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SEX WORK AND THE LAW: A FRAMEWORK FOR LEGAL RECOGNITION OF PROSTITUTION IN INDIA

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I. ABSTRACT

"Prostitution, recognised as one of the world's oldest professions, has undergone complex legal and social transformations." Courtesans in ancient India were a regulated profession, as mentioned in texts such as the Kautilya Arthashastra and Vatsyayana, Kamasutra. However, colonial morality criminalised them, and the change in the profession was based on stigma rather than law. Today, the situation has been discriminated against in India because the Immoral Traffic (Prevention) Act, 1956 (Act No. 104 of 1956) has given partial criminalisation to sex work, hence, maltreatment by the police, lack of healthcare services, and institutional neglect. Sex workers play significant roles in the informal economy, but are denied an identity document, franchise, ration cards, shelter, and medical care, which further marginalises their community generationally. It is also a comparative law study of two of the largest international precedents: the New Zealand Prostitution Reform Act 2003, which completely decriminalises sex work and treats it as labour, and the German regulatory approach incorporates sex work into the formal economy by requiring licensing, taxation, and compliance with health regulations. Such models can provide useful guidance in crafting an Indian framework of law that values both the liberty of individuals and the health priorities of the population. In Budhadev Karmakar v. State of West Bengal (2022), the Supreme Court upheld the right to dignity of sex workers under Article 21. Likewise, the case Canada v. Bedford (2013) condemned statutes that posed a threat to the security of sex workers. With the legal maxim Fiat justitia ruat caelum-let justice be done though the heavens fall - legal reform should focus on human dignity, the health of the population and participatory democracy, and sex work should therefore be a question concerning justice and not morality.

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II. KEYWORDS

Article 21; Budhadev Karmakar v. State of West Bengal; Decriminalisation; German regulatory approach; ITPA 1956; New Zealand Prostitution Reform Act 2003; Sex workers' rights.

III. INTRODUCTION

Prostitution is as ancient as civilisation. The financial statement of these words, repeated ad infinitum in legal and scholarly circles, is a profound historical reality: sex work is not a recent phenomenon but has existed as far back as human history goes, a product of economy, politics, culture, and society. Courtesans such as the Ganika existed in ancient India and enjoyed considerable social status, being frequently praised for their intelligence, skill, and tact.²

Kamasutra and the *Arthashastra* did not view sex work as taboo; rather, they viewed it as a dignified and organised vocation.³ But in ironic contrast, the contemporary legal systems, particularly the post-colonial Indian legal system, not only criminalise this very same profession but also stigmatise it. The awkwardness between past acceptance and the present criminalisation necessarily lends credence to the fact that there is a dire need to change the laws based on justice and rights.

Traditionally, sex work was not necessarily considered a shameful issue. In ⁴In Mesopotamia, the religion was associated with sacred prostitution. *Hetairai* were very well-educated and influential courtesans in ancient Greek society.⁵ Kautilya *Arthashastra* in the Mauryan era of India stated taxes on prostitutes, use by the states to act as spies and the existence of state-regulated brothels.⁶ *Kamasutra* even taught

² Sukumar Dutt, *Buddhist Monks and Monasteries of India* (George Allen and Unwin 1962) 87-92 https://archive.org/details/buddhistmonksandmonasteriesofindiatheirhistorycontributiontoindianculturesukumardutt_202002/page/n87/mode/1up.

³ Sanjay K Gautam, 'The Courtesan and the Birth of "Ars Erotica" in the "Kāmasūtra": A History of Erotics in the Wake of Foucault' (2014) 23(1) *Journal of the History of Sexuality* 1 <http://www.jstor.org/stable/24616647>.

⁴ Gerda Lerner, 'The Origin of Prostitution in Ancient Mesopotamia' (1986) 11(2) *Signs* 236 <http://www.jstor.org/stable/3174047>.

⁵ James Davidson, *Courtesans and Fishcakes* (HarperCollins 1997) <https://eclass.uoa.gr/modules/document/file.php/PHIL959/DAVIDSON%20Courtesans.pdf>.

⁶ Kautilya, *Arthashastra*, ch 27 'The Superintendent of Prostitutes' <https://www.wisdomlib.org/hinduism/book/kautilya-arthashastra/d/doc366073.html>.

how to practice emotional intelligence, etiquette and the rights of courtesans. But the colonial interferences placed Victorian morals on the local morals. The British came up with laws like the 'Contagious Diseases Act'⁷ enabled them to treat Indian women suspected of being sex workers in a very invasive and discriminatory manner.

Such colonial mentality continued in the post-independence era in a different form through the name, "Immoral Traffic (Prevention) Act (ITPA)" 1956.⁸ Although it would help to reduce trafficking, practically, it criminalises the consensual adult sex work and permits systematic exploitation. In the existing Indian law, there is no demarcation between consensual sex work and sex trafficking. ITPA (Sections 3) criminalises the activity of a brothelkeeper, (Section 8) soliciting or (Section 4) even living off the avails of sex work, so it is practically impossible for sex workers to do this business and not to break any law.

Such a grey area takes the profession back into the darkness, causing police corruption, violence and a blot on human rights. Most sex workers do not have the basic identity papers such as Aadhaar card or Voter ID, which allows them untapped access to housing, health and rations and the political process. They fall outside the sight of the state because they lack legal legitimacy.⁹ Absence of control is not only detrimental to the sex workers but also promotes trafficking. Brothels grow to become hotbeds of exploitation in the absence of state control. Sex workers usually have children who have no opportunity to have an education, as well as welfare, which makes them prone to be sex workers as well, and so the cycle is repeated.

This does not represent a moral compromise on the part of a government that decides to legalise sex work based on rights; it is merely a constitutional duty. The Indian Constitution, since the Supreme Court, Article 21 has been interpreted as providing

⁷ Contagious Diseases Act 1864 (UK) 27 & 28 Vict c 85
<https://www.legislation.gov.uk/ukpga/Vict/27-28/85/enacted>.

⁸ Immoral Traffic (Prevention) Act 1956, Act No 104 of 1956
https://www.indiacode.nic.in/bitstream/123456789/15378/1/the_immoral_traffic_%28prevention%29_act%2C_1956.pdf.

