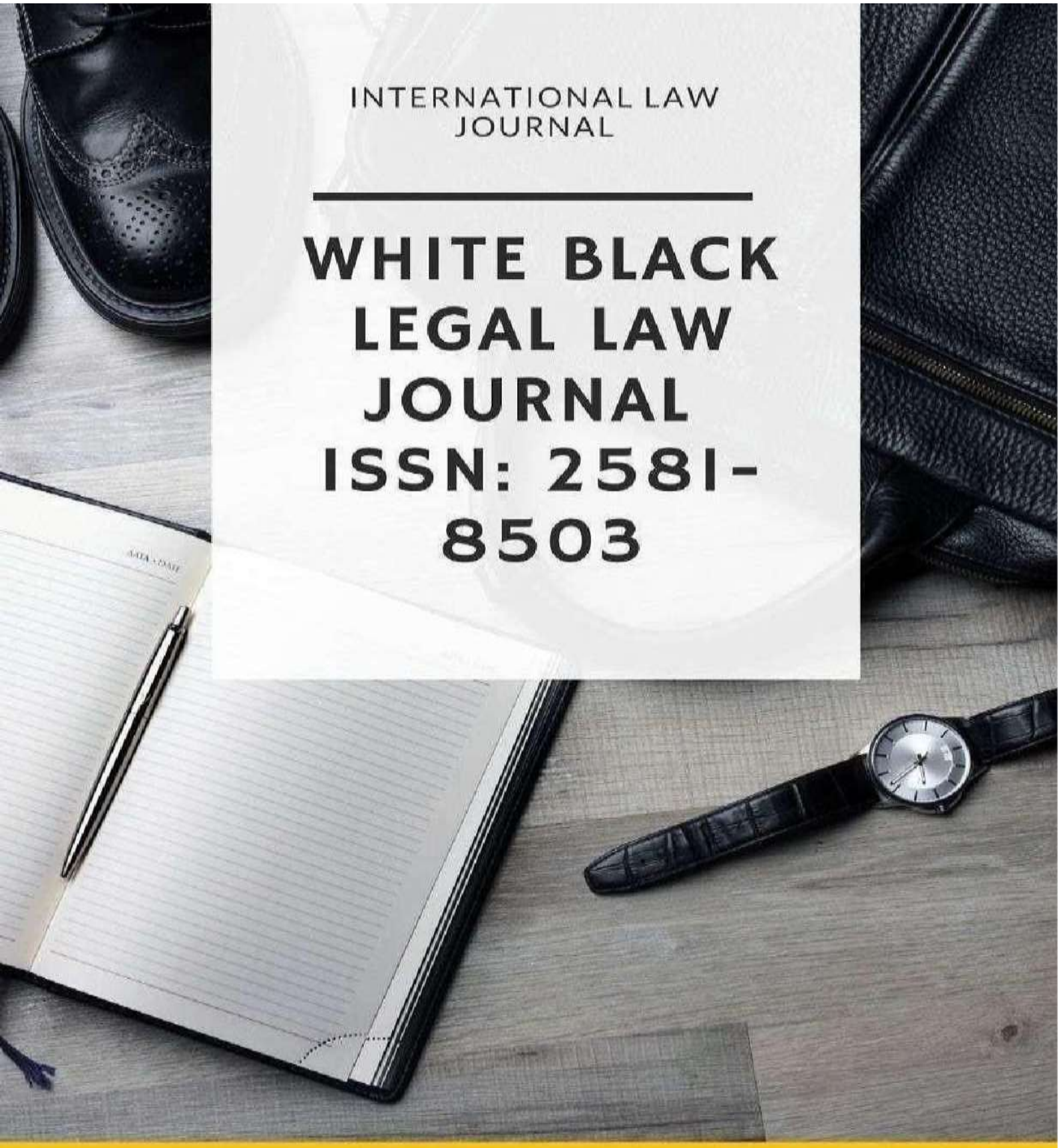

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RETHINKING CRIMINALIZATION: LEGAL AND ETHICAL DIMENSIONS OF VOLUNTARY SEX WORK IN INDIA

