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**CONTOURS OF DIGNITY: EXAMINING SEX WORK IN INDIA AND BEYOND**

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## I. ABSTRACT

*The public use of terms like "Veshya," "Randi," and "Fahesha" can evoke intense emotions, especially when associated with one's family, contributing to a prevalent societal disdain towards sex workers in India. Despite the historical roots of sex work in economic necessity, the lives of sex workers are marked by shame and societal hatred.*

*Our article delves into the moral intricacies of prostitution, assessing the theoretical constitutional rights of sex workers through a critical analysis of the Immoral Traffic (Prevention) Act of 1956 in Indian legislation. We explore the complexities of prostitution, evaluate the constitutional rights of sex workers, and extend our analysis to compare countries where prostitution is legal, discussing the potential benefits of legalization in India. As contributors, we actively examine the positive transformations that could arise from officially recognizing prostitution in India as a labour right, scrutinizing measures by the Indian apex court.*

*Addressing pivotal judgments on sex work, the article tries to examine the employment rights of sex workers, emphasizing the necessity to empower and protect this marginalized group. The paper contributes to a nuanced understanding of the challenges faced by sex workers, advocating for their rights in both legal and societal realms. While underscoring the resistance of societal perspectives to change, we advocate for acknowledging fundamental human rights for sex workers, providing a meaningful perspective in the ongoing discourse on this critical societal issue. The paper, in its entirety, supports the provision of labour rights for sex workers in India and emphasizes the respect due to them.*

## II. KEYWORDS:

Sex workers, Stigma, Prostitution, Labour rights, Legal rights, Constitutional rights.

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### **III. TRANSCENDING BOUNDARIES: AN INTRODUCTION**

The issues that Indian sex workers face persist despite moral judgments and social norms, pointing to a flagrant violation of their rights and dignity. The complex societal perceptions surrounding prostitution further exacerbate this already complex issue. Rather than concentrating on poetic analogies, this paper aims to investigate the harsh realities that millions of sex workers must contend with in a society that is tainted by ignorance and prejudice.

The plight of sex workers becomes a major theme as they make their way through a society that not only oppresses them but also treats them with contempt from those entrusted with justice. This discussion goes beyond focusing on any group to include a broader understanding of human conflict and the complexity of society.

This paper avoids moralistic judgments while acknowledging the horrors that occur within the industry, such as human trafficking, and the variety of reasons why people choose to work in the sex industry. When exposing the skewed societal attitudes towards morality in sex work, Emma Goldman's observation—"To the moralist, prostitution does not consist so much in the fact that the woman sells her body, but rather that she sells it out of wedlock"—becomes relevant. This demonstrates how narrow-minded a society that purports to be progressive is in trying to restrict women's physical rights. The narrative of the struggle for sex workers' rights and recognition takes place against the backdrop of discriminatory laws and traditional society. Many sex workers are in favour of equal treatment and the rights outlined in the constitution because poverty, violence, and inequality work together to create a false front. This paper imagines a society, where sex workers and privileged women are not marginalized, akin to Toba tek Singh from Manto's story, where justice and understanding are sought. A community that is characterized by compassion, empathy, and a genuine desire to understand one another's circumstances, promoting justice and fairness for all people as fellow humans.

#### IV. UNRAVELING PROSTITUTION: BEYOND STEREOTYPES AND STIGMA?

Prostitution is linked to unfavorable social perceptions, so further study in this field is required. Essentially, it is about people—women in particular—whose morality is often questioned because of what they do for a living. They are often depicted as immoral, giving the impression that they are inert goods that can be bought and sold for cash. This custom-based viewpoint fails to recognize the fundamental rights guaranteed by our constitution, which set them apart from exchangeable inanimate objects. This fact deeply and mysteriously saddens me.

A complex viewpoint is necessary to define prostitution. It can be viewed as a freely exchanged payment for people of any gender providing sex services. Given the intricacy of this line of work, we must approach this definition delicately. Unfortunately, society tends to turn a blind eye to alarming statistics. According to the National AIDS Control Organisation (NACO) Sankalak booklet<sup>2</sup>, About 9.95 lakh (9.03–10.89 lakh) female sex workers are thought to be in India; they are categorized as a high-risk group because of their susceptibility to HIV. According to reports, 1456 new cases of HIV infection among female sex workers were discovered in 2022–2023, highlighting the ongoing risk in this community.

The National Crime Records Bureau Report for 2022–21 documents over 6,000 instances of abuse, encompassing physical violence, directed at female sex workers. In the subsequent 2022–23 report<sup>3</sup>, 1,900 cases of people being trafficked specifically for prostitution and sexual exploitation were noted. The report also lists 583 cases that are still pending that involve the sale of minors for prostitution. According to the report, law enforcement efforts led to the recovery of 38 females who had been kidnapped or abducted for prostitution. In 2023, 227 cases involving prostitution in or near public areas were registered under the Immoral Traffic (Prevention) Act,

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<sup>2</sup> National Aids control organization (2023), 'SANKALAK: Status of National Aids & Std Response', (Accessed 31 December 2023), <https://naco.gov.in/sites/default/files/Sankalak%20Booklet.pdf>.

<sup>3</sup> National Crime Records Bureau, 'Crime in India 2022', (Accessed 31 December 2023), <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>.

bringing the total number of cases under this act to 2,622. These statistics collectively underscore the persistent challenges surrounding prostitution in India from a legal perspective. We intend to illuminate the intricate lives of individuals caught in the complexities of prostitution by examining the numerous layers surrounding this issue in our exploration.

