEX TERRAIN OF SEX WORK IN INDIA: BALANCING MORALITY AND LEGALITY

“Sex work in India exists at the intersection of morality and legality, serving as a contentious issue that divides society. The intricate dialogue surrounding this matter explores ethical dilemmas, legal structures, societal perceptions, and the real-life experiences of sex workers. In a nation steeped in cultural heritage and a myriad of belief systems, the debate over the ethical and legal legitimacy of sex work is multifaceted, reflecting the intricate interplay of historical, socio-economic, and political influences.”

“Essentially, the debate surrounding sex work in India, concerning morality versus legality, centres on conflicting views regarding morality, human rights, and individual autonomy. On one hand, opponents of legalization often argue from moral or religious standpoints, viewing sex work as inherently immoral or sinful. They argue in favour of criminalizing or prohibiting sex work, viewing it as detrimental to societal values and undermining the dignity of women. On the other hand, proponents of legalization emphasize the principles of human rights, bodily autonomy, and harm reduction. They argue that criminalizing sex work only exacerbates the vulnerabilities faced by sex workers, such as exploitation, violence, and marginalization. They argue that legalization would provide sex workers with increased protection, access to healthcare, and channels for addressing grievances.”

“The legal environment concerning sex work in India is marked by uncertainty and lack of uniformity. While the Immoral Traffic (Prevention) Act, 1956 criminalizes certain aspects of sex work, such as solicitation and brothel-keeping, it does not explicitly outlaw voluntary adult sex work. This legal grey area has led to a patchwork of interpretations and enforcement practices across different states, resulting in a lack of clarity and uniformity in

addressing the issue. Furthermore, the enforcement of laws related to sex work is frequently tainted by corruption, police violence, and violations of human rights, adding to the complexities faced by sex workers.”

“Despite these challenges, there are pockets of progress and resilience within the sex work community in India. Grassroots organizations, collectives, and networks of sex workers have emerged as powerful advocates for their rights and well-being. Through collective action, advocacy campaigns, and community-led initiatives, they have sought to challenge stereotypes, demand recognition as legitimate workers, and assert their agency in shaping policies that affect their lives.”

“Furthermore, there is a pressing need for societal awareness and education regarding issues faced by women, aiming to prevent inhumane treatment and atrocities against them. Given these factors, it is essential to legalize prostitution and establish a regulatory body. This regulation not only recognizes the presence of sex work but also aims to safeguard the rights and welfare of both sex workers and minors engaged in the industry.”

“The discourse surrounding sex work in India highlights the conflict between moral considerations and legal realities. While moral concerns continue to influence societal perceptions and governmental policies regarding sex work, there is a growing recognition of the necessity for a rights-based approach that prioritizes the welfare and autonomy of sex workers. Achieving a balance between morality and legality demands a nuanced comprehension of the structural inequalities, power dynamics, and intersecting forms of oppression that shape the experiences of sex workers. Ultimately, addressing the intricate challenges associated with sex work in India requires a concerted effort to combat stigma, uphold human rights, and advocate for policies that respect the dignity and self-determination of all individuals involved in the sex industry.”

“In summary, the legalization and regulation of prostitution are imperative for tackling the multifaceted challenges linked to this occupation. Through the establishment of a regulatory framework, society can enhance the protection of the dignity and rights of sex workers, while also striving to mitigate exploitation and violence within the industry. It is essential for policymakers and society at large to acknowledge the significance of fostering a supportive and secure environment for all individuals engaged in the sex trade.”

