



# INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

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## Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **COMMERCIALISING PROSTITUTION IN INDIA: TOWARDS A REGULATORY, LICENSING, AND LABOUR-RIGHTS FRAMEWORK**

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## **Abstract**

In India, prostitution has a unique legal status since it is neither completely illegal nor acknowledged as employment. Although consensual adult sex work is not illegal in and of itself, the legal framework that surrounds it makes almost all related activities illegal, making the profession functionally illegal. By forcing the activity underground, this disjointed strategy has increased the vulnerability of sex workers rather than preventing exploitation or trafficking. Lack of legal recognition allows arbitrary policing and moral surveillance while depriving sex workers of access to justice, health protections, and labour protections. The research paper makes the case that the ongoing use of partial criminalisation is both socially detrimental and unconstitutional. It promotes a regulatory framework that views prostitution as a business that is governed by state regulation, labour laws, and licensing. Based on feminist legal theory, labour law principles, constitutional jurisprudence, and comparative regulatory experiences, the paper argues that regulated commercialisation provides a better way to safeguard the rights of sex workers while addressing legitimate state concerns about exploitation and trafficking. In addition to redefining the role of law from one of moral control to one of rights-based governance, the paper offers an organised framework for regulation in India that emphasises dignity, autonomy, and accountability.

**Keywords:** *Prostitution, Sex Work, Regulation, Labour Rights, Trafficking, India*

## 1. Introduction

Prostitution in India exists in a state of legal confusion. While consensual adult sex work isn't explicitly banned, almost every condition needed for its safe, organized, and respectful practice is criminalised. These include solicitation, running brothels, collective work arrangements, third-party involvement, and visible operation. This contradictory setup allows sex work to function without legal acknowledgment, making it an unstable job.<sup>1</sup>

Prostitution has always been a part of Indian society. From the Devadasi and Nagarvadhu systems to colonial military brothels, sex work has changed along with economic shifts, urbanization, and social divisions. However, current laws still view prostitution through a moral lens, seeing sex workers as either criminals or helpless victims needing rescue. This limited viewpoint ignores the reality that sex work is often a means of survival affected by poverty, migration, caste, gender, and exclusion from regular jobs.

The Immoral Traffic (Prevention) Act of 1956 highlights this contradiction. Designed to fight trafficking and exploitation, its enforcement mostly targets adult sex workers instead of those who exploit them. Police raids, detentions in corrective homes, forced evictions, and informal criminalization through public-order laws have become common. Research shows widespread abuse, extortion, and sexual violence by law enforcement, along with a lack of legal protection.

Criminalisation has not succeeded in its goals. It has neither ended prostitution nor significantly reduced trafficking. Instead, it has pushed sex work underground, increased dependence on informal middlemen, limited access to healthcare, and discouraged interactions with legal systems. Public health crises, such as HIV/AIDS and COVID-19, have revealed the fallout of this invisibility, as sex workers were left out of welfare programs, healthcare, and economic support.

Legally, this approach is becoming unworkable. Articles 14,<sup>2</sup> 19(1)(g),<sup>3</sup> and 21<sup>4</sup> guarantee equality, livelihood, dignity, and bodily autonomy regardless of societal values. Courts have

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<sup>1</sup> Global Network of Sex Work Projects 1 Understanding Legal Frameworks and the Struggle for Sex Work Law Reforms. (n.d.). <https://www.nswp.org/sites/default/files/Sex%20Work%20&%20The%20Law.pdf>

<sup>2</sup> Constitution of India, art. 14 (1950)

<sup>3</sup> Constitution of India, art. 19(1)(g) (1950)

<sup>4</sup> Constitution of India, art. 21 (1950)

consistently stated that sex workers deserve a life of dignity and freedom from harm. Yet the law does not recognize sex work as legitimate work, creating a gap between constitutional ideals and the realities people face.<sup>5</sup>

This paper suggests that regulating prostitution through licensing and labour protections is a clearer and more rights-respecting option. Regulation does not mean unrestricted legalization. Instead, it helps the State differentiate consensual sex work from trafficking, set enforceable health and safety standards, formalize the economy through taxation, and recognize sex workers as individuals who have rights. Experiences from places like New Zealand, Germany, and the Netherlands show that regulated systems better protect personal autonomy, reduce violence, and improve public health.

## **2. Historical and Socio-Economic Foundations of Prostitution in India**

### **A. Historical Continuities and Transformation**

Prostitution in India is not a recent issue; it has deep historical roots within the social, cultural, and economic structures of pre-modern Indian society. Ancient legal and administrative texts, especially the Arthashastra, recognized sex workers as an important part of urban economies. Instead of condemning sexual labour on moral grounds, these texts took a practical approach that focused on regulation, taxation, and protection. They saw sex work as a type of labour that helped generate state revenue and maintain social order. Sex workers were often organized, monitored, and sometimes given legal recognition and economic stability. Systems like the Devadasi and Nagarvadhū traditions show the complex and varied history of sexual labour. Under these systems, women performed artistic, ritualistic, and sexual roles connected to religious institutions or royal support. While these arrangements were often patriarchal and exploitative, they also provided social status, economic security, and cultural acceptance, which set these women apart from later views of "prostitutes" as social outcasts. Importantly, sexual labour in these contexts was not just seen as immoral; it was linked to religious devotion, court culture, and artistic work. Colonial intervention disrupted these local systems. British rule dismantled traditional forms of support and redefined artistic and ritual labour as immoral and illegal. This change stripped sex work of its

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<sup>5</sup> Singh, U., Kumar, J., & Saroj, U. (n.d.). INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH BETWEEN EXPLOITATION AND EMPOWERMENT: LEGALIZING SEX WORK IN INDIA. Retrieved December 29, 2025, from <https://ijalr.in/wp-content/uploads/2025/12/BETWEEN-EXPLOITATION-AND-EMPOWERMENT-LEGALIZING-SEX-WORK-IN-INDIA.pdf>

cultural legitimacy and turned it into a commodified service aimed mainly at colonial military and urban male populations. Prostitution became centered around military camps, port cities, and growing urban areas, regulated not to protect workers but to maintain colonial public health and military discipline.<sup>6</sup> Colonial criminal law marked a significant shift in how sexuality was governed. Influenced by Victorian moral views, British officials saw prostitution as a social problem instead of a regulated job. Laws targeting "public morality," vagrancy, and venereal disease transformed sex workers into targets of surveillance, control, and punishment. This moral legal framework established the groundwork for post-independence abolitionist views that still influence Indian prostitution laws today. Despite significant changes in economic structures, gender relations, and labour markets, modern legal systems remain closely tied to this colonial moral legacy, often focusing on symbolic morality rather than real situations.