⁹ National Human Rights Commission, *Advisory on Rights of Women*
https://nhrc.nic.in/sites/default/files/Advisory%20on%20Rights%20of%20Women_0.pdf.

dignity, autonomy, and privacy.¹⁰ In *Francis Coralie Mullin*, the Court determined that the right to life encompasses the right to live with human dignity.¹¹ In the case of *Budhadev Karmakar v. State of West Bengal*, SCC Online SC 704,¹² these rights of sex workers were confirmed by the Supreme Court, which ordered them to be awarded identity documents, to have access to health services and that the police cease harassing sex workers. The court has come out strongly to point out that sex workers cannot be left outside the protection of the Constitution just as any other citizen.

In other jurisdictions, *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101, 2013 SCC 72 (Can.) is an icon.¹³ In Canada, criminal laws against elements of sex work were formerly struck down by the Supreme Court of Canada earlier as a violation of the right to security of the person in the Canadian Charter of Rights and Freedoms. The court stated that the criminal laws are not supposed to put lives in jeopardy. Justice must triumph despite normative familiarities. The constitutional pledge of equality and dignity shall be served first by granting sex workers legal dispensation and protection.

The health dangers involved in unregulated sex work are high. Sex workers report a prevalence of HIV, STIs, unwanted pregnancy and psychiatric diseases. The National AIDS Control Organisation (NACO) found that the HIV among sex workers in India was 1.56, contrasted with the general population (NACO, Hindu, 'India HIV Estimates 2021 Fact Sheet').¹⁴

¹⁰ The Constitution of India 1950

https://www.indiacode.nic.in/bitstream/123456789/16124/1/the_constitution_of_india.pdf.

Indian Kanoon, 'Search: Article 21 of Constitution'

<https://indiankanoon.org/search/?formInput=article+21+of+constitution>.

¹¹ *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608

<https://indiankanoon.org/doc/78536/>.

¹² *Budhadev Karmaskar v State of West Bengal* (2011) 6 SCC 396

<https://indiankanoon.org/doc/1302025/>.

Budhadev Karmaskar v State of West Bengal [2022] SCC OnLine SC 704

<https://indiankanoon.org/doc/145721634/>.

¹³ *Canada (Attorney General) v Bedford* [2013] 3 SCR 1101, 2013 SCC 72.

<https://www.canlii.org/en/ca/scc/doc/2013/2013scc72/2013scc72>.

¹⁴ National AIDS Control Organisation, *India HIV Estimates 2021 Fact Sheet* (NACO 2021)

https://naco.gov.in/sites/default/files/India%20HIV%20Estimates%202021%20_Fact%20Sheets_Fi nal_Shared_24_08_2022_0.pdf.

With legalisation, it would be possible to do regular health check-ups, have access to government health programs such as the Ayushman Bharat approach to mental health services, and prevent STIs by providing free condoms and educating people.¹⁵ It would enable the Health Ministry to introduce specific interventions, and the national results in the field of public health would be enhanced. This framework can be reinforced with mobile clinics, digital health cards and confidential testing centres. Moreover, decriminalisation motivates sex workers to access medical services without any fear of criminal law and stigma.

New Zealand and Germany are some of the countries that have demonstrated that decriminalisation results in better health-seeking behaviour and lowered rates of transmission. This work lies where constitutional justice, health, economics, and human dignity meet. It favours a rights-based legalisation model of sex work in India, one which is based on history, informed by international best practices and which ought to be driven by constitutional morality. The reform of the law cannot be aimed at regulating sex work but empowering those involved in it.

A. Research Objectives

1. To analyse the constitutional and legal contradictions in India's current approach to sex work regulation, particularly the conflation of consensual adult sex work with human trafficking under the ITA, 1956, considering Article 21 jurisprudence.
2. To discuss partial criminalisation of sex work under the guiding lights of Article 21 and constitutional morality concerning the jurisprudence of the Supreme Court in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, which confirms that dignity, autonomy, and individual identity are central to the constitutional image of justice.

National AIDS Control Organisation, *India HIV Estimates 2021 Fact Sheet* (NACO 2021) https://naco.gov.in/sites/default/files/India%20HIV%20Estimates%202021%20_Fact%20Sheets_Final_Shared_24_08_2022_0.pdf.

¹⁵ Press Information Bureau, 'Ayushman Bharat for a New India -2022, announced by the Union Finance Minister in Budget 2018 (PIB 1 February 2018) <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=151854>.

3. To critically examine how decriminalisation is affecting the social, legal and safety results of sex workers through criminological theories, including Routine Activity Theory and Labelling Theory, and to assess peer-reviewed evidence concerning global models, especially New Zealand and Germany, that have shown reductions in violence, police exploitation and risk to public health.
4. To discuss the rejection of healthcare and social welfare rights by sex workers in the context of national health policies, including Ayushman Bharat - PM-JAY, and international health standards, including the World Health Organisation 2012 guidelines on HIV prevention, treatment, and care among sex workers.
5. To examine how sex workers contribute to grassroots political activity as well as how they are not represented because they are not being covered by the identity, and propose ways of integrating them into democratic and policy processes

B. Research Methodology

The Methodology used in the current research is a form of legal research that is doctrinal, analytical and comparative and exploratory. The doctrinal approach is the systematic reasoning of constitutional provisions, statutory provisions and case laws governing sex work in India, whereas the analytical process of methodology enables the review of inconsistencies in the law, gaps in policy and social consequences. This research utilises the doctrinal method of law research explained by Terry Hutchinson in *Researching and Writing in Law* (4th ed., 2018) that presupposes the predominant importance of identifying, interpreting, and analysing legal texts such as statutes, constitutional clauses, and judicial cases.

It deploys a comparative law method approach also with references made to the Students explained that his application of a functionalist approach originated in *Introduction to Comparative Law* by Konrad Zweigert and Hein Kotz (3rd edition, 1998) where the authors focused on the answers of various legal structures to comparable problems as opposed to the comparison structure of a legal system. It is

the comparative aspect that is based on Indian, New Zealand, and German legal contexts of law, which imply three divergent directions in sex work criminalisation, decriminalisation, and legalisation, respectively. The method of study is on government databases like Manupatra, SCC Online and India Code and relies on constitutional interpretation and integration of the statutory and case law. The primary parameters quoted in the comparisons are legality of sex work, availability of health and welfare, police violence and how human rights and the constitutional provisions have been integrated.