## V. FACTORS LEADING TO PROSTITUTION IN INDIA

Prostitution in India is the backdrop of various complex reasons associated with social, economic, and cultural factors, contributing to the continuous supply of prostitutes in India. Some of these reasons include:

- **Gender Inequality:** In India, a woman's birth in most parts of the country is seen as a curse due to her being considered a bad investment, as money has to be invested in her education, marriage, and dowry. Consequently, poor families from various regions prefer to sell their female children to brothels and other agents to make money from them.
- **Traditional Jobs:** In some communities, it is a cultural job. For example, in the tradition of the Bankhead Tribes of M.P., flesh trading is a tradition. This community in India views the birth of women as an auspicious symbol, representing the birth of a breadwinner in the family. Women in this community often act as prostitutes, with males of the tribe acting as their agents.
- **Poverty:** Poverty is one of the factors that drive many women into the profession, as the lack of employment opportunities and education leads them to take up such a profession<sup>4</sup>.
- **Human Trafficking:** Human trafficking is closely associated with the practice of prostitution. Various researches reveal that women are forced into prostitution by various multilevel rackets each year. These rackets buy them from their families at a cheap price and then force them to repay the price at which they were bought by

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<sup>4</sup> Akwinder Kaur, [A sociological perspective on India's journey of legalizing prostitution: An illicit to a lawful activity](https://ijsra.net/sites/default/files/IJSRA-2022-0326.pdf), 8 International Journal of Science and Research Archive 182-188 (2023), <https://ijsra.net/sites/default/files/IJSRA-2022-0326.pdf>.

becoming prostitutes. This trafficking occurs at both national and international levels in India.

- **Deceit:** In some cases, individuals visit poor villages and propose to marry the daughters of the poor. Many families allow these marriages, and in various instances, these individuals sell their wives to brothels, leading them to become prostitutes. These individuals often marry multiple women after obtaining permission from their parents by promising them a better life, only to push them into a dark room where their will is violated.
- **Social Stigma Related to the Image of Prostitution and Prostitutes in Society:** Many women who are victims of deceit and human trafficking do not return to their families or villages due to the social stigma associated with their images as women who once sold their virtue. They have to consider whether they will be accepted in society as normal humans and whether their families will be happy to receive them. This often leads them to not leave the profession and stay in the same volatile environment.

## VI. PROBLEMS FACED BY SEX WORKERS IN INDIA

Sex work in India is a complex and multifaceted issue, marked by numerous challenges and hardships faced by those engaged in the profession. These individuals grapple with a range of issues, from legal ambiguities to societal stigmatization. The following outlines some of the most pressing problems that Indian sex workers deal with, highlighting how complicated their circumstances are:

- **Targeting Clients of Sex Workers:** A client seeking prostitution services is apprehended by police during raids, who then place them under arrest and file criminal charges against them. This punitive approach only serves to exacerbate the problems already faced by sex workers and them. The sex workers' livelihood is further complicated by an endless web of legal issues, in addition to the harm these police actions cause to their clients.
- **Brutality and Violence by Clients:** Prostitutes are often abused by clients who view them as nothing more than objects to be used for their benefit. Sex workers

are brutally treated by clients and pimps, who are often under the influence of drugs. This sometimes results in murders going unreported. Because sex workers are especially susceptible to violence, safety precautions are crucial. Raising awareness among sex workers, encouraging them to contact the police to report abuse incidents, offering strong support for victims, and admitting the widespread violence in their industry are all important steps towards addressing this issue comprehensively<sup>5</sup>.

- **Lack of Social Support and Rehabilitation Programs:** Rehab programs are sent to sex workers who are frequently saved by the police, but in many states, the system of support is either non-existent or not functioning properly. Women are left jobless as a result, and they are compelled to return to prostitution. These successful rehabilitation programs are essential to ending the cycle and giving sex workers who are looking for a different kind of life long-term support.
- **Dependence on Pimps:** Most women forced into prostitution become dependent on pimps who set their prices and keep a sizable amount of their earnings for themselves. These women suffer in silence because they are afraid of being attacked or treated unfairly, which prevents them from speaking out. Reducing reliance on exploitative middlemen can be achieved by giving sex workers the power to directly negotiate fair terms with clients. Because they have more control over the terms, they are less susceptible to manipulation and can guarantee improved working conditions.
- **Unwanted Pregnancies:** Prostitutes frequently struggle to convince clients to adopt safer behaviours, which results in unintended pregnancies. Their struggles are exacerbated by the need to overcome social and political barriers to abortion services. It is crucial to guarantee that sex workers have access to reproductive health services and education so they can make informed decisions about their

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<sup>5</sup> Satarupa Dasgupta, *Violence in Commercial Sex Work: A Case Study on the Impact of Violence Among Commercial Female Sex Workers in India and Strategies to Combat Violence*, 27 *Violence Against Women*, 378 (2021), <https://doi.org/10.1177/1077801220969881>.

bodies. Empowering them protects them from becoming unintentionally pregnant without their knowledge or consent and keeps them safe.

- **Risk of Sexually Transmitted Diseases:** When clients refuse to use birth control, and those who work in the sexual industry and engage in such activities run a higher risk of catching STDs. Promoting safe practices and granting access to healthcare resources are two ways to mitigate this risk, protecting the community of sex workers as well as the people who use their services. Only 74.2% of the estimated 9,95,499 people use condoms for safe sex, according to the National AIDS Control Organisation (NACO) Sankalak booklet. This means that the remaining people are vulnerable to STDs and unintended pregnancies. In addition, the report reveals that 1.85% of HIV-positive cases were prevalent in the population that was sampled. It emphasizes how crucial it is to implement programs that improve safe practices and sex workers' access to healthcare to safeguard both their clients and their well-being<sup>6</sup>.
- **Police Brutality:** People who work in the sex industry frequently come into contact with criminal activity during rescue operations, which erodes public confidence in law enforcement. Rebuilding this trust through compassionate approaches is essential for sex workers and law enforcement to have a cooperative and productive relationship. In a landmark ruling, *Karmasakar v. State of West Bengal*<sup>7</sup>, the Supreme Court emphasized that when a sex worker files a complaint, whether related to criminal, sexual, or any other offense, the police must handle it with utmost seriousness and act by the law. Moreover, the Supreme Court has mandated that law enforcement treat all prostitutes with respect and refrain from using physical or verbal abuse, using violence, or forcing them into having sex. This directive aims to ensure the safety and well-being of sex workers within the police force and the broader governance system of the country.