### **B. Poverty, Migration, Gender, and Informality**

Today's entry into sex work in India is best understood through the lens of structural inequality instead of individual moral choice. Research consistently shows that poverty, chronic unemployment, agrarian distress, rural-to-urban migration, caste-based marginalization, and limited access to education are significant factors driving participation in sex work. For many women, sex work becomes a survival strategy after facing abandonment, widowhood, domestic violence, sexual assault, or forced displacement due to conflict or environmental disasters. In these situations, a lack of strong social safety nets leaves few options for earning income. At the same time, studies increasingly acknowledge that not all entry into sex work is purely forced or accidental. For some people, sex work is a logical economic choice in labour markets that rely on informal, unstable work and gender-based wage discrimination. Compared to domestic work, construction, or factory jobs, sex work may offer better pay, flexible hours, and more control over time and mobility. This economic reasoning challenges simple victim narratives and highlights the need for labour-focused analysis. Male and transgender sex workers, though historically present, are often marginalized in legal discussions and academic research. Their situations reveal the limitations of traditional moral frameworks that focus on heterosexual norms and exclude other gender identities. These groups frequently face additional stigma due to their non-conforming

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<sup>6</sup> Verma, A. (n.d.). Rethinking Laws on Commercial Sex Work in India. <https://law.padhaikaro.com/assets/Tolerance%20-Alisha-Verma-SampleBook.pdf>

identities, making them especially vulnerable to violence, extortion, and legal invisibility. The rising visibility of male and transgender sex work in urban areas challenges the common belief that prostitution is only a women's issue. This calls for more inclusive and comprehensive approaches.<sup>7</sup>

### C. Violence, Health, and Structural Vulnerability

Criminalization greatly increases the structural vulnerability of sex workers by exposing them to various forms of violence. Studies show alarmingly high rates of physical, sexual, and emotional abuse, not just by clients and intermediaries but also by law enforcement and intimate partners. The constant risk of arrest or harassment discourages sex workers from reporting violence or seeking legal help, effectively normalizing abuse as part of their job. The lack of legal recognition also keeps sex workers from essential social protections. Without formal occupational status, they cannot access healthcare benefits, labor protections, insurance, or social security programs. Health risks, including HIV and other sexually transmitted infections, reproductive health issues, psychological trauma, and occupational injuries, rise due to the absence of regulatory oversight, safe working conditions, and worker-led health initiatives. Criminal law, instead of offering protection, acts as a mechanism that worsens harm and reinforces marginalization.<sup>8</sup> The COVID-19 pandemic highlighted these structural inequalities. Lockdowns abruptly stopped sex work, cutting off income sources overnight. Because of the informal and criminalized nature of their work, most sex workers were excluded from state relief and welfare programs that required proof of residence, identity documents, or formal employment records. Many faced urgent food shortages, evictions, untreated health issues, and mental distress, revealing the devastating effects of legal invisibility during crises.<sup>9</sup>

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<sup>7</sup> Ashim Nanda & Archana Gupta (2025). LEGISLATIVE COMMENT ON THE SEX WORKERS (REHABILITATION AND SOCIAL SECURITY) BILL, 2015. *The Indian Journal for Research in Law and Management*, Volume I(Issue 2). Retrieved from <https://ijrlm.com/journal/legislative-comment-on-the-sex-workers-rehabilitation-and-social-security-bill-2015/>

<sup>8</sup> Kapur, P., & Mahishi, A. (n.d.). INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES Need to Protect Sex Workers' Right to Health in India: A Comparison with New Zealand. *International Journal of Law Management & Humanities*, 4. <https://doi.org/10.1000/IJLMH.111706>

<sup>9</sup> Debashri Sarkar, D. (n.d.). INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES Sex-Workers' in India: Examining Their Situation in the Light of Covid-19 Pandemic. *International Journal of Law Management & Humanities*, 5. <https://doi.org/10.1000/IJLMH.113257>

## **D. Social Stigma and Intergenerational Exclusion**

Social stigma is one of the most lasting and damaging aspects of sex work in India. This stigma extends beyond sex workers to their families, particularly their children. Children of sex workers often face discrimination in schools, denial of admission, bullying, and social exclusion, which severely limit their educational and social opportunities. These forms of exclusion contribute to a cycle of vulnerability, pushing children toward the same precarious livelihoods as their parents. The lack of legal recognition further deepens this marginalization by excluding sex workers from civic life. Challenges in obtaining identity documents, opening bank accounts, finding housing, or accessing welfare benefits reinforce their status as second-class citizens. Without meaningful inclusion in legal and social institutions, sex workers remain trapped in cycles of poverty, stigma, and invisibility. This underscores the urgent need for structural and rights-based solutions.<sup>10</sup>

## **3. Existing Legal Framework Governing Prostitution in India and Its Structural Failures**

### **A. Immoral Traffic (Prevention) Act, 1956: Design and Operation**

The Immoral Traffic (Prevention) Act, 1956 (ITPA) serves as the main legal framework for regulating prostitution in India. The law was created to meet India's commitments under the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. This reflects a shared view from the mid-twentieth century that linked prostitution to exploitation. The Act follows an abolitionist model, believing that prostitution is a social harm that should be gradually eliminated instead of seen as acceptable work. While the ITPA does not explicitly make consensual sexual activity between adults for money illegal, it does not recognize sex work as a legal occupation. It instead creates a legal situation where the formal legality of prostitution is weakened by criminalizing almost all actions that enable it.<sup>11</sup>

Sections 3 to 8 of the ITPA prohibit many activities related to sex work. These include managing brothels, making money from prostitution, recruiting, or inducing individuals into sex work,

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<sup>10</sup> Post, G. (2016, April 19). How are the rights available to prostitute workers in India violated - Ipleaders. iPleaders. <https://blog.ipleaders.in/rights-available-prostitute-workers-india-violated/>

<sup>11</sup> Ahmed, W., Khan, M. W., & Jameel, A. (2024). Legislative Developments and Judicial Approach Towards Prostitution in India: An Analysis. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.4913680>

keeping people on premises used for prostitution, soliciting clients in public, and engaging in sex work near schools, places of worship, and other public places. Although each rule aims to prevent exploitation or public nuisance, together they create an almost complete ban. Sex work is allowed only in theory because the practical conditions needed to engage in it, like shared workspaces, support systems, or client solicitation, are largely criminalized. Independent sex workers face penalties for solicitation, and cooperative working arrangements are often classified as brothel-keeping, which leaves no legal way to operate.<sup>12</sup>

Legal experts and researchers have pointed out that this law does not clearly differentiate between consensual adult sex work and trafficking or forced prostitution. By treating all forms of prostitution as suspicious, the law groups voluntary work with coercive exploitation under a single set of rules. Instead of focusing on finding and punishing force, fraud, or abuse, the ITPA targets the conditions surrounding sex work, effectively going after the occupation itself. This perspective reflects a strong moral belief that prostitution is inherently degrading and exploitative, regardless of consent, autonomy, or working conditions. It conflicts with modern views that emphasize rights and labour.

### **B. Indian Penal Code and Constitutional Provisions**

The Indian Penal Code, 1860 operates alongside the Immoral Traffic (Prevention) Act, 1956 by addressing forms of sexual exploitation that involve coercion, deception, or the abuse of vulnerability, with particular emphasis on the protection of minors. Provisions such as Sections 372<sup>13</sup> and 373<sup>14</sup> explicitly criminalize the sale and purchase of children for the purposes of prostitution, reflecting a clear legislative intent to draw a strict line between consensual adult sex work and child sexual exploitation. In addition, Sections 366A<sup>15</sup> and 366B<sup>16</sup> target the procurement

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<sup>12</sup> Valia, B. (2025). FROM MARGINALIZATION TO RECOGNITION: THE LEGAL TREATMENT OF SEX WORKERS IN INDIA. *Indian Journal of Integrated Research in Law*, V(IV), 189–191. <https://ijirl.com/wp-content/uploads/2025/07/FROM-MARGINALIZATION-TO-RECOGNITION-THE-LEGAL-TREATMENT-OF-SEX-WORKERS-IN-INDIA.pdf>

<sup>13</sup> Indian Penal Code, No. 45 of 1860, § 372 (Repealed), Read Bharatiya Nyaya Sanhita, No.45 of 2023, § 98