The research is informed by a multi-dimensional analysis. This comprises constitutional interpretation in terms of dignity, privacy, and bodily integrity as a matter of right under Article 21; comparativism that draws on foreign precedent and its relevance in India; and intersectionality that concerns marginalisation based on caste, gender, and disability. It even looks at the concerns of public health and environmental justice, in particular, impoverished sanitation and squalid conditions in red light areas; criminological views that decriminalisation would diminish trafficking and institutionalised corruption; and a moral-political approach that accuses the government of failing to enforce the constitutional morality in two rules of protection for vulnerable groups.

Although the study conducts vast secondary research, it is limited by the fact that there is no field research and personal testimony of sex workers and law enforcement agencies. The relevant primary sources, which are consulted, are the Indian Constitution Articles 14, Articles 19 1(a), Articles 19 1(g), and Articles 21;

The Immoral Traffic (Prevention) Act, 1956 with both 1978 and 1986 amendments; and other milestone cases, including *Navtej Singh Johar v. Union of India* (2018), *Budhadev Karmakar v.*, *Maneka Gandhi v. Union of India* (1978), and *K.S. Puttaswamy v. Union of India* (2017). Secondary sources used by the research include the reports of NACO, NHRC, WHO, and IIHS; government policies of Swachh Bharat Mission, Ayushman Bharat; peer-reviewed journals such as *The Indian Journal of Medical Research*, *The Lancet*, and *Human Rights Watch*; news sites, including *The Hindu*, *The Wire*, *BBC*, *Scroll*, and *Deutsche Welle*; publications and data of NGOs

(Durbar Mahila Samanwaya Committee (DMSC), Ashodaya Samithi, and Apne Aap Women Worldwide).

C. Scope and limitation

The current study is a doctrinal and comparative research on the legal, social, health, and environmental consequences of decriminalizing sex work in India. It explores international reference, public policy and theories of human rights. Nonetheless, the study relies only on secondary literature and lacks the field work and firsthand statements made by sex workers and the enforcing agencies.

One of the main limitations of the study is that it uses solely doctrinal sources. Although this allows the creation of a robust theoretical and jurisprudential background, it fails to feature empirical evidence or testimonies of sex workers themselves, which is essential in understanding the realities on the ground. These limitations indicate that future studies must consider including qualitative interviews or on-the-ground-based data so that legal analysis can be guided by the experiences of individuals the law most impacts.

D. Research Question

1. To what extent can the legalisation and regulation of sex work reduce human trafficking while improving access to healthcare and welfare services?
2. Whether the anonymity and political invisibility of the sex workers among their peers as voters in India is a factor that further marginalises the already unrepresented, as far as policy making is concerned, by the elected governments.
3. Whether international legal models of sex work regulation, including decriminalization in New Zealand and legalization in Germany, could effectively be extrapolated to India and, by that measure, assessed in terms of their effects on access to healthcare, police violence, working conditions, legal recognition and leave alone a measure of their congruence with other constitutional values like dignity and autonomy.

4. Whether or not it is possible to elevate the generation chain of poverty and prostitution through educational reservation and claims of support schemes cannot be given to the children of sex workers.
5. The question of whether decriminalization of sex work in India can help promote long-term social change, interpreted in terms of sociological theories of social change (e.g. Structural Functionalism, Conflict Theory), and stigma reduction approaches such as stigma theory by Erving Goffman and modified labelling theory by Link & Phelan, especially in alleviating moral bias and institutional positioning of sex workers.

E. Research Problem

1. This limited criminalisation of sex work in India introduces a substantial obstacle on the path to achieving fundamental human rights such as the right to equality, bodily autonomy, health, and non-discrimination. Despite the Indian Constitution reaffirming these principles in Articles 14, 19(1)(g), and 21, the current legal infrastructure regards sex workers as objects of governance instead of rights-holding citizens. This research problem inquires how such legal treatment can lead to the systematic abuse of a sex worker's human rights and why India must harmonise its domestic law with both constitutional principles and international human rights standards that support dignity, inclusion, and legal empowerment.
2. Whether there can be a rights-based legal framework that can inform the regulation of sex work in India in line with constitutional safeguards and the appreciation of dignity and autonomy by the Supreme Court. This involves an analysis of foreign best practices like the New Zealand decriminalisation and the German regulatory model to ascertain their constitutional flexibility in changing the Indian socio-legal environment based on the principles of constitutional morality and judicial interpretation.

F. Literature Review

Sex work has long been surrounded by a complex of moral panic and patriarchal regulation, along with institutional indifference. In the current legal and social system, sex workers have been regarded as criminals, not due to any criminality of the actions which are criminally performed, but because society has a perception that such a kind of labour is morally wrong. Legal scholars believe this punitive approach infringes on key rights and does not represent the complex socio-economic realities of the sex work participants. (Kotiswaran, 2011).¹⁶

The evolution of terminology, as the termini effect as popularised by the 1970s, by Carol Leigh's led to the shift of terminology in the framing of prostitution to sex work, which was a critical step forward in re-framing the narrative.¹⁷ It focused on the idea that sex work was an accepted means of labour and opposed the prevalent images of sex workers as victims or deviants (Leigh, 1997). Even the current criminal laws, however, contribute to structural violence, further victimising the sex workers as they still contribute to the social stigma and isolation of sex workers (Agustin, 2007).¹⁸

Such disenfranchisement is further accentuated because sex workers are not represented in legal policymaking. Legislative discussions do not necessarily focus on their lived experiences, resulting in infrastructures that criminalise their earnings and result in systematic disenfranchisement. (Kempadoo and Doezema, 1998).¹⁹

Worldwide human rights groups, such as UNAIDS, the World Health Organisation, and Amnesty International have urged total decriminalisation of sex work.²⁰ According to them, criminalisation makes people more exposed to acts of violence, it

¹⁶ A. Hudgins, 'Review of *Dangerous Sex, Invisible Labour: Sex Work and the Law in India* by P Kotiswaran' (2012) 35(1) *Political and Legal Anthropology Review* 139 <http://www.jstor.org/stable/24497447>.