RECCOMENDATIONS

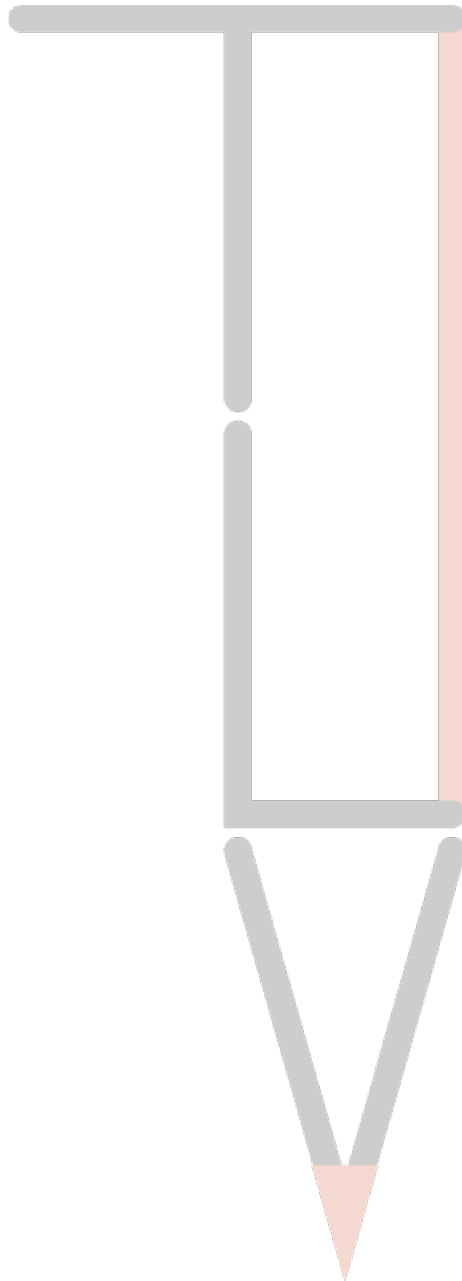
1. **Legalize all facets of sex work:** Advocate for the full decriminalization of all facets of sex work, encompassing sex workers, clients, and third parties, alongside the repeal of punitive laws and regulations that amplify vulnerabilities among various subgroups of sex workers. Criminalization not only fosters stigma and discrimination but also obstructs sex workers' ability to obtain healthcare services, exacerbating their heightened susceptibility to HIV and other health hazards. Decriminalization would enhance healthcare accessibility and facilitate the establishment of occupational health and safety measures, thereby advancing the well-being, self-determination, and health of sex workers.

2. **To give recognition to sex work as ‘work’:** Recognize sex work as a legitimate form of employment and grant comprehensive legal protections and labour rights to sex workers, encompassing health and safety standards, measures against discrimination, and eligibility for social protection programs.
3. **Guarantee that healthcare services are easily available, non-coercive, and tailored to meet the varied needs of sex workers:** Acknowledge the right to health of sex workers by providing inclusive sexual and reproductive health services, psychological assistance, and access to justice and social protection without prejudice or bias. Health encompasses more than just the absence of illness; it embraces overall well-being. Sex workers, representing diverse backgrounds and experiences, necessitate accessible healthcare services devoid of stigma. These services should comprehensively address their right to health, including sexual and reproductive health services, psychological and emotional support, specialized healthcare, and access to justice and social protection. It is crucial to recognize that sex workers are not merely carriers of disease; they contribute significantly to disease prevention and are essential members of society. Integrated service delivery models, offering a spectrum of services, are often more effective and less stigmatizing than narrow, disease-focused approaches, such as those exclusively targeting HIV.
4. **Cease state-sanctioned crackdowns, surveillance, and harassment of sex workers, clients, and third parties, including police and immigration interventions:** In addition to ongoing efforts towards full decriminalization, it is crucial to enact policies addressing the adverse effects of laws, policies, and practices concerning sex work and immigration. Immediate action is necessary to establish local or regional "non-harassment" and "access without fear" policies, which would halt police and immigration crackdowns, public health surveillance, and the targeting of both migrant and non-migrant sex workers, third parties, and clients. Such policies would facilitate a departure from punitive measures that undermine the health of sex workers and violate their rights. Instead, they would support community-driven initiatives aimed at reaching and aiding those most in need.
5. **Promote trust and cooperation between the healthcare system and organizations led by sex workers:** The organization and delivery of healthcare services should acknowledge sex workers as experts on their own lives and health needs, recognizing their potential as both service providers and recipients. Collaborative approaches that are free from stigma and discrimination are best developed in partnership with sex workers and organizations led by them. To cultivate more respectful and nuanced relationships between healthcare providers and sex workers, ongoing training led by the community is recommended. This training should prioritize understanding sex workers' lived experiences, expertise, and distinct needs. Furthermore, it is crucial for medical education to incorporate essential components addressing health disparities and the specific requirements of marginalized populations, including sex workers.
6. **Empower and mobilize sex worker communities:** To empower sex workers in research, programming, and policy development, it is essential to recognize their expertise and agency in shaping interventions that cater to their needs and promote their rights. While community-based and sex worker-led approaches to