<sup>14</sup> Indian Penal Code, No. 45 of 1860, § 373 (Repealed), Read Bharatiya Nyaya Sanhita, No.45 of 2023, § 99

<sup>15</sup> Indian Penal Code, No. 45 of 1860, § 366A (Repealed), Read Bharatiya Nyaya Sanhita, No.45 of 2023, § 96

<sup>16</sup> Indian Penal Code, No. 45 of 1860, § 366B (Repealed), Read Bharatiya Nyaya Sanhita, No.45 of 2023, § 141

and importation of minor girls for illicit sexual purposes, while Section 370<sup>17</sup> and 370A,<sup>18</sup> introduced and expanded through subsequent amendments, provide a broader statutory framework to combat human trafficking and the sexual exploitation of trafficked persons. Collectively, these provisions form the core of India's criminal law response to forced prostitution and trafficking, seeking to penalize exploitative actors rather than those subjected to coercion.<sup>19</sup>

At the constitutional level, protections against trafficking and exploitation are firmly grounded in fundamental rights. Article 23 of the Constitution explicitly prohibits trafficking in human beings and forced labour in all forms, establishing a non-derogable guarantee against exploitation.<sup>20</sup> Article 21, which secures the right to life and personal liberty, has been expansively interpreted by the Supreme Court to encompass the right to live with dignity, bodily autonomy, and meaningful livelihood. Significantly, constitutional jurisprudence has clarified that these guarantees extend to all persons, including those engaged in sex work. In *Budhadev Karmaskar v. State of West Bengal*,<sup>21</sup> the Supreme Court unequivocally recognized that sex workers are entitled to the protection of human dignity and directed the State to develop rehabilitation, skill development, and alternative livelihood schemes, emphasizing that moral disapproval cannot justify the denial of fundamental rights.

Despite these constitutional affirmations, a persistent tension remains between rights-based judicial interpretation and the prevailing statutory framework. While courts have acknowledged the dignity, autonomy, and citizenship of sex workers in principle, existing criminal laws continue to deny them recognition as workers or rights-bearing economic agents. The continued reliance on punitive and prohibitory statutes produces doctrinal inconsistency, whereby constitutional values of dignity and equality coexist uneasily with legal regimes that render sex workers invisible, precarious, and vulnerable. This disjunction between constitutional ideals and regulatory practice underscores a fundamental incoherence in India's legal approach to sex work.

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<sup>17</sup> Indian Penal Code, No. 45 of 1860, § 370 (Repealed), Read Bharatiya Nyaya Sanhita, No.45 of 2023, § 143

<sup>18</sup> Indian Penal Code, No. 45 of 1860, § 370A (Repealed), Read Bharatiya Nyaya Sanhita, No.45 of 2023, § 144

<sup>19</sup> Badge, S. U. (2025). SEX WORK AND THE LAW: A FRAMEWORK FOR LEGAL RECOGNITION OF PROSTITUTION IN INDIA. *LawFoyer International Journal of Doctrinal Legal Research*, 3(3), 70–95. <https://doi.org/10.70183/lijdlr.2025.v03.85>

<sup>20</sup> Constitution of India, art. 23 (1950)

<sup>21</sup> *Buddhadev Karmaskar v. State of West Bengal*, 2011 (11) SCC 538 (Supreme Court of India, 2011)

Indian courts have repeatedly clarified that engaging in sex work does not take away individuals' constitutional protection. Judicial intervention has been especially important in cases where sex workers faced custody, moral policing, or were treated as criminals instead of as citizens with rights.

In *Kajal Mukesh Singh & Ors v. State of Maharashtra* (2021), the Bombay High Court addressed the misuse of the Immoral Traffic (Prevention) Act, 1956 against adult sex workers.<sup>22</sup> The petitioners, three women working in sex trade, were held in a corrective institution for nearly a year after a police raid, even though there was no final order declaring them guilty or proving they were operating a brothel or convincing others to engage in sex work. The Court stated that prostitution itself is not a crime and confirmed that an adult woman has a fundamental right to choose her career. It noted that the aim of the ITPA is not to eliminate sex workers or prostitution, but to punish sexual exploitation, commercial sex through brothels, and coercive actions.<sup>23</sup>

The Court found that lower courts acted casually by ignoring the safeguards in Section 17 of the Act.<sup>24</sup> This includes the limits on custodial detention and the need for a proper inquiry before sending people to protective homes. Importantly, the High Court ruled that adult sex workers must give consent before being placed in corrective or protective institutions, as they have the same fundamental rights as any other citizen under Part III of the Constitution. The orders by the Magistrate and the Sessions Court were cancelled, leading to the release of the petitioners.

A rights-focused approach was also taken by the Calcutta High Court in *Manoj Kumar Shaw v. State of West Bengal* (2013).<sup>25</sup> This case revealed serious issues in the criminal justice system's handling of trafficking-related crimes. The Court strongly criticized the practice of locking up minor victims of prostitution while being lenient on offenders. It held that sex workers, especially

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<sup>22</sup> *Kajal Mukesh Singh & Ors v. State of Maharashtra*, 2020 SCC OnLine Bom 954 (Bombay High Court, 2021)

<sup>23</sup> Indulia, B. (2020, September 29). Bom HC | Is there any provision under law that makes prostitution per se a criminal offence or punishes a person for indulging into prostitution? HC expounds. SCC Times. <https://www.scconline.com/blog/post/2020/09/29/bom-hc-is-there-any-provision-under-law-which-makes-prostitution-per-se-a-criminal-offence-or-punishes-a-person-for-indulging-into-prostitution-hc-expounds/>

<sup>24</sup> Immoral Traffic (Prevention) Act, No. 104 of 1956, § 17

<sup>25</sup> *Manoj Kumar Shaw & Ors vs The State of West Bengal & Ors*, WP No. 14727 (W) of 2013 (Calcutta High Court, 2013)

minors, should be treated as victims rather than criminals. The Court pointed out that placing victims in jail increased their vulnerability to threats and trauma, which indicated a troubling reversal of justice priorities.

The Calcutta High Court further highlighted the need for investigating authorities to handle prostitution cases sensitively, especially when they involve legitimate businesses like health spas. It called for accountability from the investigating officer, ordered the release of the victims, required recording their statements under Section 164 of the Code of Criminal Procedure, and provided interim compensation and rehabilitation. This ruling emphasizes the constitutional duty to protect dignity and bodily integrity, particularly in cases of exploitation.<sup>26</sup>

Judicial insistence on dignity and consent has also been affirmed in cases of sexual violence against sex workers. In *Delhi v. Pankaj Chaudhry & Ors* (2009), the Supreme Court clearly rejected the idea that a woman's sexual history or profession lessens her right to refuse consent. The Court reversed an acquittal by the Delhi High Court, stating that "no means no" applies to all women, regardless of whether they are involved in prostitution or viewed as having 'loose morals'. The Court stressed that even if a woman is used to sexual activity, no one has the right to exploit her or question her character to justify sexual violence.<sup>27</sup>

The Supreme Court's decision reinforced that sex workers deserve the same protection against sexual assault as any other woman, and that moral judgments about character do not lessen the gravity of rape. By upholding the conviction and imposing a ten-year sentence, the Court highlighted that bodily autonomy and consent are fundamental constitutional rights, regardless of social stigma. Together, these rulings show a clear judicial trend: while statutory law remains punishing and unclear, courts have consistently affirmed that sex workers maintain full constitutional rights. The legal findings respect the autonomy in choosing one's work, denounce custody without consent, and uphold the right to bodily integrity and refusal. However, these protections are still inconsistent and specific to certain cases, highlighting the necessity for a clear