AUTHORED BY - PROF. MONICA CHAWLA

Abstract

Prostitution in India remains a multifaceted issue entangled in a delicate web of moral considerations and legal complexities. This abstract provides an overview of the intricate relationship between morality and legality surrounding the practice, delving into the nuances of India's legal framework and the ethical debates surrounding the profession. India's legal stance on prostitution is convoluted, with varying regulations across states and union territories. The Immoral Traffic (Prevention) Act, 1956, forms the cornerstone of legislation related to prostitution, criminalizing activities such as solicitation and running brothels. However, the decentralized nature of India's legal system results in divergent approaches, from pragmatic policies in states like Maharashtra to more stringent measures elsewhere. The Supreme Court of India has significantly influenced the discourse on prostitution. In 2011, it issued guidelines aimed at safeguarding the rights of sex workers, differentiating between voluntary and forced prostitution. Landmark cases, such as Budhadev Karmaskar v. State of West Bengal (2011), have emphasized the need to recognize sex workers' rights and ensure their access to essential services. Case examples, including the GB Road Case (2016) and the Sonagachi Case (2001), illuminate the challenges of human trafficking, forced prostitution, and the exploitation of vulnerable individuals. These underscore the imperative for nuanced legal frameworks that address the complexities of the sex trade. Recent developments, such as the Justice Verma Committee Report (2013) and the proposed Trafficking of Persons Bill (2018), reflect ongoing efforts to reform India's legal approach to prostitution.

Keywords: Prostitution, India, Morality, Legality, Supreme Court

I INTRODUCTION

Prostitution, defined as the exchange of sexual services for money or goods, remains a contentious issue in India, characterized by a complex interplay of morality, legality, and societal perceptions. Historically, prostitution has existed in the Indian subcontinent for centuries, with references found in ancient texts and cultural traditions. In contemporary India, prostitution exists in a legal grey area-neither explicitly legalized nor completely criminalized-leading to a fragmented and ambiguous legal framework that is often interpreted variably across jurisdictions and social contexts.

This article explores the multifaceted landscape of prostitution in India by examining its historical roots, current legal status, moral considerations, and the lived realities of sex workers. In particular, it focuses on evaluating prostitution through the lens of Immanuel Kant's moral philosophy, especially the "principle of humanity," to argue that prostitution inherently violates the moral respect owed to individuals.

Kantian ethics emphasizes the intrinsic dignity and moral worth of every human being. Central to this philosophy is the principle that individuals must always be treated as ends in themselves and never merely as means to an end. From this standpoint, the commodification of the human body in prostitution raises significant ethical concerns. When a person sells their body for sexual services, it can be argued that they are reduced to an instrument for the satisfaction of another's desires, thereby undermining their inherent dignity and autonomy.

Kantian moral theory posits that personhood and moral agency are intimately connected with the self-determining will of embodied individuals. Human beings recognize their subjectivity-and, by extension, their humanity-through social interactions that involve mutual recognition and respect. Sexuality, within this framework, is one of the ways individuals express their autonomy and identity. However, not all expressions of sexuality are morally equal. For Kant, morally acceptable sexual relations must involve mutual respect and consent, wherein each individual acknowledges the other as a rational, autonomous being.

Prostitution, as a commercial transaction, often lacks this mutuality and reciprocity. The dynamic may involve one person exerting their will over another, treating the other merely as a means to an end-primarily, sexual gratification-without genuine acknowledgment of the other's

dignity or subjectivity. Even if consensual, such exchanges may still fall short of the moral ideal posited by Kantian ethics, as they commodify an aspect of personhood that should be respected, not sold.

Although perspectives on sexual morality vary across different ethical frameworks, many converge on the principle that sexual relations should involve mutual respect and recognition of each party's autonomy. Kantian ethics, by underscoring the moral imperative to treat humanity always as an end, challenges the moral acceptability of prostitution, not merely from a standpoint of legality or consent, but from the deeper philosophical commitment to human dignity.