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<sup>6</sup> National Aids control organization (2023), 'SANKALAK: Status of National Aids & Std Response', (Accessed 31 December 2023), <https://naco.gov.in/sites/default/files/Sankalak%20Booklet.pdf>.

<sup>7</sup> *Karmasakar v. State of West Bengal*, 2022 SCC OnLine SC 704.

These problems highlight the pressing need for extensive legal, social, and healthcare reforms to protect the rights and well-being of India's sex workers.

## VII. COMPARATIVE APPROACHES: NEW ZEALAND'S SEX WORK LEGISLATION VS. INDIA'S AMBIGUOUS STANCE"

- **New Zealand**

With the passage of the Prostitution Reform Act of 2003, New Zealand's stance on sex work underwent a radical change. The act removed legal restrictions and placed a strong emphasis on the protection of human rights for individuals involved in the profession. The Act, as detailed in Sections 34–41, requires sex work business operators to possess certificates issued by any District Court's Registrar. In contrast to other countries' systems that could result in illegal operations because of a lack of licenses, New Zealand's decriminalized system guarantees that certificates will be issued after fulfilling certain requirements.

Strict disqualification requirements are outlined in Section 36, which prohibits people with specific criminal records from being eligible to hold certificates. The Act permits yearly renewal, with the potential for cancellation for operators found guilty of certain crimes. Operators who violate the confidentiality of court records about certification information face penalties. Operators are required to produce certificates upon police request, ensuring accountability.

The Prostitution Reform Act of 2003 penalizes anyone who coerces or induces someone to provide commercial sexual services, and it gives sex workers the right to withdraw their consent to provide services at any time. The Act includes a review mechanism that will be implemented in three to five years, indicating a commitment to assess its effect on the number of sex workers, evaluate support systems for those who leave the industry, and think through any necessary amendments. The Act forbids underage sex workers and imposes harsh punishments, up to seven years in prison, on anyone who helps someone under the age of eighteen provide sexual services. By excluding minors from prosecution as parties to the offense, the cautious approach demonstrates a commitment to justice.

The collaborative efforts of the New Zealand Police and sex worker organizations, including training workshops on sexual assault, exemplify a progressive engagement model. This collaboration aims to improve the safety of sex workers' working environments as part of the Act's greater objective to advance their welfare and occupational health. Apart from decriminalizing prostitution, the Prostitution Reform Act of 2003 prioritized the human rights and welfare of sex workers through comprehensive legislation. A notable shift in policy requires operators of brothels to hold a registered certificate, distinguishing it from previous practices such as the Contagious Disease Act of 1868, which was implemented by the British government in India and granted identity cards to sex workers.

Furthermore, the Act establishes health and safety standards for sex workers, as well as clients, and dispute tribunals, to handle workplace conflicts. Medical officers of the Health Ministry are authorized to inspect brothels to ensure compliance with safety and healthcare standards, with a focus on the safety of patrons and sex workers. Even so, the shadowy world of sex trafficking is still a problem because foreign victims won't be officially recognized until 2022. The commitment to addressing suspicious activities is emphasized by the reliance on laws and individuals as whistleblowers.

The population and effectiveness of law enforcement in India differ, making it difficult to draw direct comparisons. This is evident from a comparative analysis. The rights of sex workers have been neglected in India due to societal moral judgments, which have left them open to health risks, deceit, and human trafficking. As an example of a system that truly prioritizes the welfare of sex workers and the advancement of those in the industry, New Zealand's structured approach, in contrast, places a higher priority on the well-being of these individuals<sup>8</sup>.

## VIII. CONSTITUTIONAL RIGHTS OF THE SEX WORKERS

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<sup>8</sup> Ceri Warnock, Nicola Wheen, Sex Work in New Zealand: The Re-Importation of Moral Majoritarianism in Regulating a Decriminalized Industry, Canadian journal of women and the law *Revue juridique La femme et le droit*, Pg. 432, [https://www.researchgate.net/publication/265708679\\_Sex\\_Work\\_in\\_New\\_Zealand\\_The\\_Re-Importation\\_of\\_Moral\\_Majoritarianism\\_in\\_Regulating\\_a\\_Decriminalized\\_Industry](https://www.researchgate.net/publication/265708679_Sex_Work_in_New_Zealand_The_Re-Importation_of_Moral_Majoritarianism_in_Regulating_a_Decriminalized_Industry) .

The Constitution of India being a living document gives rights to the sex workers like any other citizen of India, even though in spirit whereas reality might be contrasting. But certainly, given the Constitution. They are provided some rights, such as: -

1. **Equal protection of law and Equal protection by law under article 14<sup>9</sup>of the Indian constitution of India.:** - Under this negative injunction imposed by the Constitution on the state, Sex- workers are to be granted equal protection under the law. This right allows them to be treated like every other individual of the country would be and would take care of them not being targeted and treated discriminatorily by law enforcement agencies and judiciary.

Coming to Equal protection by law, this principle would in theory ensure that sex workers are not targeted by laws or singled out by the action of law enforcement agencies by making laws which will affect them in a negative sense, being laws are made against them.

2. **Right to Freedom of Expression under Article 19(1)(a)<sup>10</sup>:** under said article, they like any other human being have the right to expression, they are free to raise their voices to represent their independent thoughts, opinions, and experiences which are relate to occupation and social issues. They have the right to discuss their stories of trauma, public discourse, and discrimination towards them. This negative injunction gives them the power to show society a mirror of the wrongs that have been committed towards them from time immemorial.