¹⁷ Carol Leigh, 'Inventing Sex Work' in Jill Nagle (ed), *Whores and Other Feminists* (Routledge 1997) 225 <https://www.are.na/block/6529440>.

¹⁸ LM Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry* (Zed Books 2007) <https://www.cambridge.org/core/journals/journal-of-social-policy/article/abs/l-m-agustin-2007-sex-at-the-margins-migration-labour-markets-and-the-rescue-industry-london-zed-books-1699-pb-248-pbk/1C17B54F0ADABF0DB894F122B0ECB502>.

¹⁹ K Kempadoo and J Doezema (eds), *Global Sex Workers: Rights, Resistance, and Redefinition* (Routledge 1998) <https://shekhar.cc/wp-content/uploads/2017/05/kempadoo.pdf>.

²⁰ UNAIDS, *Guidance Note on HIV and Sex Work* (2012) <https://www.unaids.org>.

complicates healthcare access, and it leads to police excesses (UNAIDS, 2012; WHO, 2015; Amnesty International, 2016).²¹

Lessons may be learned from comparative legal models. The Decriminalisation and labour protection is exemplified by the Prostitution Reform Act of 2003 in New Zealand, which has shown how decriminalisation can be an effective policy towards better health and social inclusion of sex workers. (New Zealand Ministry of Justice, 2008).²² Conversely, the Nordic model whereby clients are criminalised, and workers have not been heavily criticised due to its perceived ability to push the industry underground, making it more dangerous and less likely to seek justice and services (Levy and Jakobsson, 2014).²³

IV. CONSTITUTIONAL FRAMEWORK

The Indian Constitution offers a strong foundation on which sex workers should be considered and given legal protection.²⁴ Article 14 protects equality before the law; it forbids arbitrary classification.²⁵ Criminalisation of consensual adult sex work enacts unequal legislation and contravenes this constitutional obligation. (*State of West Bengal v. Anwar Ali Sarkar*, (1952).²⁶ Article 15 forbids discrimination based on several grounds, such as sex and caste. Many sex workers in India also belong to

²¹ World Health Organisation, *Sex Workers: Prevention and Treatment of HIV and Other STIs* (WHO 2015) <https://www.who.int/teams/global-hiv-hepatitis-and-stis-programmes/populations/sex-workers>.

Amnesty International, *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (2016) <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>.

²² New Zealand Ministry of Justice, *Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003* (2008) <https://prostitutescollective.net/wp-content/uploads/2016/10/report-of-the-nz-prostitution-law-committee-2008.pdf>.

²³ J Levy and P Jakobsson, 'Sweden's Abolitionist Discourse and Law: Effects on the Dynamics of Swedish Sex Work and on the Lives of Sweden's Sex Workers' (2014) 14(5) *Criminology & Criminal Justice* 593 <https://nationalsurvivornetwork.org/document/swedens-abolitionist-discourse-and-law-effects-on-the-dynamics-of-swedish-sex-work-and-on-the-lives-of-swedens-sex-workers/>.

²⁴ The Constitution of India 1950 https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf.

²⁵ Constitution of India 1950, art 14 <https://indiankanoon.org/doc/367586/>.

²⁶ *The State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75 <https://indiankanoon.org/doc/1270239/>.

historically disadvantaged groups, Dalits, and Adivasis.²⁷ (Kotiswaran, 2011).²⁸ The criminalisation they aim to face is intersectional discrimination that compromises constitutional equality.

Under Article 19(1)(g), every person has a right to practice any profession. Although Article 19(6) allows reasonable limitations to considerations, blanket criminalisation of sex work exceeds that limitation, rendering the profession inaccessible and unsafe.²⁹ The acknowledgement of sex work as another way of earning a living is paramount to the maintenance of freedom of occupation. Article 21, which is a broad interpretation of the *Maneka Gandhi v. Union of India*³⁰ and *K.S. Puttaswamy v. Union of India*³¹ Encompasses rights to dignity, right to privacy, and bodily autonomy.

These are the foundations of decriminalization efforts. The emerging jurisprudence by the Supreme Court in *Budhadev Karmaskar v. State of West Bengal* (2011; 2022) confirms that the protection of the constitution can also be enjoyed by sex workers as they are citizens of this country. Therefore, the existing legal and criminalisation of the sex business is in opposition to the constitutional principles. There is a more equitable and encompassing legal model in the form of a rights-based legal model grounded in constitutional morality.

V. INTERNATIONAL COMPARATIVE ANALYSIS

New Zealand and German experiences represent strong alternatives to the criminalised models of sex work. The Prostitution Reform Act 2003 in New Zealand decriminalised sex work and brought it within the protection of labour.³² According to the Prostitution Law Review Committee (2008), 90% of sex workers reported that

²⁷ Constitution of India 1950, art 15 <https://indiankanoon.org/doc/609295/>.

²⁸ Prabha Kotiswaran, *Dangerous Sex, Invisible Labour: Sex Work and the Law in India* (Princeton University Press, 2011) <https://assets.press.princeton.edu/chapters/s9467.pdf>.

²⁹ Constitution of India 1950, art 19 <https://indiankanoon.org/doc/1/>.

³⁰ *Maneka Gandhi v Union of India* (1978) 1 SCC 248 <https://indiankanoon.org/doc/1766147/>.

³¹ *Justice K S Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1 <https://indiankanoon.org/doc/127517806/>.

³² Prostitution Reform Act 2003 (NZ) <https://www.legislation.govt.nz/act/public/2003/0028/latest/dlm197815.html>.

they were better able to refuse clients, access to health services, and police protection. Notably, no signs of an increase in trafficking after the reform were observed. In Germany, sex work is a profession that is legally tolerated in the Prostitution Act 2001 (ProstG).³³ The workers can enrol, receive social insurance, and work contractually. These models portray the state-approved regimes that put in place health, dignity, and economic integration ahead of punishment, providing the essential information to the Indian discourse that currently shifts towards sex work regulation.