II HISTORICAL BACKGROUND OF PROSTITUTION IN INDIA

a) Ancient India

Prostitution in ancient India was not viewed with the same moralistic contempt as in modern times. In fact, courtesans (known as *ganikas*, *devadasis*, or *nagarvadhu*) held an important place in society. Texts like the *Kamasutra* and *Arthashastra* discussed sex work in practical and legal terms, indicating its accepted role within urban economies.[1] *Ganika* were highly trained in arts, music, and dance, often associated with temples and royal courts. The *Arthashastra* (by Kautilya, 3rd century BCE) regulated prostitution through state mechanisms, viewing it as taxable labor.[2]

b) Medieval India

During the medieval period, the status of sex workers began to change, particularly under Islamic rule and growing feudal morality. While some forms of courtesan ship remained, women increasingly lost autonomy, and their social status declined. The institution of the devadasi system (women dedicated to temple service) became more exploitative over time, especially in South India. Some Mughal-era writings mention courtesans (*tawaifs*) who continued to enjoy cultural prominence in courts.

c) Colonial Period

British colonialism fundamentally changed the social and legal treatment of prostitution

[1] Sumanta Banerjee, *Under the Raj: Prostitution in Colonial Bengal 17* (Seagull Books, Calcutta, 2nd edn., 1998).
[2] Saddan Hossain, "The Ethical and Hinduism views on Prostitution" 373 *International Journal of Scientific Development and Research*, 2023.

in India. The colonial state adopted Victorian morality and institutionalized control over sex workers. Contagious Diseases Acts (1860s–1880s) targeted Indian prostitutes near British cantonments, forcing them into medical inspections under the guise of public health. Sex workers were criminalized under various laws, including the Indian Penal Code (IPC) and Police Acts, portraying them as a threat to morality and order. Simultaneously, the traditional status of courtesans declined sharply, as nationalist and reformist movements began to condemn prostitution.

d) Post-Independence Era

After 1947, independent India retained many colonial-era laws. While prostitution per se is not illegal, many associated activities—like brothel-keeping, soliciting, and pimping—are criminalized under the Immoral Traffic (Prevention) Act (ITPA), 1956. Sex workers face legal ambiguity: their existence is tolerated, but their work is heavily policed. Activism in the late 20th and early 21st centuries, including by groups like Durbar Mahila Samanwaya Committee (DMSC), began to demand rights, recognition, and decriminalization.

III INTERNATIONAL LEGAL APPROACHES TO PROSTITUTION

The legal status of prostitution varies significantly across the globe, reflecting differing cultural, religious, and political attitudes toward sex work. Broadly, four primary legal frameworks can be identified: legalized/regulation, decriminalization, criminalization, and the Nordic model (also known as partial criminalization or the "equality model"). Each model entails distinct implications for sex workers' rights, public health, human trafficking, and law enforcement.

In countries that adopt a legalized or regulated model, prostitution is permitted under specific conditions, and the state plays an active role in overseeing the industry. Sex workers are often required to register with authorities, undergo regular health checks, and operate within designated zones or licensed brothels.[3]

a. Germany: Prostitution is fully legal and subject to state regulation. Sex workers may work independently or in licensed brothels and are entitled to access public health

[3] Ministry of Justice, *Review of the Prostitution Reform Act 2003* (2008) https://www.justice.govt.nz (last visited on June 12, 2025).

insurance, legal protections, and pension contributions. The 2002 Prostitution Act aimed to improve working conditions and reduce stigma by recognizing sex work as a legitimate form of labor.

b. Netherlands: Prostitution is legal and regulated, with a well-known system of red-light districts, particularly in Amsterdam. Licensed brothels must comply with local zoning and health ordinances, and sex workers can legally operate as self-employed professionals. However, unregistered and illegal sectors continue to pose regulatory challenges.

c. Austria, Switzerland, Greece, and Turkey: These countries also permit prostitution under varying regulatory frameworks. In Austria and Switzerland, for instance, sex workers are required to register and undergo periodic health checks. Brothels operate under strict licensing conditions. In Turkey, only registered brothels are legal, while street-based sex work remains prohibited.

d. Nevada, United States: Prostitution is legal only in specific rural counties within the state of Nevada and only within state-licensed brothels. It remains illegal in the majority of U.S. states, including large urban centers such as Las Vegas and Reno[4].

b) *Decriminalization* involves the removal of all criminal penalties associated with consensual adult sex work, both for sellers and buyers. Unlike legalization, decriminalization refrains from imposing an elaborate regulatory regime, instead treating sex work as ordinary labor subject to standard workplace protections.