3. **The right to movement and residence under Article 19(1)(d)<sup>11</sup> :** -Under the said article the sex workers are free to have freedom of movement and residence without facing discrimination or harassment solely inflicted on them due to the nature of their work. They don't have to relocate and travel and give more money for rental houses than others just because of the nature of their work.

4. **Constitutional Safeguards: Article 21 and the Rights of Sex Workers in India<sup>12</sup>**

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<sup>9</sup> INDIA CONST. art.14.

<sup>10</sup> INDIA CONST. art. 19(a).

<sup>11</sup> INDIA CONST. art. 19(d).

<sup>12</sup> INDIA CONST. art. 21.

Article 21 of the Constitution of India encompasses a myriad of human rights that are unequivocally conferred upon sex workers. As citizens of India, these individuals are entitled to the protection and fulfillment of these rights, as mandated by the constitutional framework. Such as: -

**4.1 Right to life: -** Under this right, they have the right to live and this has a very large scope. Keeping in mind the Judgement of the Honourable Supreme Court in *Kharak Singh v. State of Uttar Pradesh*<sup>13</sup>, the Right to life does not mean mere animal existence. Keeping this in mind, sex workers are free to lead a life that is free of violence, exploitation, and abuse. Moreover, their dignity and security are ensured.

**4.2 Right to Personal Liberty: -** Under this right sex workers have the right over their bodies not just in a theoretical sense but in spirit. They have the right to make decisions concerning their body, sexuality, and profession. By this right, they can't be forced to take part in a profession or coerced to take part in prostitution.

**4.3 Right to Privacy: -** Under this right, they have the right to privacy, they can't be photographed or filmed without their consent or exposed to the masses because of their occupation. They possess the right to privacy, which extends to every facet of their lives, encompassing their homes, workplaces, and personal relationships. Consequently, their image cannot be tarnished through the infringement of this right, safeguarding them from unwarranted violations of their privacy.

Honourable Supreme Court in the case of *State of Maharashtra vs Madhukar Narain Madhikar*<sup>14</sup> court here ruled that "even a woman with easy virtue is entitled to privacy and no one can invade her privacy as and when he likes." So, the court admitted that as human beings sex workers are entitled to get equal protection under the law.

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<sup>13</sup> Kharak Singh v. State of Uttar Pradesh, AIR 1964 SCR (1) 332.

<sup>14</sup> State of Maharashtra v. Madhukar Narain Madhikar, AIR 1991 SC 207.

**4.4 Right to live with dignity:** - Prostitutes have the right to be treated with dignity and respect and under this right they should lead a life free of discrimination, and stigmatization from the people who are surrounding them due to the nature of their work. Freeing them and helping them lead a dignified life challenging society's bias and promoting cultural acceptance for them as humans is one of the rights enshrined by the constitution under this right.

Supreme court in the case of *Karmaskar vs State of West Bengal*<sup>15</sup> held that “Sex workers or prostitutes have the right to live with dignity under article 21 of the Indian Constitution.”

**4.5 The Right to practice any profession or occupation:** - By border interpretation of the right to life we have freedom of practice of any profession. This allows sex workers who have by their consent engaged in the profession and looking up to it as a means of livelihood to continue doing the same without facing any restriction and interference from the government and law agencies.

5. **Right against exploitation under article 23**<sup>16</sup> :- This right as it sounds protects sex workers from being forced labourers of the brothels and pimps, they work for. Furthermore, it allows them to be protected against human trafficking for sexual exploitation and forces them to join the profession against their will. The state under this article must make laws that would safely guard against exploitation of the sex workers like violence, overtime hours without their consent, and underpayment of wagers by the pimps and brothels. Moreover, the government under this article is supposed to rehabilitate and integrate them into society allow them to have access to education, and provide them with training which will help them to lead a new life.

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<sup>15</sup> Karmasakar v. State of West Bengal, 2022 SCC OnLine SC 704.

<sup>16</sup> INDIA CONST. art. 23.

## IX. PROVISIONS OF THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956: SAFEGUARDING SEX WORKERS AND ADDRESSING EXPLOITATION

Immoral Traffic (Prevention) Act, 1956 is the governing legislation of the country that deals with Prostitution. The object of the act does not deal with the criminalization of the Prostitution. The prima facie object of the act is to protect sex workers from the exploitation faced by them from brothels and pimps. So, keeping that in mind act renders commercialization to be punishable instead of prostitution as a profession<sup>17</sup>. Moreover, the act presents itself on gender natural scope as it includes both male and female sex works.

High Court of State of Gujarat in the case of **Shanta vs State**<sup>18</sup> clarified that the act does not aim to abolish prostitution or to punish a woman simply because of being a prostitute rather it aims at making commercialized vice a criminal offence.

1. **Section 3 of the Immoral Traffic (Prevention) Act**<sup>19</sup>, provides that commercialization of prostitution is punishable by rendering brothels and allowing usage of premises as brothels as punishable with rigorous imprisonment. Moreover, punishments are increased after successive commission of crime to ensure that brothels are not practiced over time.
2. **Section 5 of the Immoral Traffic (Prevention) Act**<sup>20</sup>, of the act, deals with the offense of procuring, inducing, or taking a person for prostitution. The main aim of this section is to address the issue of human trafficking and exploitation which is faced by many women who are made to enter this profession by being sold off by either their family or by deceit to brothels or pimps for becoming prostitutes.

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<sup>17</sup> Geetanjali Misra, Ajay Mahal, Rima Shah, *Protecting the rights of sex workers: The Indian experience, Health and Human Rights*, *Health Hum Rights*, Vol. 5, Issue No. 1, (2000), <https://pubmed.ncbi.nlm.nih.gov/11154525/#:~:text=An%20alternative%20paradigm%2C%20which%20revolves,of%20sex%20workers%20in%20India> .