VI. STRUCTURAL PROBLEMS AND PUBLIC HEALTH DIMENSIONS

Several studies in the field of public health have shown that criminalisation of sex work increases health risks, particularly the problem of HIV/AIDS and sexually transmitted infections (STIs). Empowerment of sex workers through legal framework and health education initiatives such as *Ashodaya Samithi* in Mysore and *Sonagachi* Project, Kolkata highlights that lower rates of STIs transmission and greater rates of condom use occur due to empowerment.³⁴ Such models are published in peer-reviewed journals such as the Indian Journal of Medical Research and demonstrate how well peer-based interventions and harm reduction strategies work.

A. Economic Implications and Informal Labour

The sex industry is an important contribution to urban economies, especially in housing, informal trade, and service sectors. However, its unregulated status leaves it out of labour protection, taxation, and welfare provision. In Germany, the Federal Statistical Office reported that the regulated sex industry earns an estimated 15 billion

³³ Prostitutionsgesetz (ProstG), BGBl I 2001, 4983 (Germany)
<https://dserver.bundestag.de/brd/2001/D817+01.pdf>.

³⁴ S Reza-Paul and others, 'Declines in Risk Behaviour and Sexually Transmitted Infection Prevalence Following a Community-Led HIV Preventive Intervention among Female Sex Workers in Mysore, India' (2008) 22(Suppl 5) *AIDS* S91 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3252604/>.
S. Jana and others, 'The Sonagachi Project: A Sustainable Community Intervention Program' (2004) 16(5) *AIDS Education and Prevention* 405 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2824563/>.

Euros a year, enabling it through licensing fees, statistically recorded tax levies, and economic monitoring.³⁵

In India, there are no official government models, but strong indirect evidence is presented through peer-reviewed research. As an example, Hui (2017) employed structural equation modelling to assess the economic well-being and wage determinants of brothel-based sex workers in Delhi and Kolkata.³⁶ Such analyses indicate that the formalisation and regulation of sex work in India has the potential to generate significant tax revenue and provide access to pensions, health insurance, and labour rights, alongside a matching decrease in economic vulnerability, police harassment, and exclusion because of legal invisibility.

B. Human Trafficking and Regulatory Clarity.

Probably the most widespread claim against the legalisation of sex work is associated with human trafficking.³⁷ There is, however, some evidence that decriminalisation in the event of highly regulated mechanisms can aid in the differentiation of consensual sex work and human trafficking. In India, this proposal to separate persons engaged in prostitution because they are victims of trafficking and those engaged in prostitution who have done it voluntarily has been attacked in the draft Trafficking in Persons (Prevention, Care and Rehabilitation Bill, 2021).³⁸ Brothels and red-light zones cannot be specifically addressed by law, which means that they are susceptible to police raids and unlawful jails, which are capable of damaging and not promoting the individuals whom they are committed to.

³⁵ European Parliament, *Report on the Regulation of Prostitution in the EU: Its Cross-Border Implications and Impact on Gender Equality and Women's Rights* (2023)

https://www.europarl.europa.eu/doceo/document/A-9-2023-0240_EN.html.

DW, 'Combating Prostitution' (2013) <https://www.dw.com/en/combating-prostitution/a-17265908>.

³⁶ N Hui, 'Bargaining Power and Indicators of Well-Being among Brothel-Based Sex Workers in India' (2017) 23(4) *Feminist Economics* 148

<https://www.tandfonline.com/doi/full/10.1080/13545701.2017.1315440>.

³⁷ Juris Centre, *Legal Status of Sex Work in India* (17 July 2023)

<https://juriscentre.com/2023/07/17/legal-status-of-sex-work-in-india/>.

³⁸ The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill 2021, Bill No 235 of 2021

https://sansad.in/getFile/BillsTexts/RSBillTexts/Asintroduced/15-E_257.pdf?source=legislation.

C. Identity, Political Inclusion and Social Visibility

In India, Sex workers do not have Aadhaar, Voter ID or ration cards; thus, they cannot access the available public services and are not provided with the opportunities of taking part in democratic life. A study conducted by the Durbar Mahila Samanwaya Committee (DMSC) in Kolkata has demonstrated how getting the sex workers' legal identity documents has helped them open bank accounts, receive pensions, and vote during elections as well.³⁹ Political inclusion is crucial in making sure that sex workers demand a voice in the policymaking and allocations of welfare.

Structural invisibility is the legal invisibility, and sex workers are not within the concept of the state's responsibility in the absence of a formal assessment. By legalising sex work, therefore, not only could the workers be spared exploitation, but it would give them the power as complete citizens.

VII. ETHICAL DIMENSIONS, CULTURAL DIMENSIONS

Sex work is a hotly contested topic in India, which is intertwined with social morality, cultural discrimination and ingrained patriarchal expectations. Yet, when addressing this problem ethically, standard moralistic approaches must be abandoned in favour of constitutional morality as upheld by the Indian Supreme Court in *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1.⁴⁰ In this seminal ruling, the Court emphasised that constitutional morality must take priority over social morality in cases where the latter promotes discrimination and exclusion (paras 92-94, 116-118, 124-128). The judgment has placed a specific focus on the right to live with dignity, autonomy, and non-discrimination as intrinsic to Article 21 and Article 15 of the Constitution. This school of thought within the study of law underscores the moral importance of ensuring that sex work emerges as a legitimate and desirable occupation, and not an aberration or sin. The legal framework should thus become resistant to attempting to impose majoritarian cultural values onto vulnerable groups, particularly where such

³⁹ Durbar Mahila Samanwaya Committee (DMSC), *Survey of Occupational Oppressions Faced by Sex Workers* (n.d.) <https://www.opensocietyfoundations.org/publications/survey-occupational-oppressions-faced-sex-workers>.

⁴⁰ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1 https://www.scoobserver.in/wp-content/uploads/2021/10/377IPC_-_Judgement.pdf.

values have been proven to restrict bodily autonomy rights and economic survival rights of sex workers.