a. **New Zealand**: The Prostitution Reform Act of 2003 fully decriminalized sex work, making it the first country to do so comprehensively. The law enables sex workers to work legally, form collectives, and report abuse or exploitation without fear of prosecution. The New Zealand model is often cited by human rights organizations as a best-practice approach due to its focus on safety, health, and agency.

b. Australia (New South Wales and Victoria): In these states, sex work is decriminalized, and sex workers are protected under occupational health and safety legislation. New South Wales, in particular, does not require sex workers to register or undergo mandatory health checks, emphasizing voluntary engagement with services instead. Other Australian states apply different models, ranging from criminalization to

[4] Manasvi Kaushik, "Legalization of Sex Work in India: A Comprehensive analysis of Laws Related to Sex Work", 588
Indian Journal of Integrated Research in Law, 2022.

partial legalization.[5]

c) Under a *criminalization model*, all aspects of prostitution are illegal. Sex workers, clients, and third parties (such as brothel operators or pimps) are subject to prosecution. This model is typically justified on moral, religious, or public order grounds, but it has been widely criticized for driving the sex industry underground and increasing vulnerability to violence and exploitation.

a. Saudi Arabia, Iran, United Arab Emirates: Prostitution is entirely illegal and is harshly punished under Islamic law, often involving imprisonment, corporal punishment, or even capital penalties in extreme cases. These laws are grounded in religious doctrine and social conservatism.

b. Philippines and Indonesia (outside regulated zones): Prostitution is illegal, though widespread in practice. In the Philippines, enforcement is inconsistent, and sex workers are often vulnerable to exploitation and abuse. In Indonesia, although Bali and some other areas tolerate sex work unofficially, the legal status remains criminalized.

c. United States (majority of states): Prostitution is criminalized in all but a few counties in Nevada. Both sex workers and clients may be prosecuted, and enforcement disproportionately affects marginalized communities.

d. Russia: Street prostitution is illegal, but enforcement is inconsistent. While the sale of sex itself may be treated as a minor administrative offense, associated activities such as brothel-keeping and pimping are criminal acts. The lack of a clear legal framework has resulted in widespread informal and unregulated sex work.

d) This approach criminalizes the purchase of sex but not the sale, based on the assumption that sex work is inherently exploitative and predominantly a result of gender inequality. The model seeks to reduce demand for commercial sex and simultaneously promote exit strategies and support for those engaged in the industry.

a. Sweden: Introduced in 1999, the Swedish model aims to discourage the demand for prostitution by criminalizing clients, not sex workers. The policy is coupled with social services intended to help sex workers exit the industry. Supporters argue that the model reduces trafficking, while critics claim it drives sex work underground.

b. Norway, Iceland, France, Ireland, and Canada: These countries have implemented versions of the Nordic model, often accompanied by public awareness campaigns and

[5] Scarlet Alliance, "*Decriminalisation of Sex Work in Australia"* (2022) https://www.scarletalliance.org.au (last visited on July 3, 2025).

support services. While the criminalization of clients remains central, the effectiveness of the model remains contested.

c. **Israel (since 2020)**: Adopted a similar framework, where clients face fines and repeat offenders may face criminal charges. The law includes provisions for rehabilitative and social assistance programs for sex workers.

IV LEGAL PROVISIONS GOVERNING PROSTITUTION IN INDIA

A crime is related to prostitution and trafficking in the given sections

a) Immoral traffic(prevention)Act 1956.
b) Procuration of minor girls (section 366 A) Indian penal code now in Section 96 of the Bharatiya Nyaya Sanhita, 2023.
c) Import of minor girls (section 366B) Indian penal code now in Section 141 of the Bharatiya Nyaya Sanhita, 2023.
d) Selling girls for prostitution (Section 372) Indian penal code now in Section 98 of the Bharatiya Nyaya Sanhita, 2023.
e) Buying girls for prostitution (Section 373) Indian penal code now in Section 99 of the Bharatiya Nyaya Sanhita, 2023.