<sup>18</sup> Bai Shanta v. State of Gujarat, AIR 1967 Guj 211.

<sup>19</sup>Immoral Traffic (Prevention) Act, 1956, § 3.

<sup>20</sup>Immoral Traffic (Prevention) Act, 1956, § 5.

3. **Section 6 of the Immoral Traffic (Prevention) Act**<sup>21</sup>, Detaining a person on premises where prostitution is carried on: - This provision aims to protect people who are detained in places without their consent where prostitution has been carried out. By doing such an act they are generally forced into prostitution by the detainer. Through this section, legislation is depriving people of their freedom and autonomy by punishing the detainer for keeping them in without their consent in the premises by forcing them into prostitution.
4. **Section 7 of the Immoral Traffic (Prevention) Act**<sup>22</sup>, Prostitution in or in the vicinity of public places: - Under this section any person who carries out the activity of prostitution in public places which is not properly defined in the act is punished with imprisonment of 3 months.

Under this section, police have been given a wide variety of powers relating to investigation, search, seizure, and powers relating to arrest which if not used carefully will be tools in the hands of the officers to make the lives of sex workers miserable.

5. **Section 8 of the Immoral Traffic (Prevention) Act**<sup>23</sup>, Seducing or soliciting for prostitution. Under this section

Terms of solicitation and seduction are very vague and are kept open to interpretation which makes them liable to be misused. Moreover, this section provides for criminalization of the sex workers and infringes on their business and smooth operation of the same. In all its finality this section targets the sex workers who might be independent by making seduction and solicitation a punishable offence.

6. **Section 10 of the Immoral Traffic (Prevention) Act**<sup>24</sup>, Detention in a Corrective Institution: - Whenever a woman is found guilty of an offense under section 7 and section 8 of the act she is sent to a corrective institution for rehabilitation,

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<sup>21</sup>Immoral Traffic (Prevention) Act, 1956. § 6.

<sup>22</sup>Immoral Traffic (Prevention) Act, 1956. § 7.

<sup>23</sup>Immoral Traffic (Prevention) Act, 1956, § 8.

<sup>24</sup>Immoral Traffic (Prevention) Act, 1956, § 10.

and correction. Under these institutes, educational and vocational training is provided to women so that they can lead a life away from prostitution. This has to be seen as a rehabilitative measure rather than being solely punitive and the objective prima facie seems to protect the sex workers who were forced into the profession.

7. **Section 20 of the Immoral Traffic (Prevention) Act**<sup>25</sup>, Removal of a prostitute from any place: - Section 20, of the act, gives the magistrate power to remove a prostitute residing in his jurisdiction and evict her from the place in the interest of the larger public and if a person violates the order issued by the honourable magistrate, they should be liable to pay fine. Under this section, the woman can be displaced how many times needed and she is liable to prove that she is not a prostitute.

## X. CRITIQUE OF IMMORAL TRAFFIC (PREVENTION) ACT, 1956

While, the Prima facie Act Immoral Traffic (Prevention) Act, 1956, presents itself as a law whose object is not the criminalization of Prostitution, but instead commercialization of the prostitution as an activity<sup>26</sup>. So, in the ideal form of this act, sex workers should not be targeted. But, after seeing some of the sections of the act we can draw an inference that the act is tainted by a moralistic attitude that aims to protect public decency and is basically by various section is not aimed at making the lives of the sex workers easier but is acting as a wolf in sheep's clothing by doing a moral clean-up of the site while presenting itself as worker-centric law.

The attitude of the judges also shows contrary to, in some cases, it can be seen that while in a case where one of the parties is going on the moralistic judges of the country would start to discuss the evils that prostitution possesses and would call for the abolishment of the practice. An example of the same is *Vishal Jeet vs Union of India*<sup>27</sup>, where the Honourable court called prostitution a "Running sore on the

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<sup>25</sup>Immoral Traffic (Prevention) Act, 1956, § 20.

<sup>26</sup> AMAAN AHMED, *Critical Analysis of The Immoral Traffic (Prevention) Act, 1986*, JLSR, Vol. 5, Issue No.1, (Feb,2019), <https://thelawbrigade.com/wp-content/uploads/2019/05/Amaan-Ahmed.pdf> .

<sup>27</sup> Vishal Jeet v. Union of India, AIR 1990 SCR (2) 861.

body of the civilization and destroys all moral values and calls for appropriate action to eradicate this evil". The judgment is not only a description of the will and thoughts of the justice system but also reflects the mindset of the society we live in. Some of the judgements put us to shame by posing sex workers as a woman of less virtue, which correlates to the fact a woman is not human if what she does is not up to the moral standards of the society, we live in.

Furthermore, we can confirm the same from various sections of the act which is government legislation on prostitution in the country is against sex workers on multiple fronts. Such as:

1. **Section 8 of the Immoral Traffic (Prevention) Act<sup>28</sup>, Seducing or soliciting for prostitution:** - The act that aims to not target sex workers specifically does so by interfering with their work, by criminalizing the act of solicitation. Moreover, the act presents itself as gender-neutral in spirit while for the same offense, the punishment given to men is less than what is given to women. Besides, this section of the act paves the way for the harassment of sex workers, instead of the people who are involved in the commercialization of the activity. Moreover, pimps and brothel owners have the scope to just pay bribes to the police officers and instead get the sex workers arrested while they will be mostly left untouched. This makes women who might not be soliciting themselves a comfortable target or replacement, who will get engulfed in the fire just because she was a mere bystander while it was burning. This section paves a way to treat them like criminals along with pimps and brothel owners.
2. **Section 10 of the Immoral Traffic (Prevention) Act<sup>29</sup>, Detention in a corrective institution:** The act continues to show its intention by treating the women who are arrested under sections 7 and 8 of the acts as criminals who have done something wrong, and as a result, they have to go through corrective institutions and go through reforms. Moreover, the court has given discretion to the judges who are supposed to do moral policing of the sex workers by

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<sup>28</sup>Immoral Traffic (Prevention) Act, 1956, § 8.