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<sup>26</sup> Code of Criminal Procedure, No. 2 of 1974, § 164 (Repealed) Read Bharatiya Nagarik Suraksha Sanhita, No.122 of 2023, § 183

<sup>27</sup> *State vs Pankaj Chaudhary*, CRL. A. 813/2011 (Delhi High Court, 2011)

regulatory framework that connects statutory law with constitutional values.<sup>28</sup>

### **C. Policing Practices and De Facto Criminalization**

Even though consensual adult prostitution is not legally considered a crime, everyday policing has turned sex work into a criminal activity. Law enforcement often uses laws related to public nuisance, solicitation, loitering, or running a brothel to justify surveillance, raids, and arrests in areas known for sex work. These operations seldom focus on identifying traffickers, coercive networks, or organized exploitation. Instead, the efforts are mostly aimed at sex workers themselves, who are seen as offenders rather than individuals deserving protection. This type of enforcement creates a situation of de facto criminalization, where the experiences of sex workers closely resemble those of formally criminalized groups.<sup>29</sup> Studies and rights-based reports show consistent patterns of abuse within these policing practices. Sex workers report regular harassment, demands for money or sexual favours, physical and sexual violence, and detention without proper legal process. Raids often lead to the destruction of personal belongings, forced displacement, and public humiliation, increasing social stigma. The constant fear of police action prevents sex workers from going to law enforcement, even if they are victims of serious crimes like assault, rape, or trafficking. It also stops them from getting healthcare, carrying condoms, or seeking legal help, as these actions are often seen as proof of wrongdoing. As a result, criminalization acts not as protection against exploitation, but as a system that increases vulnerability, limits access to justice, and maintains violence and insecurity.<sup>30</sup>

## **4. Failures of the Existing Indian Framework**

### **A. Criminalisation Without Protection**

The biggest problem with India's prostitution laws is that they focus on criminalization without providing real protection. The Immoral Traffic (Prevention) Act of 1956 claims to prevent exploitation, but its enforcement mainly targets sex workers instead of traffickers or those who use

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<sup>28</sup> Mahawar, S. (2021, December 1). Judgments on rights of sex workers. Ipleaders. <https://blog.ipleaders.in/judgments-rights-sex-workers/>

<sup>29</sup> Kotiswaran, P. (2014). Beyond the allures of Criminalization: Rethinking the regulation of sex work in India. *Criminology & Criminal Justice*, 14(5), 565–579. <https://doi.org/10.1177/1748895814542533>

<sup>30</sup> Charan, J. L. (2018). Regulation of Prostitution in India a Study with Special Reference to Sonagachi, Kolkata, West Bengal. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4215594>

coercion. This shift in focus has turned the law into a tool for control instead of a means of protection. Although the courts have recognized that prostitution itself is not illegal, this has not led to real safeguards. In the case of *Buddhadev Karmaskar v. State of West Bengal*, the Supreme Court stated that sex workers deserve a life of dignity under Article 21 and highlighted the importance of rehabilitation and social integration. However, the Court did not explore whether criminalization itself harms dignity by taking away autonomy, making a living, and denying legal recognition.<sup>31</sup> The lack of actual reform after such statements shows the limitations of welfare-based judicial actions when regulatory change is absent. Criminalisation without protection creates a confusing situation where sex work is tolerated but still punished. This legal uncertainty leaves sex workers vulnerable to violence, extortion, and wrongful detention while protecting exploitative individuals from oversight.

### **B. Police Abuse, Arbitrary Enforcement, and Lack of Accountability**

One of the most documented results of the current system is systemic police abuse. Enforcement under the ITPA includes discretionary raids, forced evictions, confiscation of earnings, and detention without due process. These actions are made possible by the lack of clear regulatory standards and judicially enforceable guidelines. In *State of Maharashtra v. Mohd. Yakub*, the Supreme Court warned against broad interpretations of laws that criminalise preparatory or related acts without clear legislative intent.<sup>32</sup> Still, prostitution law continues to criminalize related activities so broadly that simply being present or associated with someone can lead to police action. This over-criminalization leads to harassment while offering little deterrence against trafficking. Research shows that sex workers rarely report abuse due to fear of retaliation, social stigma, and the threat of criminal charges. The law creates an environment of impunity, where rights violations happen under the guise of legality. The lack of accountability mechanisms deepens mistrust between sex workers and state institutions, which undercuts the goal of protection.

### **C. Health, Safety, and Structural Vulnerability**

Criminalization has led to serious public health issues. The hidden nature of sex work limits access to healthcare, HIV prevention services, and safety measures. During public health crises, like the

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<sup>31</sup> *Buddhadev Karmaskar v. State of West Bengal*, 2011 (11) SCC 538 (Supreme Court of India, 2011)

<sup>32</sup> *State of Maharashtra v. Mohd. Yakub*, AIR 1980 SUPREME COURT 1111 (Supreme Court of India, 1980)

COVID-19 pandemic, sex workers faced greater challenges because they lack legal recognition and social security. In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, the Supreme Court acknowledged that health is a key part of the right to life.<sup>33</sup> Still, excluding sex workers from public health planning shows a failure to apply this principle for marginalized groups. Criminalization creates a barrier to healthcare access, which goes against constitutional commitments. Without regulation, there are no enforceable standards for working conditions, consent protocols, or safety measures. Vulnerability is not a random occurrence; it is a result of the law.

#### **D. Conflation of Trafficking and Consensual Sex Work**

A persistent flaw in Indian prostitution law is the mixing of consensual adult sex work with trafficking. This mix weakens anti-trafficking efforts by spreading out enforcement focus and reducing resources. Scholars have pointed out that broad criminalization hides coercion instead of revealing it. In *Gaurav Jain v. Union of India*, the Supreme Court highlighted the need to protect trafficking victims and prevent sexual exploitation. However, when consensual sex workers are treated as trafficked victims against their will, rescue operations turn coercive and unproductive. Detaining individuals in protective homes without their consent violates personal freedom and reinforces stigma.<sup>34</sup> By not separating choice from coercion, the law harms both personal freedom and anti-trafficking goals. To effectively prevent trafficking, we need clear legal definitions, focused enforcement, and remedies centered on victims. None of this comes from blanket criminalization.

#### **E. Denial of Labour Rights and Economic Security**

Perhaps the biggest failure of the current framework is its refusal to recognize sex workers as workers. Without legal recognition, sex workers miss out on labour protections, social security benefits, and opportunities to formalize their work. This exclusion increases reliance on intermediaries and raises the risk of exploitation. In *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court acknowledged that livelihood is a crucial part of the right to life.

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<sup>33</sup> *Paschim Banga Khet Mazdoor Samity of Ors vs State of West Bengal & Anr*, AIR 1996 SUPREME COURT 2426 (Supreme Court of India, 1996)

<sup>34</sup> *Gaurav Jain v. Union of India & Ors*, AIR 1997 SC 3021 (Supreme Court of India, 1997)

Still, prostitution law continues to deny sex workers the legal tools needed to secure their livelihoods safely and with dignity. The conflict between constitutional law and statutory design remains unresolved.<sup>35</sup> Criminalisation thus deepens poverty instead of easing it. By blocking legal ways to organize, negotiate, and protect themselves, the law reproduces the very harms it claims to prevent.