V IS PROSTITUTION LEGAL OR ILLEGAL IN INDIA? A DETAILED EXPLANATION

Prostitution in India exists within a complex and often misunderstood legal framework. Engaging in sex work defined as the exchange of sexual services for money between consenting adults is not, in itself, illegal under Indian law. However, this legality is heavily restricted by the Immoral Traffic (Prevention) Act (ITPA), 1956, and various provisions of the Indian Penal Code (IPC), which criminalize many associated activities such as brothel-keeping, soliciting in public places, pimping, and living off the earnings of a sex worker. This dichotomy creates a legal grey area where the act of prostitution is technically permissible, but almost all conditions surrounding it are not. For instance, it is illegal to operate out of a brothel or to solicit clients near public spaces realities that push sex workers into hidden or unsafe environments. As a result, sex workers are frequently subjected to harassment, extortion, and violence, often from those who are meant to protect them, such as the police. The absence of clear legal protections also means that sex workers lack access to labor rights, healthcare, and legal recourse, making their work highly precarious. In practice, while the law may not criminalize sex work outright,

it effectively renders it unviable and unsafe, contributing to the ongoing marginalization and stigmatization of those in the profession.

VI INDIAN PENAL CODE (IPC) IN RELATION TO PROSTITUTION

While the Indian Penal Code (IPC), 1860, does not directly outlaw prostitution, several of its provisions are frequently invoked in cases involving sex work particularly in relation to human trafficking, exploitation, and child prostitution. These sections serve to criminalize coercive and exploitative practices, especially when minors are involved. Sections 370 and 370A of the IPC are critical in addressing human trafficking for exploitation, including sexual exploitation and forced prostitution. Section 370 defines trafficking broadly, covering recruitment, transportation, and harboring of persons for the purpose of exploitation through force, fraud, coercion, or abuse of power. It explicitly includes prostitution and sexual exploitation within its definition of exploitation. Section 370A focuses on the sexual exploitation of trafficked persons, prescribing stringent punishments for anyone who knowingly engages or attempts to engage in sexual acts with trafficked individuals. The law is particularly harsh when the victim is a minor, with punishments ranging from 5 years to life imprisonment, depending on the gravity of the offense and the age of the victim.

In addition, Sections 372 and 373 of the IPC directly criminalize the sale and purchase of minors for purposes of prostitution. Section 372 penalizes anyone who sells, lets out, or otherwise disposes of any person under the age of 18 with the intent that they will be used for prostitution or illicit intercourse. Similarly, Section 373 punishes any person who buys, hires, or otherwise obtains a minor for such purposes. Both offenses are punishable with up to 10 years of rigorous imprisonment and a fine. These provisions are crucial for protecting vulnerable individuals, especially children, from exploitation. However, critics argue that they are often misused against adult sex workers, conflating voluntary sex work with trafficking. In many cases, adult women engaged in consensual sex work are wrongly treated as victims of trafficking, leading to forced "rescues" and institutionalization, rather than a focus on consent and rights. Hence, while these IPC provisions aim to prevent exploitation, their application often fails to differentiate between voluntary sex work and coercion, further complicating the legal position of sex workers in India.[6]

[6] Lin Lean Lim, *The Sex Sector: The Economic and Social Bases of Prostitution in Southeast Asia* 114 (ILO, 1998).

The BNS, 2023 has defined what constitutes an organised crime and it has included "human trafficking for prostitution" as an organised crime. According to the BNS, 2023 maximum punishment for an organised crime can go upto imprisonment for life-or-death penalty can also be granted. Though, unlike the IPC, the BNS has expressly defined and criminalised organised crimes but commercial prostitution has always been an organised crime in India in which most of the workers are trafficked and forcefully recruited. According to an estimate there are nearabout 8.25 lakh female sex workers in India who have been identified while the real numbers of sex workers can be much more than this. NACO (National AIDS Control Organisation) which comes under the Ministry of Health & Family Welfare has said that in India there are nearabout 9 lakh sex workers. But many sex workers profess this job temporarily or very secretly, hence the exact number of sex workers can be even more than 10 lakhs in India. Also, there are many syndicates which are still not trapped which may have been recruiting so many sex workers who are still not counted.[7]