<sup>29</sup>Immoral Traffic (Prevention) Act, 1956, §10.

analyzing their character, state of health, and mental condition to dwell upon a decision that instead of prison she should be sent to a corrective institution. In finality, now assuming a completely reformed woman who is up to the standards of morality and is ready to join society is supposed to again prove the fact that she is up to standards and will be leading a life useful and up to society's standards, then finally she will achieve her freedom.

3. **Section 17 of the Immoral Traffic (Prevention) Act<sup>30</sup>, Intermediate custody of Person:-** Procedures for the intermediate custody of persons removed or rescued under Sections 15 and 16 are outlined in Section 17 of the Immoral Traffic (Prevention) Act. The closest magistrate has the power to issue an order for safe custody if the presenting officer is unable to bring the individual before the relevant magistrate right away. A follow-up inquiry evaluates the veracity of the data, the age, the disposition, and the appropriateness of the parents or guardians. Children may be placed in recognized institutions. If care and protection are needed, the magistrate has the power to order incarceration in a protective home. Custodial requirements include limitations on religious freedom, and appropriate care may necessitate a bond. Section 17A emphasizes the magistrate's duty to verify parents' capacity before entrusting rescued individuals to their care, with a particular emphasis on rehabilitation and well-being. A procedure for appeals is also established.

There are, however, problems with Section 17. The provision allowing for a person to be detained for up to ten days before being brought before the appropriate magistrate may be construed as being excessive, endangering the right to a speedy trial. Subjective judgments are more likely when the standards used to decide whether parents or guardians are appropriate are vague. It's possible that the allotted three weeks of custody during the investigation won't be sufficient to perform an exhaustive assessment. While the emphasis on protective custody is crucial, the section would benefit from a clearer definition

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<sup>30</sup> Immoral Traffic (Prevention) Act, 1956, §17.

of rehabilitation measures for the long-term well-being and integration of individuals into society.

One effort to solve these issues is the 2007 launch of the Ujjawala scheme. Its goals are to stop human trafficking and help victims get back on their feet by giving them access to basic amenities, education, and job training. However, information about the scheme is still unknown. Moreover, the "THE SEX WORKERS (WELFARE AND REHABILITATION) BILL, 2016" is a proposed law that is presently pending rather than an act. Moreover, In the recent case of **Budhadev Karmaskar v. State of West Bengal & Ors**,<sup>31</sup> the court held that "woman is compelled to indulge in [sex work] not for pleasure but because of abject poverty. If such a woman is granted an opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body."

Given the circumstances and difficulties experienced by sex workers, it emphasizes how important vocational training is. With the help of this training, they will be able to support themselves and build a respectable life without the help of pimps or other outside forces that might drag them back into the cycle.

4. **Section 20 of the Immoral Traffic (Prevention) Act<sup>32</sup>, Removal of a prostitute from any place:** - I wish author Saadat Hasan Manto was still alive and could have had a chance to read this piece of legislation. Because section 20 of the feels like legislation targeting sex- workers specifically. She is now compelled to demonstrate that she is not engaged in sex work, as failure to do so could result in her eviction from her residence, akin to swiftly removing a troublesome presence like a mouse from one's home. This parallels the paradox within our ostensibly moralistic society, where we assert that such measures are not punitive. However, this particular provision reveals a groundbreaking contradiction, underscoring our collective inclination to avoid confronting uncomfortable truths. In this context, fundamental rights guaranteed under

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<sup>31</sup> Karmasakar v. State of West Bengal, 2022 SCC OnLine SC 704.

<sup>32</sup> Immoral Traffic (Prevention) Act, 1956, § 20.

Article 19, about freedom of movement, and Article 14, ensuring equality before the law, seem to be eclipsed, as her profession is deemed a threat to the moral standards cherished by society, albeit not in spirit. The object of the act feels like empty words that were written to fulfil the requirements of the convention.

5. **Section 4 of the Immoral Traffic (Prevention) Act<sup>33</sup>, Punishment for living on the earnings of prostitution:**

(a) to be living with, or to be habitually in the company of, a prostitute it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1) This highlights that the scope of the act goes beyond targeting just the commercialization of prostitution; it also incriminates the sex workers themselves for their consensual participation. Subsection 2(a) of the act is particularly concerning, as it implies that merely cohabiting with a person engaged in sex work requires providing evidence of not financially benefiting from their profession. Failing to do so could lead to legal repercussions, essentially dehumanizing sex workers.

Additionally, the act lacks a clear definition of trafficking, creating ambiguity for law enforcement and potentially leaving room for the exploitation of sex workers. Furthermore, the act often conflates the terms "trafficking" and "prostitution," which may not always be appropriate or necessary.

## XI. LIST OF IMPORTANT JUDGMENTS RELATED TO PROSTITUTION

**Some of the important judgments are already laid out so they will be excluded: -**

1. *Karmasakar vs State of West Bengal*<sup>34</sup>: **The court** in this case has done commendable work it has finally acknowledged the various evil acts our society as well as the law enforcement system possess towards sex workers. Court in this case has clarified that in cases where sex workers have consent

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<sup>33</sup> Immoral Traffic (Prevention) Act, 1956, § 4.

<sup>34</sup> *Karmasakar v. State of West Bengal*, 2022 SCC OnLine SC 704.

police should refrain from interfering or taking criminal action against them. Moreover, the court has recognized the instances of police brutality and attitudes towards sex workers. Supreme Court has given a strong warning to police to keep in mind sex workers also have human rights. Moreover, the court has clarified that sex workers who are victims of sexual assaults should be provided with all the medical assistance granted to a normal survivor. In its finality, the court has called for Sex workers not to be arrested, penalized, or harassed by conducting raids by police. The Court in this case acknowledges the evils and inhumane acts the society poses towards sex workers and sends a message that the same won't be tolerated.