healthcare and social services delivery are recognized as effective practices for meeting the needs of sex workers, they often do not receive sufficient prioritization from funding bodies and healthcare systems. Therefore, promoting community empowerment and mobilization becomes crucial as key strategies for advancing rights-based and evidence-driven interventions. These include advocating for full decriminalization, implementing non-coercive occupational health and safety standards, addressing instances of violence, ensuring access to justice, and engaging in broader anti-stigma initiatives.

7. **Encourage collaborations between organizations led by sex workers, academics, policymakers, and programmers to promote inclusive and evidence-based approaches that prioritize the health and human rights of sex workers, especially those from marginalized and criminalized communities:** These efforts are essential for fostering comprehensive and inclusive perspectives across research, policymaking, and implementation, thereby effectively advancing the health and human rights of sex workers. Partnering with community-led organizations, especially those advocating for marginalized and criminalized groups overrepresented in sex work—such as immigrants, individuals living with HIV, substance users, LGBTQ+ individuals, Black, Indigenous, and People of Colour, and women aligned with the core tenets of the sex worker rights movement—is particularly relevant.
8. **Ensure equitable access to health and social services for sex workers, irrespective of internal mobility or immigration status:** Reform policies to remove barriers to critical social services and supports, particularly for migrant and mobile sex workers who are often excluded due to stigma and legal restrictions. Sex workers necessitate access to essential social services, encompassing housing assistance, food support, basic income, employment insurance, and other critical services, including assistance for survivors of violence. However, immigrant and mobile sex workers are frequently unjustly marginalized from these services due to eligibility restrictions, stigma, and the failure to acknowledge sex work as legitimate employment. Immediate policy reforms are imperative to guarantee these protections for immigrant and mobile workers, who often encounter barriers in accessing health and social services and protective programs contingent upon local registration or immigration status.
9. **Endorse resilient and evidence-based strategies spearheaded by sex workers:** Sex workers exhibit resilience, adaptability, and determination both individually and collectively, in their profession, personal lives, and advocacy efforts. Recognizing these strengths and harnessing the wisdom and expertise of sex worker communities in program development, policy creation, and research endeavours is recommended. Moreover, it is vital to regard sex workers as active participants and authorities in their own lives when conducting research on the health and social obstacles they face.
10. **Allocate resources to enhance the capability of organizations led by sex workers to actively participate in research, policy creation, and program execution, recognizing their invaluable role in fostering community empowerment and mobilization endeavours:** Sex workers demonstrate resilience, adaptability, and determination both individually and collectively, in their professional roles, personal lives,

and advocacy endeavours. Acknowledging and leveraging these strengths, along with tapping into the expertise and perspectives of sex worker communities, is crucial in program development, policy formulation, and research. Furthermore, it is essential to recognize sex workers as active participants and authorities in their own lives when examining the health and social challenges they face.