Living conditions of sex workers are quite bad and because these workers are marginalised and discriminated against hence sexually exploiting them continuously becomes so easy. Most of the sex workers cannot openly explain what profession they do because it will bring shame towards them from society members. Due to moral policing and shame, the sex workers are not considered as a part of dignified society in India. Generally, commercial sex works are performed in traditional hubs or small or temporary hubs through an organised syndicate.[8]

VII CONSTITUTIONAL RIGHTS RELEVANT TO SEX WORKERS IN INDIA

Although the Indian Constitution does not specifically address sex work, sex workers are entitled to the same fundamental rights as any other citizen. These rights, enshrined in Part III of the Constitution, serve as the foundation for arguments in favor of decriminalizing sex work and ensuring the protection and dignity of those involved in the profession.[9]

Article 14 guarantees the Right to Equality before the law and equal protection of the laws to

[7] The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).
[8] Ms. Amritha VS, Dr. Jobi Babu and Dr. KM Ashifa, "Legalization of Sex Work in India: Perspectives on Changes in Socio-Economic and Living Conditions of Female Sex Workers" 409 *Journal of Survey in Fisheries Sciences* 2023.
[9] The Constitution of India, 1950, (Act 27 of 1949).

all persons. This means that sex workers, regardless of societal stigma or the nature of their work, must be treated equally in the eyes of the law. They cannot be discriminated against by the police, judicial system, or government institutions simply because of their profession. In practice, however, sex workers are often denied equal treatment, facing harassment, arbitrary detention, and violence violations that contradict the spirit of Article 14.

Article 19(1)(g) protects the Right to practice any profession, or to carry on any occupation, trade, or business, subject to reasonable restrictions in the interest of morality, public order, or health. While this article is frequently cited in debates about the legal status of sex work, the key tension lies in the phrase "subject to reasonable restrictions." Courts and lawmakers often invoke "morality" to justify limitations on sex work, such as banning brothels or public soliciting. However, many legal scholars and human rights advocates argue that consensual adult sex work should fall within the scope of Article 19(1)(g), and that moral disapproval alone is not a sufficient ground for criminalization.

Article 21, which guarantees the Right to Life and Personal Liberty, has been interpreted by the Supreme Court to include the right to live with dignity, the right to privacy, and the right to safe working conditions. For sex workers, this means they are constitutionally entitled to be protected from violence, abuse, and exploitation.[10] The landmark Supreme Court ruling in *Budhadev Karmaskar v. State of West Bengal (2022)* affirmed that sex workers have the right to live with dignity and are entitled to the protection of the law, reinforcing their Article 21 rights. This decision emphasized that the profession of sex work, when conducted voluntarily by adults, does not strip individuals of their fundamental human rights.[11]

In summary, while sex work may not be explicitly protected under the Indian Constitution, Articles 14, 19(1)(g), and 21 provide a robust legal foundation for recognizing and safeguarding the rights of sex workers. These provisions support the growing argument that adult, consensual sex work should be decriminalized, and that sex workers should be treated as equal citizens under the law, deserving of dignity, autonomy, and protection.

[10] M.P. Jain and S.N. Jain, "*Principles of Administrative Law*" 38 (Wadhawa, Nagpur, 2001).
[11] D.D. Basu, "*Commentary on the Constitution of India"* 245 (LexisNexis, Publications, New Delhi, 2023).

VIII THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Sex trafficking and organising prostitution through brothels are criminalised by the ITPA Act in India. This act assumes prostitution as "the sexual exploitation or abuse of persons for commercial purpose".[12] According to this act a brothel is a place "used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes". Commercial prostitution is very commonly organised in brothels in India and if a person who is running a brothel or any premises to be used a brothel, then he can be punished with a maximum punishment of rigorous imprisonment up to 5 years with fines. A maximum punishment of imprisonment up to 10 years can be imposed if a person is detained for prostitution in a brothel or in any other premises, and this punishment has to be imposed if there was the consent of that victimised person or not. It has to be said that the perception regarding livelihood has changed in the modern times, it is not logical to criminalise consensual sex work and courts of India also have many times asked for securing the rights of sex workers.