## **5. Sex Work as Labour: Feminist, Constitutional, and Human Rights Perspectives**

### **A. Reconceptualizing Sex Work as Labour**

A key issue in India's regulation of prostitution is its ongoing refusal to see sex work as a form of labour. In practical terms, sex work involves providing services for payment, influenced by market demand, negotiation between the service provider and client, risks associated with the job, and limitations caused by informality and stigma. These traits are not exclusive to sex work. Many other sectors in the informal economy share them, including domestic work, construction, street vending, and home-based labour. However, unlike these sectors, sex work remains outside the conversation about labour laws, making its workers legally invisible.<sup>36</sup>

This invisibility does not stop exploitation or abuse. In fact, denying labour status increases vulnerability by leaving sex workers unprotected by regulations like workplace safety standards, avenues for resolving disputes, social security, and the right to collective bargaining. By failing to recognize sex work as work, the law supports exploitative practices and prevents workers from finding the means to resist coercion or abuse.<sup>37</sup>

Studies in labour law show that exploitation is worst in sectors marked by informality, stigma, and a lack of legal recognition. When work occurs outside of regulatory frameworks, the power imbalance between workers and those who manage them grows, making legal recourse nearly

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<sup>35</sup> Olga Tellis & Ors v. Bombay Municipal Corporation & Ors. Etc, AIR 1986 SUPREME COURT 180 (Supreme Court of India, 1985)

<sup>36</sup> Subramanian, R. (2018). FORMALISATION OF LABOUR: THE ECONOMICS OF PROSTITUTION IN INDIA. PEOPLE: International Journal of Social Sciences, 4(2), 288–303. <https://doi.org/10.20319/pijss.2018.42.288303>

<sup>37</sup> Vinod, M. (2019). An Account of Healthcare Policies for Prostitutes in India. IOSR Journal of Economics and Finance, 10(1), 69–74. <https://doi.org/10.9790/5933-1001016974>

impossible. Recognizing sex work as labour does not mean morally approving of it. Instead, it would allow for the establishment of basic protections, such as regulated working hours, health and safety standards, enforceable contracts, and the right to organize. This approach would help the state clearly separate consensual work from coercive practices, tackling exploitation directly without labelling all sex work as criminal.

### **B. Feminist Legal Debates: Abolition Versus Agency**

Feminist engagement with prostitution has long been characterized by deep theoretical and political divisions, reflecting broader disagreements about sexuality, labour, power, and the nature of consent. Radical feminist approaches conceptualize prostitution as an institutional expression of patriarchal domination and entrenched gender inequality. From this perspective, prostitution is not merely an individual transaction but a structural practice that commodifies women's bodies within a system shaped by economic deprivation, male sexual entitlement, and gendered power imbalances. Proponents of this view argue that consent obtained under such conditions cannot be considered meaningful or autonomous, as structural coercion constrains choice. This understanding forms the ideological foundation of abolitionist legal frameworks, which prioritize criminalization of the sex trade, rescue operations, and rehabilitative interventions aimed at removing women from prostitution rather than reforming the conditions under which it occurs.

In contrast, liberal, intersectional, and sex-positive feminist perspectives challenge the assumption that prostitution necessarily negates agency or autonomy. These scholars emphasize bodily autonomy, self-determination, and the capacity of women and transgender persons to make complex economic and personal decisions within constrained social realities. From this standpoint, abolitionist models are criticized for reproducing paternalistic attitudes that portray sex workers as passive victims incapable of choice, thereby denying them political and legal subjectivity. Critics further argue that criminalization often substitutes private forms of exploitation with coercive state intervention, exposing sex workers to surveillance, policing, and institutional violence. By forcing sex work underground, abolitionist laws increase dependence on intermediaries, reduce negotiating power, and heighten exposure to abuse, undermining the stated goal of protection.<sup>38</sup>

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<sup>38</sup> Jain, D., Rhoten, K., Jana, S., Kalantry, S., Brundige, E.-B., Gupta, R., Pradhan, M., Calabrese, C., Citro, B., Bhuyan, R., Moti, S., Dev, M., Ghosh, A., Garden-Monheit, H., Liu, B., Serrano, B., Ko, H., & Khan, R. (n.d.). SEX

Importantly, agency-based feminist frameworks do not deny the existence of exploitation, violence, or inequality within the sex industry. Rather than treating exploitation as inherent to sex work itself, these perspectives locate harm in the conditions under which the work is performed, such as unsafe environments, unequal bargaining power, social stigma, and criminalization. From this view, the primary sources of vulnerability are legal exclusion and lack of regulatory oversight, not the exchange of sexual services per se. Regulation is therefore understood as a harm-reduction strategy aimed at improving safety, autonomy, and access to justice, rather than as a moral endorsement of prostitution. By distinguishing consent from coercion and work from exploitation, agency-based approaches seek to reorient legal responses toward rights, protection, and accountability.<sup>39</sup>

### C. Dignity, Autonomy, and Constitutional Morality

Indian constitutional law has increasingly recognized dignity and autonomy as key parts of the right to life and personal freedom outlined in Article 21. In a series of important rulings, the Supreme Court has stated that bodily autonomy, the freedom to make decisions, and the ability to shape one's own choices are constitutionally protected rights, even if those choices cause moral unease or social disapproval. The Court has stressed that fundamental rights cannot depend on adherence to dominant moral views or societal pressures. Tying constitutional protection to ideas of moral respect undermines the concept of constitutional morality. This principle requires the State to serve as a counter-majoritarian body that defends individual dignity, particularly for marginalized and stigmatized groups.

In this constitutional context, the ongoing refusal to legally recognize sex workers raises serious issues. By not accepting sex work as valid labour or a protected livelihood, the State effectively denies sex workers' legal rights in their working lives. This exclusion makes them vulnerable to violence, coercion, and systemic abuse, while also denying them access to legal help, welfare benefits, and institutional support. A regulatory approach based on dignity would not aim to

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WORK AND THE LAW IN INDIA: PERSPECTIVES, VOICES, AND NARRATIVES FROM THE MARGINS.  
<https://pure.jgu.edu.in/id/eprint/2795/1/Jain2017.pdf>

<sup>39</sup> Scoular, J., & O'Neill, M. (2007). Regulating Prostitution: Social Inclusion, Responsibilisation and the Politics of Prostitution Reform. *British Journal of Criminology*, 47(5), 764–778. <https://doi.org/10.1093/bjc/azm014>

abolish sex work through moral judgment or harsh penalties. Instead, it would focus on protecting individuals involved in sex work from exploitation, giving them agency, and shielding them from violence by both the state and private individuals. This kind of approach connects constitutional values with real-life experiences, turning dignity from a theoretical idea into a tangible guarantee.<sup>40</sup>

#### **D. International and Human Rights Frameworks**

At the international level, discussions about human rights have increasingly focused on a more nuanced and rights-based view of sex work. Current international organizations clearly differentiate between consensual adult sex work and trafficking or forced sexual exploitation. Institutions like the Committee on the Elimination of Discrimination against Women (CEDAW), the United Nations Development Programme (UNDP), and the Global Commission on HIV and the Law have suggested decriminalizing consensual adult sex work to protect fundamental rights. These suggestions are based on evidence showing that criminalization makes it harder for sex workers to access healthcare, increases their risk of violence, and limits their ability to seek justice and protection.<sup>41</sup>