BIBLIOGRAPHY

STAUTES:

- The Immortal Traffic Prevention Act, 1956
- Indian Penal Code, 1860
- The Constitution of India, 1950

ARTICLES:

- Anushka Ambli, “Legalization of prostitution in India,” *International Journal of Legal Developments and Allied Issues*, (2018)
- Akwinder Kaur, “A sociological perspective on India’s journey of legalizing prostitution: An illicit to a lawful activity,” *International Journal of Science and Research Archive*, (2023)
- Nalla Sindhu, The status of prostitution in India, *Brillopedia*, (2022)
- Harsh Kirar, “Evolution of prostitution,” *Legal service India*
- Sehgal N, Patni CB. ‘Covid-19 and female sex workers in India: a journey of brutal reality’, *SN Soc Sci*, 3(3). (2023)
- Bhattacharji, Sukumari. “Prostitution in Ancient India.,” *Social Scientist*, 15(2), pp. 32-61. (1987)
- Roshni S, “Prostitution in India and its legality,” *Prime Legal*, (2023)
- Yuktha Suresh, “Legalization of Prostitution in India and its Impact on the Exploitation and Violence Against Women,” *IJLMH*, 4(2), pp. 961 – 968. (2021)
- Kiran Bhatti, ‘A review of Immortal Prevention Traffic Act 1956’, *Centre for policy research*, (2017)
- Aditya Shaw, ‘Salient Features of the Immortal Trafficking Prevention Act,’ *Sociallaws Today*, (2023)
- Ishu Dayal Srivastava and Priyankita Majhi, ‘The Immoral Traffic (Prevention) Act: The Problems,’ *IJLMH*, 5(5), pp.851 – 859. (2022)
- Krishna Prasad, ‘Plug Loophole in probe into immoral trafficking cases,’ *The Hindu*, (2016)
- Manya Ahuja, ‘Policing Organised sex work in India: A critical analysis of Immortal Traffic Prevention Act, 1956,’ *iBlog pleaders*, (2021)
- Thilagavati K., ‘Legal status of sex work in India,’ *Juriscenter*, (2023)

- Nayana Vachani, 'Morality, Social Stigma and Inaction: Challenges for sex workers in India,' *Nickled and Dimed*, (2020)
- Shriya Patnaik, 'the invisible voices of India Informal sector sex worker,' *LSE*, (2021)
- Richard Branson, '10 causes of prostitution', *International Union of sex workers*, (2023)
- SWP Kumara, 'Socio-cultural factors that lead street female sex workers to prostitution' *SSRN papers*, (2019)
- Dianne Nogrums, 'International sex workers day 2020: Problems and challenges sex workers face everywhere', *India.com*, (2020)
- Nitashu Natsu, 'Story of abuse that sex workers face everyday,' *Times of India*, (2023)
- Akash Khan & Rajeshwari Singh, 'Legal aspects related to prostitution in India,' *iBlog pleaders*, (2020)
- Gayathri G., 'Examining the law on the prostitution in India,' *The Analysis*, (2023)
- Rishav Sharma & Ujjwal Singh, 'Whether prostitution shall be legalised and regularised in furtherance of article 14, 19 & 21 of the constitution of India,' *IJRAR*, 5(2), (2018)
- Shreyas Gupta, 'Human rights of sex workers in India: the way forward,' *SSRN papers*, (2013)
- Aayushi bhopche, 'Protection of human rights of sex workers,' *National Journal for legal Research and Innovative Ideas*, (2022)
- J. D'Cunha, 'The Legalization of Prostitution: A Sociological Inquiry into the Laws Relating to Prostitution in India and the West Bangalore, India,' *Wordmakers*, (1991)
- Willis, B., Hodgson, I., & Lovich, R., 'The health and wellbeing of female sex workers children in Bangladesh: A qualitative study from Dhaka, Chittagong and Sylhet,' *Vulnerable Children and Youth Studies*, 9 (2), 123–131 (2014)
- Kakeri, M., Gokhale, C. N., & Waghmare, R. B. 'A health status review of children of commercial sex workers residing in a metropolitan city area,' *PARIPEX- Indian Journal of Research*, 7(8), 10–11 (2018)
- Pardeshi, G., & Bhattacharya, S., 'Child rearing practices amongst brothel-based commercial sex workers,' *Indian Journal of Medical Sciences*, 60(7), 288–295 (2006)