The silence of the existing laws regarding paid and consensual sex work creates ambiguity because it indirectly debars actions against persons who involve in paid and consensual sexual activities but at the same time many sex workers become prone to exploitation because their rights are not expressly explained in the written laws. Sex trafficking and organising commercial prostitution should still be treated as crimes but India needs a modern law to properly define laws related to prostitution by abolishing the old ambiguous laws. The new law must expressly provide it to be a legal act if a sex worker is providing sexual services without being enforced by someone and in this new law all the rights of sex workers must be codified.[13]

IX JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 is a crucial piece of legislation aimed at protecting the rights of children in India, especially those who are vulnerable to exploitation, abuse, and trafficking, including being forced into sex work. While the Act primarily deals with children in conflict with the law and those in need of care and protection, it plays a significant role in the context of child trafficking and commercial sexual

[12] The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s.2(f).
[13] Anshika Yadav, 'Legal Status of Prostitution in India', *International Journal of Creative Research Thoughts*, 5 (2024).

exploitation.[14]

Under this law, any child defined as a person below the age of 18 who is found to be a victim of trafficking, abuse, or sexual exploitation, including being forced into prostitution, is treated not as an offender but as a child in need of care and protection. The Act mandates that such children must be rescued and placed in the care of Child Welfare Committees (CWCs), which are responsible for ensuring their rehabilitation, counselling, education, and reintegration into society.[15] The Act also provides for stringent punishment against individuals or groups involved in trafficking or exploiting children for prostitution. It empowers the authorities to initiate legal proceedings against traffickers, brothel owners, or even guardians who knowingly push children into sex work. Offenses against children under this Act are treated as heinous crimes, attracting severe penalties. Importantly, the Juvenile Justice Act also emphasizes the rehabilitation and restoration of rescued children, rather than just punishment of perpetrators. It recognizes that children who are trafficked into sex work are victims of circumstances and deserve protection, not criminalization.

The Act encourages the setting up of child care institutions and shelter homes where victims can receive psychological support, vocational training, and access to legal aid. In summary, the Juvenile Justice Act, 2015 plays a protective and rehabilitative role in cases involving children trafficked into sex work. It aligns with India's obligations under international conventions such as the UN Convention on the Rights of the Child, and reflects a shift from viewing trafficked minors as delinquents to recognizing them as victims in need of state care and justice.

X CASE LAWS

To understand the legal landscape surrounding prostitution in India, it is essential to examine some significant case laws that have shaped the discourse on the subject. *State of Andhra Pradesh* v. *Uppu Venkatesh,* in this case, the Supreme Court of India upheld the right of sex workers to live with dignity. The court ruled that sex work is a source of livelihood, and sex workers are entitled to the same fundamental rights as other citizens. *Budhadev Karmarkar* v. *State of West Bengal*[16], this is the landmark Supreme Court case marked a significant step

[14] Juvenile Justice Act, 2015, India, a*vailable at* https://recordoflaw.in/juvenile-crime-on-the-rise-in-india-causes- trends-solutions/ (last visited on Feb 12, 2025).
[15] Dr. R. Seyon, *Judicial Activism and Human Rights of Women & Children* 195 (Regel Publications, New Delhi, 2nd edn., 2016).
[16] AIR 2011 SCC 148.

toward recognizing the rights and dignity of sex workers in India. The case arose after allegations that the police had harassed, assaulted, and humiliated sex workers during raids on brothels in West Bengal. The Supreme Court emphatically ruled that sex work, when engaged in consensually by adults, is a legitimate profession and that sex workers are entitled to the full protection of their fundamental constitutional rights, especially the right to life and personal liberty under Article 21, which includes the right to dignity. The Court condemned police excesses and directed law enforcement officials to conduct raids humanely, without resorting to violence or public humiliation. Importantly, the judgment drew a clear distinction between trafficking and forced prostitution which must be combated vigorously and voluntary adult sex work, which must be respected and protected by the law. This ruling reinforced that sex workers should not be subjected to arbitrary arrests or discrimination and should be allowed to live and work with dignity. Overall, *Budhadev Karmaskar* is seen as a progressive judicial recognition of sex workers' rights and an important precedent for safeguarding their constitutional protections. *Gaurav Jain* v. *Union of India*[17]**,** the Delhi High Court recognized the rights of transgender sex workers and directed the government to take measures to protect their dignity and rights. These cases reflect the evolving perspective of the Indian judiciary, which acknowledges the rights and dignity of sex workers and calls for a more nuanced approach to prostitution.