Upendra Baxi gives this view theoretical support by explaining constitutional morality as a judicial compass that protects democratic considerations against the tyranny of cultural orthodoxy.⁴¹ Baxi provides arguments to say constitutional morality cannot be reduced to a procedural adherence alone, but must be a commitment to human dignity, inclusion and justice (Baxi, 2002). Therefore, any law relating to sex work that does not factor these values into its legal discourse is a continuation of structural injustice and a failure to realise the transformative power of constitutionalism as a force in India.

A. Intersectionality: Caste, Genderity and Disability in Sex Work

The convergence of otherness in terms of caste, gender identity, and sex work produces novel layers of outsider-ness. Transgender and Dalit sex workers report compounded discrimination in availing housing, policing and health support. It is advised that this part should reference the works of the academic theory, like that of Revathi (2016) with her book entitled. *A Life in Trans Activism* (Zubaan Books, 2016) or Ruth Vanita and Saleem Kidwai's work on queer histories to contextualise lived experiences. Caste-based exclusion in sex work is also reported in studies such as PUCL-Karnataka (2003, on human rights violations against the transgender community, and in the International Dalit Solidarity Network (2003).⁴² These

⁴¹ U Baxi, 'Constitutional Morality and Judicial Review' in SP Sathe (ed), *Judicial Activism in India* (Oxford University Press 2002) 144
https://watermark.silverchair.com/010557.pdf?token=AQECAHi208BE49Ooan9kkhW_Ercy7Dm3ZL_9Cf3qfKAc485ysgAAA0gwggNE....

⁴² Nivedita Menon, 'Sexuality, Caste, Governmentality: Contests over "Gender" in India' (2009) 91 *Feminist Review* 94 <http://www.jstor.org/stable/40663982> accessed 21 July 2025.
International Dalit Solidarity Network, *About Us* (IDSN, n.d.) <https://idsn.org/about-us/who-we-are/>.

resources support the necessity of specific legal safeguards with the SC/ST Prevention of Atrocities Act.⁴³ and the Transgender Persons (Protection of Rights) Act, 2019.⁴⁴

B. Grassroots Governance and Informal Justice

Mistrust in formal legal institutions often causes sex workers to resort to local mechanisms of dispute resolution, protection, and resource allocation. Political science works on informal governance, e.g., *The Politics of the Governed* by Partha Chatterjee (Columbia University Press, 2004),⁴⁵ reviewing subaltern political formations, is suggested to be included in the section. A major example of grassroots governance at work is the Durbar Mahila Samanwaya Committee (DMSC), which mediates brothel-level drama, provides harm reduction, and organises healthcare. Such informal systems should have their status recognised under the legal and policy framework as valid local governance mechanisms.

C. Criminological Perspectives and Harm Reduction

When sex work is muddled with criminality, it can mean that sex workers get a disproportionate amount of policing and harassment by the system. It is advisable to extend this part with criminal philosophies like Routine Activity Theory and Labelling Theory, which question how state surveillance escalates exposure instead of preventing crime. The methodological details of how decriminalisation can cut violence perpetrated by law enforcers and enhance neighbourhood safety can be found in empirical studies, including those by Jeffrey and MacDonald (2006).⁴⁶ and NSW Global Mapping on Legal Environments (2020).⁴⁷ Crime reduction should

⁴³ *The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989*
https://www.indiacode.nic.in/bitstream/123456789/15338/1/scheduled_castes_and_the_scheduled_tribes.pdf

⁴⁴ Transgender Persons (Protection of Rights) Act 2019 (India)
https://www.indiacode.nic.in/bitstream/123456789/21054/1/transgender_persons_%28protection_of_rights%29_act%2c_2019.pdf.

⁴⁵ Partha Chatterjee, *The Politics of the Governed* (Columbia University Press, 2004)
<https://cup.columbia.edu/book/the-politics-of-the-governed/9780231130639/>.

⁴⁶ L A Jeffrey and G MacDonald, *Sex Workers in the Maritimes Talk Back* (UBC Press, 2006)
<https://www.ubcpres.ca/asset/9418/1/9780774813310.pdf>.

⁴⁷ Global Network of Sex Work Projects (NSWP), *Sex Work and the Law: A Global Mapping of Legal Environments* (2020) <https://www.nswp.org/sex-work-laws-map>.

therefore not be viewed as repression, but rather as service delivery and legal empowerment.

VIII. REINTERPRETING DOMESTIC AND INTERNATIONAL JURISPRUDENCE ON SEX WORK AND TRAFFICKING

The current evolution of jurisprudence, both within the domestic and international arenas, proves a gradual awakening to the reality of sex work and human rights and the need to differentiate between consensual sex work and trafficking.

1. **All India Network of Sex Workers v. Union of India (W.P. (C) No. 297/2018**, before the Delhi High Court)⁴⁸ objects to the existing equating in Indian law between consensual sex work and trafficking. The petition urges the decriminalisation of consenting adult sex work, which implies that blanket criminalisation infringes on the constitutional rights to life, dignity, and livelihood. It is a landmark case that is likely to influence sex work policy in the future in India through constitutional and human rights jurisprudence.
2. In **National Human Rights Commission vs. State of Maharashtra (AIR 2017 Bom 42)**,⁴⁹ the Bombay High Court identified the duty of the State to ensure the delivery of basic services such as health care, shelter, and education to sex workers. By articulating the problem in terms of human rights, the judgment connected socio-economic welfare with rights under Article 21 without judging the claims of the sex workers.
3. **Apne Aap Women Worldwide v. State of Bihar (2014, Patna High Court)**⁵⁰ helped clarify that trafficking, particularly of minors, necessitates specific focus on intervention and rehabilitation of the victims, but needs to be separated from adult consensual sex work. The Court maintained that the boundaries

⁴⁸ SCC Online Blog, 'Navigating the Morality-Human Rights Divide: Charting a Path for Sex Workers in Indian Jurisprudence' (15 September 2023)

<https://www.scconline.com/blog/post/2023/09/15/navigating-the-morality-human-rights-divide-charting-a-path-for-sex-workers-in-indian-jurisprudence/>.

⁴⁹ *Gaurav Jain v Union of India* AIR 1997 SC 3021

<https://www.casemine.com/judgement/in/5608fbb4e4b014971114a6e7>.