Research from places that have implemented decriminalized or rights-focused regulatory models backs up this shift. Studies show that legal systems based on rights and labour protections do a better job of distinguishing between coercion and consent, improving public health, and holding employers, intermediaries, and clients accountable. Granting legal status to sex work rather than pushing it underground enhances transparency and reduces exploitation. These results challenge the belief that criminalization is necessary or effective in protecting women and marginalized genders. Instead, they suggest that a dignity-based approach offers a more logical and compassionate legal solution.<sup>42</sup>

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<sup>40</sup> INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS. (2022). Ijlar.com. <https://www.ijlar.com/details/legalization-of-prostitution-a-study-for-legal-status-of-sex-workers-in-india-by-riya-rakesh-shiroya>

<sup>41</sup> FRAMEWORK ON RIGHTS OF SEX WORKERS & CEDAW. (n.d.). <https://www.iwraw-ap.org/wp-content/uploads/2018/04/Framework-on-Rights-of-Sex-Workers-CEDAW-1.pdf>

<sup>42</sup> Moll, K., Loff, A., & Snowling, M. J. (2013). Cognitive Endophenotypes of Dyslexia. *Scientific Studies of Reading*, 17(6), 385–397. <https://doi.org/10.1080/10888438.2012.736439>

## **6. Comparative Models of Regulation: Lessons for India**

### **A. Criminalisation, Abolition, and Their Limits**

Studies show that criminalization and abolitionist approaches have not succeeded in eliminating prostitution or in protecting those involved in sex work. Areas with prohibitionist or neo-abolitionist frameworks, such as Sweden, Canada, and several U.S. states, usually criminalize buyers, third parties, or facilitators while formally exempting sex workers from penalties. While these models claim to be “victim-centred,” research shows their actual effects are punitive. By focusing on demand and infrastructure rather than working conditions, such systems drive sex work into more hidden and dangerous spaces. This reliance makes workers more dependent on informal intermediaries and less able to ensure their safety. The Nordic Model has gained international recognition based on the idea that prostitution is always coercive and that reducing demand will eliminate exploitation. However, evidence from countries like Canada, France, and Sweden shows that decreased visibility has not led to less harm. In fact, criminalizing clients and third parties’ limits sex workers’ ability to screen clients, negotiate safer sexual practices, or work together. Fear of police surveillance discourages sex workers from seeking help, even when they are victims of violence. These results question the foundations of abolitionist models and show that moral judgment applied through criminal law cannot replace effective regulation or protection of rights.

### **B. Legalisation Models: Germany, Netherlands, and Nevada**

Legalisation approaches take a different stance by recognizing prostitution as a legal activity that can be regulated. These models typically use licensing, zoning, and registration to incorporate sex work into formal economic and legal systems. Germany’s Prostitution Act and the Prostitutes Protection Act acknowledge sex work as legitimate labour, allowing it to be covered by taxation, social security, and labour protections. Brothels function as licensed businesses, and sex workers can enter enforceable contracts, access healthcare, and seek legal recourse for exploitation or unpaid work. Evaluations show greater access to public services, improved financial security, and better regulatory enforcement, though critics warn that strict bureaucratic requirements and mandatory registration might create new forms of surveillance and exclusion. The Netherlands has a similar but more decentralized system; regulation is typically handled at the municipal level through licensing and designated tolerance zones. By incorporating sex work into official

governance, Dutch authorities have improved their ability to monitor trafficking networks while allowing sex workers to report abuse without fearing prosecution. Studies suggest that these regulated areas experience lower violence levels, better public health outcomes, and increased cooperation between sex workers and law enforcement.<sup>43</sup> Nevada's licensed brothel system represents a more limited form of legalization. While prostitution is illegal in much of the state, licensed brothels operate under strict rules, which include health checks, condom requirements, and zoning regulations. Public health data show that these measures have led to very low rates of sexually transmitted infections in licensed establishments. Critics argue that the model is narrow and excludes independent workers, but it still illustrates that state regulation can protect health and safety without worsening trafficking or exploitation.<sup>44</sup>

### **C. Decriminalization: The New Zealand Model**

New Zealand's Prostitution Reform Act of 2003 is seen as a leading example of a rights-based regulatory framework. Instead of relying on licensing or criminal penalties, the Act fully decriminalizes consensual adult sex work while imposing strict penalties for trafficking, coercion, violence, and sexual exploitation of minors. It recognizes sex workers as workers under labour, occupational health, and safety laws, granting them clear rights to refuse clients, negotiate terms, and seek justice for abuse or unfair treatment.<sup>45</sup> Evaluations conducted by independent government bodies and researchers indicate that decriminalization has not increased trafficking or the sex industry size. Instead, sex workers report having more negotiating power, better workplace safety, and greater willingness to engage with police and regulatory authorities. Law enforcement can focus on coercion and exploitation rather than consensual activities. New Zealand's experience directly challenges the belief that decriminalization leads to more exploitation and strongly supports that rights-based regulation can improve accountability, transparency, and worker protection.

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<sup>43</sup> Eight Working Papers/Case Studies Examining the Intersections of Sex Work Law, Policy, Rights, and Health. (2018). Opensocietyfoundations.org. <https://www.opensocietyfoundations.org/publications/eight-working-paperscase-studies-examining-intersections-sex-work-law-policy-rights-and>

<sup>44</sup> Suveda, K. (n.d.). LEGALIZING THE PROSTITUTION IN INDIA. Retrieved December 31, 2025, from <https://vidhiparivartan.co.in/wp-content/uploads/2021/06/Paper-16.pdf>

<sup>45</sup> Damyanti Kanwar Rathore, Dr. Sunita Singh Khatana. (2025). Reforming Prostitution Laws in India: A Comparative Analysis with New Zealand. *European Economic Letters (EEL)*, 15(3), 1291–1295. <https://doi.org/10.52783/eel.v15i3.3521>

#### **D. Relevance for India**

Evidence from various models shows that the success or failure of prostitution laws relies more on the regulatory framework than on moral stance. Approaches that recognize sex work as legal labour, whether through legalization or full decriminalization, are better at distinguishing consensual adult work from trafficking, enforcing minimum standards, and protecting health, safety, and dignity. On the other hand, abolitionist and criminalization-focused regimes often cause more harm by pushing sex work underground and limiting access to justice. For India, these experiences highlight the shortcomings of its current suppression-based approach and suggest the promise of regulated commercialization grounded in constitutional ideals of dignity, autonomy, and equality. Instead of adopting moral abolitionist frameworks, Indian law reform could focus on rights-based regulatory methods that aim for harm reduction, labour protection, and accountability, while maintaining strong criminal penalties against trafficking and coercion.<sup>46</sup>

### **7. Public Health, Taxation, and Economic Formalisation**

#### **A. Public Health and Occupational Safety**

Public health research has consistently shown a strong link between the criminalization of sex work and increased health risks for those involved. Criminal laws create an environment of fear and surveillance. This discourages sex workers from seeking routine medical care, getting regular health screenings, or negotiating condom use with clients. The threat of arrest or police harassment often prevents sex workers from carrying condoms, sharing experiences of violence, or seeking mental health support, which increases their health vulnerabilities. Studies from India reveal that sex workers experience high rates of HIV, sexually transmitted infections, untreated reproductive health issues, mental health trauma, and workplace injuries. These outcomes are worsened by the lack of regulatory oversight, workplace standards, and access to healthcare services. In contrast, legal regulations allow sex workers to access public health systems without coercion or punitive oversight. Regulation improves access to confidential health services, harm-reduction strategies, workplace safety standards, and insurance coverage. Evidence from places like Nevada and New

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<sup>46</sup> Rafiq, J., & Dr Geeta. (2023). *Legalisation Of Prostitution in India Through the Lens of Sdg's: An Empirical Study*. 13(3), 777–803.  
[https://www.researchgate.net/publication/369550672\\_Legalisation\\_Of\\_Prostitution\\_In\\_India\\_Through\\_The\\_Lens\\_Of\\_Sdg](https://www.researchgate.net/publication/369550672_Legalisation_Of_Prostitution_In_India_Through_The_Lens_Of_Sdg)

Zealand shows that occupational health regulation based on consent and worker participation reduces infection rates, enhances health outcomes, and encourages reporting of abuse. Importantly, these systems prove that public health goals can be met without coercive testing, criminal penalties, or moral policing.