2. *State of Maharashtra vs Madhukar Narain Madhikar*<sup>35</sup> court here ruled that “even a woman with easy virtue is entitled to privacy and no one can invade her privacy as and when he likes.” So, the court admitted that as human beings sex workers are entitled to equal protection of the law.
3. *Gaurav Jain vs Union of India (1997)*<sup>36</sup>: The court, in this case, acknowledged the fact that society is responsible for the suffering of sex workers and it is responsible for eliminating women trafficking and the rescue of the victims of the same. The court also gave guidelines for the re-establishment and rescue of prostitutes and their children:

The Court stated women involved in prostitution are not offenders but shall be seen as victims of unfavourable socio-economic conditions. The court emphasized providing these women with economic independence through self-employment and vocational training. The court directed the setting up of juvenile homes for the children of sex workers to provide them with rehabilitation and safety. The court directed the composition of the committee to study the issue and make schemes for the upliftment of the victims.

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<sup>35</sup> State of Maharashtra v. Madhukar Narain Madhikar, AIR 1991 SC 207.

<sup>36</sup> Gaurav Jain v. Union of India, AIR 1990 Supp SCC 709.

4. **State of Uttar Pradesh v. Kaushalya (1964)**<sup>37</sup>: The court in this case held the Immoral Traffic (Prevention) Act, 1956 as constitutionally valid and in line with the objectives it was framed for.

Criteria are made under section 20 of the held the Immoral Traffic (Prevention) Act, 1956, The magistrate is now required to consider questions such as: -

(1) Whether she is a prostitute?

(2) Whether it is in the interest of the general public to remove her from the place of her residence.

5. **Kajal Mukesh Singh and Ors v. State of Maharashtra (2019)**<sup>38</sup> :- High Court in these cases held that Prostitution cannot be regarded as a criminal offense or does not punish a person because she indulges in prostitution under the Immoral Traffic (Prevention) Act, 1956. Instead, what is punishable under the act is sexual exploitation or abuse of a person for commercial purposes to obtain monetary gain from the same.
6. **Sahyog Mahila Mandal vs State of Gujarat**<sup>39</sup>:- The Supreme Court in this case advocated for better lives of sex workers. The court also directed central and state governments to prepare policies for the rehabilitation of physically and sexually abused women across the country.
7. **XYZ vs State of Maharashtra**<sup>40</sup>: - Sessions court of Bombay here clarified that sex work is not an offense while the commission of same in a public place might be considered as an offense. Moreover, the court here ruled that the detention of a sex worker for no reason would infringe on fundamental rights granted under Article 19 of the Indian Constitution.

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<sup>37</sup> State of Uttar Pradesh v. Kaushalya, AIR 1964 SC 416.

<sup>38</sup> Kajal Mukesh Singh and Ors v. State of Maharashtra, Criminal Writ Petition no. 6065 of 2019, (B.H.C Sep.24,2022).

<sup>39</sup> Sahyog Mahila Mandal v. State of Gujarat, (2004) 2 GLR 1764.

<sup>40</sup> XYZ v. State of Maharashtra, 2019 SCC ONLINE BOM 237.

## **XII. SUPREME COURT OF INDIA'S PROGRESSIVE INITIATIVES: COMBATING GENDER STEREOTYPES AND REDEFINING LANGUAGE**

In a groundbreaking move, the 50th and current Chief Justice of India, Dhananjaya Yeshwant Chandrachud, has spearheaded a significant transformation within the Indian judiciary. Recognizing the evolving societal landscape and acknowledging the stigma surrounding various issues, the Supreme Court of India has taken a proactive stance by releasing a handbook aimed at combating gender stereotypes.

The handbook, a testament to the judiciary's commitment to inclusivity and sensitivity, addresses long-standing stereotypes associated with professions such as prostitution. The language used in legal discourse has been overhauled to eliminate outdated and stigmatizing terms. Notably, the shift from conventional terms like "Child prostitute" to the more respectful and inclusive "child who has been trafficked" marks a commendable departure from perpetuating harmful stereotypes. A key focus of the initiative is the destigmatization of sex work. Words such as "hooker" have been replaced by the neutral, non-gender-specific term "sex worker." By emphasizing the diversity within the sector and reiterating that people of any gender can work in the sex industry, this linguistic change challenges stereotypes.

What's more, the term "prostitute" has been replaced with "sex worker," which affords dignity to those who labor in this industry. The derogatory word "whore" has been abandoned in favour of just "women." Firstly, the judiciary has avoided using terms that are disparaging, such as "easy virtue," "woman of loose morals," "promiscuous woman," and "wanton woman," and instead has adopted the more courteous term "women." Character certificates for the women involved in these cases will no longer be granted as a result of this action, allowing the outcome of the legal proceedings to be the only focus. The handbook also addresses regressive stereotypes about consent and sexual history. The document states that the morality or character of a woman should not be considered in criminal proceedings. It does this by emphasizing that a woman's past sexual history does not define her, protecting women – including those who may have engaged in sex work – from harm.

More work needs to be done, even though the Supreme Court deserves recognition for its commendable efforts to challenge gender stereotypes. Judge sensitization programmes and general de-stigmatisation campaigns are essential. Even though there is still more to be done to eliminate prejudice in society, the Supreme Court's handbook is a positive start and points the path towards a more inclusive and equitable future.