⁵⁰ *Sangram Maity v State of West Bengal* (2011) Cri LJ 1017 <https://indiankanoon.org/doc/83172639/>.

between exploitation and voluntary livelihood should be clear, and not every sex work is trafficking.

4. In comparative constitutional terms, the South African Constitutional Court dealt with the legitimacy of brothel-keeping in **S v Jordan and Others [2002 (6) SA 642; 2002 (11) BCLR 1117]**.⁵¹ Although the majority maintained the criminal provision, the presence of the minority opinion was significant, as it emphasised gendered discrimination, where such laws are indirectly punishing women more than men, which begs the question of substantive equality and disproportionate state regulations of women, as their bodies are in question.
5. The international human rights courts have provided further complexity. As stated in **S.M. against Croatia [ECtHR, App. No. 60561/14, 2020]**,⁵² prostitution forced by the government is a breach of Article 4 of the ECHR, which forbids slavery and forced labour. Notably, the Court distinguished forced prostitution and consensual sex work, indicating that different regulatory regimes are required for legal provisions.
6. Similarly, in **Krachunova v. Bulgaria [ECtHR, App. No. 18269/18, 2023]**,⁵³ the Court held that sex trafficking victims should receive compensation for lost income under Article 4 ECHR, and that the inherent dignity and rights of the sex worker, whether licit or otherwise, must continue to be respected without discrimination or prejudice. The ruling extended the debate about sex work by connecting it to social justice and international law compensation.

In combination, these rulings give rise to a vast constellation of constitutional, human rights and anti-discrimination law, recognising the significance of separating sex work

⁵¹ E Bonthuys, 'Women's Sexuality in the South African Constitutional Court: *Jordan v S* 2002 (6) SA 642 (CC); also reported as 2002 (11) BCLR 1117 (CC)' (2006) 14(3) *Feminist Legal Studies* 391 <https://link.springer.com/article/10.1007/s10691-006-9034-x>

⁵² S.M. v Croatia (European Court of Human Rights, Grand Chamber, Application No 60561/14, 25 June 2020) <https://hudoc.echr.coe.int/eng?i=001-203503>.

⁵³ A.D. v. Slovenia (European Court of Human Rights, Application No 57001/21, 8 March 2023) <https://hudoc.echr.coe.int/eng?i=001-229129>.

and trafficking and signalling an advance of rights-based legal responses sensitive to their intersections.

IX. ENVIRONMENTAL EFFECT OF RED-LIGHT AREA

Sex work that takes place in urban informal settlements frequently takes place in degraded environmental settings that may lack sanitation, clean water, and waste management. To add strength to the legal linkage between environmental rights and regulatory controls over sex work, it is suggested that Article 21 of the Indian Constitution should be invoked, which includes the right to a safe and clean environment. (*Subhash Kumar v. AIR 1991 SC 420, State of Bihar*).⁵⁴ Environmental laws, like the Environment (Protection) Act, 1986, can be used as a framework to pressure the government into enhancing better environmental factors in red-light zones.⁵⁵ A rights-based approach to urban planning would guarantee that sex workers work and reside in environments that do not pose environmental hazards.

A. Climate Resilience and Livelihood Security

Climate change, displacement, and infrastructure collapse are extremely threatening to sex workers, especially in informal settlements on the coastline or flood-prone areas. It is proposed that this section should also incorporate environmental law relations with structures, including the National Action Plan on Climate Change (NAPCC).⁵⁶ and global agreements like the Sendai Framework on the reduction of Disaster Hazards (2015-2030).⁵⁷ The displacement, relocation, housing and income support of sex workers must be considered in specific policy interventions as part of a broader climate resilience package in the realisation of their right to sustainable livelihoods.

⁵⁴ *Subhash Kumar v State of Bihar & Ors* (1991) 1 SCC 598 <https://indiankanoon.org/doc/1646284/>.

⁵⁵ *Environment (Protection) Act 1986 (India)*

https://www.indiacode.nic.in/bitstream/123456789/4316/1/ep_act_1986.pdf.

⁵⁶ *Government of India, National Action Plan on Climate Change (NAPCC) (Prime Minister's Council on Climate Change 2008)*

<https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/dec/doc202112101.pdf>.

⁵⁷ *United Nations Office for Disaster Risk Reduction (UNDRR), Sendai Framework for Disaster Risk Reduction 2015–2030 (United Nations 2015)* <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030>.

X. SUGGESTIONS

A. Legal and Policy Recommendations: Licensing and Voluntary Registration:

The recommendation is to have a federal online platform that makes available an optional database of adult sex workers. Such a portal must be created with oversight of the Ministry of Labour and Employment or a specific commission, which must adhere to constitutional rights and data privacy laws.

1. The platform ought to give sex workers

Identity protection and informed consent can be achieved by voluntarily registering with a government-issued identification like Aadhaar or voter ID. Access critical entitlements like health cards, pension schemes and social insurance that work harmoniously with other welfare schemes. To work in licensed premises under local regulations or work without a license but continue enjoying state privileges.

This paradigm echoes world best practices, especially in jurisdictions like New Zealand and in Germany, where regulatory models can permit individual autonomy and occupational protection. Voluntary licensing would also establish a legal point of contact between sex workers and the state, contributing to increased transparency, surveillance of the population in terms of public health, and the enforcement of worker rights.

2. Ensure Political and Legal Identity for Inclusion

Sex workers must be given supporting official identity documents like Aadhar, ration cards, and voter IDs, so they can participate in democracy and access welfare.

Implementation: The Election Commission and UIDAI instructions can guarantee field documentation drives in partnership with sex worker unions and NGOs.