### **B. COVID-19 and Structural Exclusion**

The COVID-19 pandemic clearly revealed the consequences of sex workers' legal invisibility. Lockdowns and mobility restrictions led to a complete loss of income for sex workers across India. Many of them rely on daily earnings. Because they lack formal recognition, many sex workers were excluded from state relief measures that required proof of employment, bank accounts, identity documentation, or registered residence. While emergency judicial actions and temporary measures provided some relief, they also highlighted the structural exclusion faced by sex workers in welfare and disaster-response efforts. This crisis highlights the wider effects of non-recognition. Without legal status, sex workers remain invisible during public emergencies, making them unreachable for coordinated humanitarian aid and undermining effective public health management. The pandemic showed that exclusionary legal frameworks not only harm sex workers but also weaken the State's ability to respond to public health crises fairly. Formal recognition is therefore essential for resilient and responsive governance.<sup>47</sup>

### **C. Taxation and Economic Integration**

Economic analyses estimate that prostitution in India is a multi-billion-dollar informal industry operating outside the formal tax and regulatory system. Criminalization ensures that this large economic activity remains hidden, with much of the income going towards bribery, extortion, and illegal intermediaries instead of public welfare or worker benefits. The lack of formal oversight also creates financial opacity, making sex workers more vulnerable to money laundering and organized exploitation. Formalization through licensing, income reporting, and taxation would help the State regulate earnings transparently, reduce illegal financial flows, and reinvest revenue into public health, rehabilitation services, education, and social security programs.<sup>48</sup> Evidence

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<sup>47</sup> Bhatt, S. (2024). Legalization of Prostitution: A Comparative Analysis Between India and Netherlands. 9, 341. <https://www.ijnrd.org/papers/IJNRD2404143.pdf>

<sup>48</sup> Sehgal, D. R. (2021, January 3). *Commercial sexual work in India: the applicability of taxation* - iPleaders. IPleaders. <https://blog.ipleaders.in/commercial-sexual-work-india-applicability-taxation/>

from areas with regulated taxation shows that such measures do not encourage more people to enter sex work or increase demand. Instead, taxation improves transparency, reduces corruption, and enhances working conditions by bringing the industry under state accountability. Treating sex work as taxable labour supports principles of economic justice, fiscal responsibility, and equality before the law, ensuring that both the State and workers have mutual obligations and benefits.

#### **D. Financial Inclusion and Collective Organisation**

Grassroots initiatives led by sex workers, such as cooperative banking, savings groups, and collective businesses, demonstrate the transformative power of financial inclusion. These models promote economic independence, decrease reliance on exploitative lenders, and strengthen community ties. However, the lack of legal recognition still limits access to formal credit, insurance, housing loans, and business opportunities. Without legal status, sex workers encounter systemic barriers to opening bank accounts, registering businesses, or accessing institutional finance. Regulatory recognition would allow sex workers to create registered unions, cooperatives, and businesses, increasing their collective bargaining power and creating safer working conditions. Legal recognition would also lessen reliance on intermediaries like pimps, landlords, and moneylenders, thereby addressing exploitation at its root. By fostering collective organization and financial inclusion, regulation can change sex work from a place of extreme vulnerability into one of negotiated autonomy and economic participation.

### **8. Trafficking, Consent, and the Limits of Criminal Law**

#### **A. Conflation of Trafficking and Sex Work**

One major problem with Indian prostitution law is the ongoing confusion between consensual adult sex work and trafficking. Laws like the Immoral Traffic (Prevention) Act, 1956, assume that prostitution is always exploitative, regardless of age, consent, or working conditions. This leads to combining very different issues, voluntary adult work, and coerced sexual exploitation, into one regulatory category. Consequently, the law focuses on stopping sex work instead of identifying and breaking down trafficking networks that depend on force, fraud, or abuse of vulnerable people. This misunderstanding weakens efforts to combat trafficking by directing resources toward raids, arrests, and moral policing instead of investigations that center on victims and prosecuting

exploiters.<sup>49</sup> Research shows that trafficking does not increase because sex work is present; it thrives because sex work is illegal and hidden. Criminalisation forces the industry into secretive and disorganized areas where oversight is limited, working conditions are unmonitored, and exploitation is hard to spot. In these settings, trafficked individuals are less likely to seek help for fear of arrest, detention, or deportation. Law enforcement often relies on sporadic raids rather than thorough, intelligence-led investigations. By suppressing consensual sex work, these conditions unintentionally allow trafficking to flourish with less accountability.<sup>50</sup>

### **B. Consent as a Legal and Constitutional Threshold**

A key flaw in Indian prostitution law is its inability to treat consent as an important legal standard. Although the Indian Penal Code and the ITPA officially criminalize trafficking, procurement, and the sexual exploitation of minors, enforcement practices often ignore consent in cases involving adult sex workers. Police actions and rescue operations usually take the stance that anyone found in sex work is a victim, leading to detaining, forced rehabilitation, or removal from workplaces without considering individual rights. While court cases have confirmed that adult sex workers have agency and cannot be detained or “rescued” against their will, these principles are applied inconsistently and are weakly enforced by police practices.<sup>51</sup> From a constitutional point of view, consent is crucial in deciding when state intervention is justified. Article 21 jurisprudence has consistently recognized bodily autonomy, privacy in decision-making, and the freedom to choose one’s job as essential to personal liberty. When criminal law ignores consent in favor of moral assumptions, it strays from this constitutional framework and may justify coercive state actions under the pretense of protection. This approach undermines individual rights and damages the credibility of anti-trafficking efforts by mixing voluntary involvement with victim status.<sup>52</sup>

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<sup>49</sup> William, amp; & Mary. (n.d.). Sex Workers and Human Rights: A Critical Analysis of Laws Regarding Sex Work. Journal of Race, Gender, and Social Justice, 23. <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1440&context=wmjowl>

<sup>50</sup> Russian Law Journal. (2025). View of A STRIDE TOWARDS NEW ERA “SEX WORK AS LABOUR.” Russianlawjournal.org. <https://russianlawjournal.org/index.php/journal/article/view/1386/761>

<sup>51</sup> Bharti, S. K. (2019). HUMAN RIGHTS OF SEX WORKERS WITH REFERENCE TO IMMORAL TRAFFIC (PREVENTION) ACT, 1956: A CRITICAL ANALYSIS. In Law College Dehradun, Uttaranchal University, Dehradun, *Journal of Emerging Technologies and Innovative Research* (Vol. 6, Issue 6, pp. 85–87) [Journal-article]. <https://www.jetir.org/papers/JETIR1906160.pdf>

<sup>52</sup> Indian Journal of Integrated Research in Law LEGALIZATION OF SEX WORK IN INDIA: A COMPREHENSIVE ANALYSIS OF LAWS RELATED TO SEX WORK. (n.d.). <https://ijirl.com/wp-content/uploads/2024/04/LEGALIZATION-OF-SEX-WORK-IN-INDIA-A-COMPREHENSIVE-ANALYSIS-OF-LAWS-RELATED-TO-SEX-WORK.pdf>