### **XIII. RECOGNIZING SEX WORK AS A LEGITIMATE PROFESSION: A COMPREHENSIVE PERSPECTIVE**

In the case of *Karmasakar vs. the State of West Bengal*<sup>41</sup>, the Supreme Court of India has officially recognized the sex industry as a legitimate career path. This important legal recognition is taken into consideration when examining the Immoral Traffic (Prevention) Act of 1956, which aims to prevent the commercialization of sex work, including the operation of brothels and the profiteering from prostitution. In an attempt to halt this commercialization, the government has granted sex work a precarious legal status, leaving prostitution in a grey area between legal and illegal. This deliberate legal positioning has unintentionally sustained illegal activities such as human trafficking, violence against sex workers, and harassment by law enforcement, driving sex work underground.

There's a good chance that these complex issues will be resolved. As long as they don't jeopardize society's moral principles and security, decriminalizing prostitution and formally acknowledging sex work as a legitimate profession are the first steps toward a solution. Recognizing sex workers as a legitimate profession would help them overcome the marginalization they currently experience. They would then fall outside the purview of the criminal justice system and be classified as victims of a long-standing institution rather than wilful wrongdoers, making them eligible for labour rights and protections.

Above all, it is critical to understand that sex workers perform a type of labour for which they frequently provide the majority of their family's income. They are the main

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<sup>41</sup> *Karmasakar v. State of West Bengal*, 2022 SCC OnLine SC 704.

breadwinners in many Indian households, becoming financially independent through their work. Therefore, the real problem is not the sex workers themselves, but rather the people who take advantage of and control them, such as fraudsters, human traffickers, and brothel owners. It is these dishonest actors who should be held accountable for their actions, not those who have freely chosen to live off of sex work, following the Universal Declaration of Human Rights (UDHR), which states that "everyone has the right to work and free choice of employment," respecting the autonomy of sex workers is imperative.

An essential first step in safeguarding sex workers and enhancing their working conditions is the official acknowledgment of sex work as a legitimate profession. If sex workers had access to labour laws and legal rights, they wouldn't have to put up with abusive working conditions. Labour and civil law would be used to address their concerns and voices, rather than the criminal justice system. Furthermore, India could benefit from adopting a model akin to New Zealand's, which enforces strict laws on brothels and pimps involved in human trafficking.

**Recognizing sex workers as labourers would bestow upon them several critical rights, including:**

- **Entitlement to Legal Protection:** Sex work is subject to labour and civil laws when it is recognized as a legitimate form of employment. As a result, sex workers would be more likely to ask for help without worrying about being unfairly criminalized.
- **Right to Work with Free Choice of Employment:** Sex workers would no longer be required to work in specific locations, and those who did so would be subject to legal consequences.
- **De-stigmatization:** The stigma associated with sex work will gradually fade when attention is turned from illegal activity to legal labour, which will lessen the discrimination faced by those who choose to partake in it.

- **Standardization of Workplace and Work Environment:** If sex workers were legally recognized as labourers, they would be entitled to a secure workplace free from physical abuse by clients, brothel owners, or pimps. Regulations could also be put in place to prevent the spread of STDs.
- **Freedom to Organize and Unionize:** If sex workers were recognized as legal workers, they would have the freedom to form unions, defend their rights, and voice their concerns to the public.

In conclusion, resolving issues related to the commercialization of sex work and significantly enhancing the rights and dignity of sex workers could result from the recognition of sex work as a profession. It would not only be a legal tweak; it would also be a revolutionary one. This comprehensive approach seeks to build a more equitable and just society by defending the rights of sex workers and improving their working conditions.

#### **XIV. CONCLUSION**

Our exploration of the nuanced facets of prostitution emphasizes the importance of a comprehensive understanding that transcends limited moral frameworks. It is crucial to protect people's constitutional rights to bodily autonomy because consenting parties in intimate relationships do not always break the law. Sex workers who engage in prostitution are subjected to unwarranted stigma; they are often dismissed as a historical phenomenon meeting a hidden market need. This stigma will persist unless interactions are voluntary, devoid of coercion or dishonesty – a rare occurrence in the complex reality of sex work.

Prostitutes face more challenges due to widespread cultural beliefs that link a woman's worth to her perceived morality. The lives of those who work in the sex industry run the risk of being marginalized, dehumanised, and erased in discussions that prioritize virtue over the general well-being of women.

Moral evaluations are significant, but they shouldn't be the only factor used to justify legal prohibitions. Legal condemnation must adhere to accepted moral standards and take into consideration the social norms that are currently in place.

The verdict from the Delhi High Court underscores the objectivity required in legal judgments, emphasizing that “The criminality in a case cannot depend upon appraisal by a judge of morality according to him. The objectivity of the judges is the key to the fairness of justice and the decisions have to be objectively determined according to the law of the land and not by moral principles of the judge concerned. Even if it is demonstrated convincingly that an act may be socially undesirable, this Court does not find it its business to say so, unless it has caused harm or has an element of criminality<sup>42</sup>”.

For us to justify our conclusion, we require detailed recommendations for new laws and regulations. Not merely a legal tweak, but a revolutionary step towards a more egalitarian society is acknowledging sex work as a profession. Judges' erroneous opinions must give way to pro-sex industry opinions and guarantee constitutional recourse for sex workers.

When we envision a society where the needs and goals of sex workers are recognized and they are treated as fellow humans, we recognize that this utopia will never materialize unless society's flaws are addressed as a whole. Action must be taken to defend the rights and dignity of sex workers as vital members of the human race, to alter laws and attitudes, and to foster compassion.

In the context of rehabilitation, it is also imperative that current practices be modified. It is a better idea to give sex workers houses that double as rehabilitation facilities rather than imprisoning them. These homes should prioritize teaching residents the new skills they will need to successfully reintegrate back into society. We can put an end to the cycle of exploitation and provide sex workers with the skills they need to lead more secure and fulfilling lives by offering them educational and vocational training. This approach not only deals with the root causes of prostitution but also breaks the cycle and creates the conditions for long-term recovery and reintegration into society.

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<sup>42</sup> S. Rajadurai v. State (NCT of Delhi), 2023 SCC OnLine Del 5919.