B. Health Rights and Universal Access

To protect the health and dignity of sex workers, it was proposed that a comprehensive legal framework should identify the rights of sex workers as they have access to non-discriminatory and easily accessible healthcare facilities. STIs and HIV/AIDS would be regularly and confidentially screened, freely accessible to testing

and treatment, and condom and PrEP distribution without stigma. Sensitivity and confidentiality among healthcare providers should be trained by the public health policy, especially addressing the reluctance of sex workers to visit hospitals due to fear of discrimination or police contact. Incorporating sex work into universal healthcare programs such as Ayushman Bharat (PM-JAY) would facilitate access to reproductive wellness, mental health, trauma counselling and pandemic-related relief initiatives. Legal status would also enable the government to conduct demographic health surveys, target vaccination (e.g. HPV, Hepatitis B), and design area-based interventions in high-risk red-light zones. The laws must mandate sanitary working conditions in registered facilities, ensure patient privacy, and outlaw discrimination by healthcare providers. Furthermore, emergency response models triggered, e.g. during COVID-19 lockdowns, should consider sex workers regarding vaccine coverage, subsidies, and health monitoring programs. Overall, these policy suggestions not only guarantee public health but also are aligned with the constitutional right to health and dignity as defined in Article 21.

C. Breaking the Generational Chain of Prostitution: A Comprehensive Strategy

To break the cycle of sex work across generations, a combination of approaches based on the enforcement of the rights of children, the elimination of illiteracy, and the enhancement of dignity and independence is proposed. Legal and policy frameworks must ensure free and quality education at primary to higher levels with scholarships, mid-day meals, free textbooks, uniforms, and safe transportation, especially in residential schools in red-light areas (e.g. Navodaya Vidyalayas, Kasturba Gandhi Balika Vidyalayas).

A reservation in education should be provided to children of sex workers at the same level as SC/ST/OBC/EWS categories based on structural disadvantage. Birth certificates, Aadhaar registration, and school records shall be needed to prove the legal identity, with children in danger afforded protection under the Juvenile Justice (Care and Protection of Children) Act, 2015, and strict enforcement of child labour and sexual exploitation laws. Simultaneously, the implementation of career counselling, mentorship of the young generation, and the inclusion of sex worker success stories

in training books could help overcome the stigma in society and motivate marginalised youth to become professionals. Examples of successful interventions, which have empowered children of sex workers to consider careers in the fields of law, media, and social work, include programmes such as Udaan School in Mumbai, the DMSC Education Program in Kolkata, and NGO programmes such as Apne Aap Women Worldwide in Bihar and Delhi. These broad efforts can guarantee that such children are not born into slavery but into hope, with constitutional principles of equality, non-discrimination, and freedom of choice.

1. Reservations in Jobs and Government Schemes

It is suggested that to uplift the socio-economic mobility of children of sex workers, the government should implement horizontal reservation for them in government employment, higher education, and skills development schemes, like the Pradhan Mantri Kaushal Vikas Yojana (PMKVY). This positive discrimination must be a matter of legislation within the architecture of the social justice provisions promised under Articles 15(4), 15(5) and 16(4) of the Constitution that authorises the state to decide even as regards the progress of the poor and uneducated.

Opportunities in the free education universities, vocational courses and government job creation schemes must be combined with health insurance, housing plans and direct benefit transfers with prevailing social welfare schemes. Moreover, children of sex workers should be listed as a vulnerable population in official documents, such as the National Education Policy (NEP) 2020 and the National Commission for Protection of Child Rights (NCPCR), as well as guaranteed representation in education and child protection efforts. These steps would formalise inclusions and how these disadvantages will be dealt with in the generational sense by incorporating the problems into the structures of state welfare by creating support and representation.

"Legalising sex work should not imply surrendering future generations to the same fate. It must be supported by a positive policy, which will allow brilliance of children born in red-light areas to be nurtured not by humiliation, but encouragement, education and the freedom of choice."

D. Challenges to Implementation and Stakeholder Analysis

Although legal decriminalisation of sex work offers a rights-based approach, its realisation is quite challenging. Among the major barriers is the institutional opposition by the law enforcement force that perceives sex workers as a criminal population and tries to take advantage of available laws to bully their way or even use them to extort. Progressive enforcement is thwarted further by judicial inconsistency, stigma among the masses, and the absence of sensitisation programmes. Even civil society organisations have their points of disagreement on whether the action should be decriminalised completely or partly decriminalised by certain sections of society (the main Freudenthal Criminal Justice Network, CJN).

Sex work groups and grassroots organisations are active proponents of complete decriminalisation, coverage by labour law, and welfare and health plans. The experiences they live give essential information as to the gap in existing laws and the future structuring of reforms. An effective legal change should involve stakeholders with some education, communication and institutionalisation of change so that the change of policy should be followed by accountability of institutions and social acceptance.

XI. CONCLUSION

The study has critically analysed the multi-dimensional legal, social, economic, and ethical aspects of sex work in India and the need to move towards a rights-based regulatory approach over a policy that criminalises sex workers. This paper explains how, with the help of the existing laws that are based on colonial morality but not constitutional values, sex work was systematically marginalised through the denial of their legal status, labour rights, healthcare, and democratic participation. Using comparative models in New Zealand and Germany, the laws, based on Indian constitutional jurisprudence on dignity, autonomy and equality, partially criminalise consensual sex work, contravening the delivery of basic rights only through Articles 14, 15, 19, and 21 of the Constitution.

The legality needs to make a clear distinction between adult and consensual sex work and trafficking, with exploitation being criminalised and bodily integrity being defended. Specifically, it is integral that children of sex workers are included in educational opportunities, their development in other vocational skills, and other programs to widely benefit the population of the target category. The future lies thus in the eventual allaying of the legal reform and the constitutional morality, as well as the national health policy, and the participatory governance. The voices of sex workers and their dignity cannot be ignored by a democratic society that pretends to respect human rights. The law should not continue being a tool of oppression but should become a tool of empowerment, justice, and social change.

A. Policy Recommendations/ Road map

Repeal of parts of the Immoral Traffic (Prevention) Act, which criminalises consensual adult sex work, legalisation of sex work as a labour activity, and inclusion of sex workers in national welfare schemes like health insurance, pensions, housing and education of children. The Ministry of Law and Justice will be needed to lead the legislature along with the Ministry of Women and Child Development, the Ministry of Social Justice and Empowerment, and the Ministry of Health and Family Welfare. A staged implementation plan would start with decriminalisation in 6-12 months, and then development of labour protections in 2 years. Compulsory police sensitisation programmes, the presence in the National Education Policy and legal assistance should be established. Legal recognition of sex work is not just a policy change- it is constitutional and morally decent.

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