### **C. Ineffectiveness of Punitive Approaches**

Punitive methods for dealing with prostitution have repeatedly failed to break down trafficking networks or significantly reduce exploitation. Instead of weakening organized crime, criminalization has led to more corruption in enforcement agencies, normalized bribery, and pushed trafficking activities into different areas and across borders. While raids and arrests may create short-term visibility, they rarely lead to prosecuting traffickers or providing long-term support for victims. Comparative studies of criminalized versus regulated systems show that trafficking detection and prevention work better where sex workers are recognized as individuals with rights who can work with authorities. Legal recognition builds trust, improves reporting of exploitation, and helps law enforcement differentiate between consensual work and exploitation. When sex workers are seen as collaborators in enforcement rather than offenders, information gathering improves, and accountability becomes more effective. Ultimately, combating trafficking requires a shift in regulation rather than more criminalization. Clear legal distinctions between consensual adult sex work and coercive exploitation allow for targeted enforcement, protect the rights of victims, and hold traffickers accountable while respecting autonomy and dignity. Regulation, instead of suppression, offers the legal clarity needed to treat trafficking as a serious crime while protecting the freedoms of those who choose to engage in sex work.<sup>53</sup>

## **9. A Proposed Indian Model: Regulation, Licensing, and Workers' Rights**

### **A. Guiding Principles**

Any regulatory framework for sex work in India should start with a clear statement of basic principles that connect constitutional requirements with social realities. The most important of these is the need to differentiate between sex work and trafficking based on consent. This ensures that voluntary participation by adults is not merged with forced exploitation. This distinction is crucial to prevent criminal law from being misused as a means of moral oversight instead of providing actual protection. It is also vital to recognize sex work as a form of labour. This means that exchanging sexual services for payment is an economic activity that should be regulated rather than erased. Such recognition allows for the application of labour standards and welfare

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<sup>53</sup> Rai, D. (2021, July 17). Controversies surrounding the legalization of prostitution in India. IPleaders. <https://blog.ipleaders.in/controversies-surrounding-the-legalization-of-prostitution-in-india/>

protections that would not be available under criminalized systems. The framework should be based on constitutional guarantees of dignity, equality, and livelihood as outlined in Articles 14, 19, and 21. This ensures that legal protection does not rely on public approval or moral standards. A model centered on rights must focus on reducing harm and promoting public health. The emphasis should be on safety, preventing violence, and providing access to healthcare rather than punishment. Finally, it is essential to include workers in governance. Sex workers should participate in creating, implementing, and monitoring regulatory measures to ensure that the law reflects their real experiences, not abstract moral views. Together, these principles bring Indian regulation in line with constitutional values and evolving international human rights standards.

### **B. Licensing and Zoning Framework**

India should implement a licensing system that allows sex work to take place through registered businesses or licensed independent operators. Licensing should serve as a protective measure instead of a means of exclusion or monitoring. Authorities that grant licenses must verify age and informed consent, ensuring participation is voluntary while categorically excluding minors. Regulatory oversight should involve regular, non-coercive health compliance checks with informed consent, respecting privacy, and personal autonomy. Licensing must require adherence to safe working standards, including secure environments, freedom of movement, and the ability to refuse clients. The framework must clearly ban coercion, debt bondage, third-party exploitation, and child involvement, with strict penalties for violations. Zoning regulations should establish legal areas for sex work without forcing workers into isolated or punitive conditions. Spatial regulation must consider community concerns alongside workers' rights, ensuring access to healthcare, legal assistance, and police protection. Well-designed zoning promotes visibility and safety rather than marginalization, integrating sex work into urban management instead of pushing it out of view.

### **C. Labour and Social Protection**

Licensed sex workers must be included within labour and social welfare law. This should cover minimum wage standards, protection against unfair non-payment, and enforcement of health and safety standards suited to the work. Anti-discrimination protections should extend to housing, healthcare, banking, and public services, combating systemic stigma. Inclusion in social security

is vital for long-term dignity and economic stability. Sex workers should have access to health insurance, maternity benefits, pensions, and disability coverage, addressing both the physical and mental aspects of work-related risks. The law should also explicitly permit collective organization through unions, cooperatives, and worker collectives. This allows sex workers to negotiate working conditions, share resources, and collectively tackle exploitation. Legal recognition of collective bargaining changes sex workers from passive subjects of regulation into active participants with rights.

#### **D. Taxation and Economic Integration**

Formal regulation should involve taxing income from sex work as self-employment or service income, replacing informal payments and bribery with transparency and accountability. Including sex work in the tax framework not only recognizes its legitimacy as an economic activity but also strengthens fiscal governance by reducing corruption and illicit financial transactions. Revenue from taxation should be allocated to specific social goals, including accessible healthcare, voluntary rehabilitation and exit programs for those wanting to leave sex work, and improved anti-trafficking enforcement. Funds should also support education, nutrition, and welfare programs for sex workers' children, breaking cycles of intergenerational exclusion. Such allocation ensures that economic integration provides real social benefits rather than just symbolic acknowledgment.

#### **E. Anti-Trafficking Enforcement**

Criminal law must be significantly adjusted to target only trafficking, coercion, child sexual exploitation, violence, and abuse. Consensual adult sex work should not fall under punitive measures, allowing law enforcement to focus on genuine exploitation. In this context, sex workers should be seen as partners, not targets, in anti-trafficking initiatives. Legal recognition builds trust, encouraging reports of coercion, abusive intermediaries, and trafficking networks. When sex workers feel protected rather than punished, enforcement becomes driven by intelligence and centered on victims. This approach boosts accountability while aligning criminal law with constitutional values of autonomy, dignity, and justice.

## 10. Conclusion

Prostitution in India has survived through different historical periods, legal changes, and shifting moral views. This endurance shows how resilient sex work is against repeated efforts to suppress it. From pre-colonial regulation to colonial moralization and post-independence criminal control, the ongoing presence of sex work reveals the limits of legal strategies that focus on elimination instead of governance. Suppressive methods have neither ended prostitution nor protected those involved in it from harm. Criminalization has made conditions worse by pushing sex work underground, limiting access to justice, and exposing sex workers to violence, stigma, and mistreatment. It has also failed to meet its own goals: trafficking networks continue to function, exploitation persists, and promises of dignity, equality, and livelihood are not fulfilled in practice. This paper argues for a shift toward regulated commercialization through licensing, labour protections, and a focus on rights-based governance. This approach offers a clearer, constitutionally sound alternative backed by evidence. Experiences from places with regulatory or decriminalized frameworks show that when sex work is included in the law, safety improves, violence decreases, effective public health interventions emerge, and law enforcement can better identify and tackle coercion and trafficking. Importantly, these positive results happen without moral judgment or paternalistic control, demonstrating that regulation can offer protection without endorsing abuse.

Acknowledging sex work as work does not mean approving of it or ignoring exploitation. Instead, it gives the legal system the clarity and tools needed to address exploitation in its true forms, through coercion, unsafe working conditions, uneven power dynamics, and lack of legal protection. A regulatory framework based on consent, labour rights, and constitutional values shifts the law's focus from surveillance and punishment to protection and responsibility. This transformation turns sex workers from targets of moral scrutiny into holders of rights, reaffirming the State's constitutional duty to protect human dignity, autonomy, and equality for everyone.