XI COMPARATIVE STUDY OF SEX WORKERS BETWEEN INDIA AND OTHER COUNTRIES

The treatment and status of sex workers vary widely across countries, shaped by legal frameworks, cultural attitudes, public health priorities, and human rights discourses. India occupies a unique middle ground where voluntary adult sex work is technically legal, but most surrounding activities are criminalized. This partial criminalization under laws such as the Immoral Traffic (Prevention) Act, 1956[18] (ITPA) means that sex workers often operate in a legal vacuum. While they may not be prosecuted for the act itself, they are frequently targeted under vague laws for brothel- keeping, solicitation, or loitering. This legal ambiguity fosters systemic abuse by law enforcement, restricts access to justice, and marginalizes sex workers socially and economically. By contrast, countries like New Zealand have adopted a decriminalization model, most notably through the Prostitution Reform Act, 2003.[19] This

[17] AIR 2015 SCC 1461.
[18] The Immoral Traffic (Prevention) Act, 1956, (Act 104 of 1956).
[19] The Prostitution Reform Act, 2003 (Act 28 of 2003).

approach treats sex work as legitimate labor, ensuring that sex workers are protected by workplace health and safety laws, have access to public services, and are free from police harassment. The New Zealand model is grounded in a rights-based approach that emphasizes consent, agency, and harm reduction, and it has been praised for improving the safety and well-being of sex workers without increasing trafficking or exploitation. Germany and the Netherlands have followed a legalization and regulation model, where sex work is legal but subject to government controls such as licensing, health checks, and zoning laws. In these countries, sex workers can operate openly, pay taxes, and even form unions. Although regulation has created safer environments in many respects, critics argue that overly bureaucratic systems may still exclude vulnerable groups, such as undocumented migrants. On the other hand, countries such as Sweden, Norway, and France follow the Nordic model, where selling sex is decriminalized but buying sex is criminalized. This model is designed to reduce demand and is often promoted as an anti-trafficking measure. However, many sex workers and researchers argue that it drives the industry underground and increases risks to sex workers, who may be less able to screen clients or access protection. In India, activists have long advocated for a shift toward either decriminalization or full legalization. Their efforts focus on recognizing sex work as work, protecting the rights of workers, and separating voluntary sex work from coercion or trafficking. Despite some progressive judicial comments such as the Supreme Court's 2022 direction to protect the rights and dignity of sex workers India still lacks a comprehensive policy that ensures legal protections and access to health, housing, and legal redress.

XII CHALLENGES FACED BY SEX WORKERS

Sex workers in India face a myriad of challenges, rooted in legal ambiguity, social stigma, and economic vulnerability. These challenges impact their health, safety, and overall well-being.

a) **Health Risks**: Sex workers are at a higher risk of contracting sexually transmitted infections (STIs), including HIV/AIDS. The lack of access to healthcare, coupled with social ostracization, can prevent them from seeking medical assistance and practicing safe sex.

b) **Violence and Exploitation:** Many sex workers experience violence and exploitation, both from clients and law enforcement. Fear of legal repercussions often prevents them from reporting crimes against them. Efforts to protect sex workers from such abuses remain insufficient.

c) **Lack of Legal Protections**: The legal ambiguity surrounding prostitution leaves sex workers vulnerable to harassment and extortion by law enforcement. They often face arrests, detention, and the confiscation of their earnings, despite the Supreme Court's recognition of their right to live with dignity.

d) **Social Marginalization**: Sex workers are marginalized within society, making it difficult for them to access education, housing, and other basic services. The social stigma attached to sex work affects their mental health and overall quality of life.

XIII EFFORTS FOR REFORM AND EMPOWERMENT

In recent years, there have been concerted efforts to reform the legal and social framework surrounding prostitution in India and empower sex workers.

a) **Legal Advocacy**: Various organizations and activists have been working to challenge the criminalization of sex work. They advocate for the decriminalization of adult consensual sex work while focusing on preventing human trafficking and protecting minors.

b) **Rights-Based Approach**: Empowering sex workers with information and resources is crucial. Organizations like the National Network of Sex Workers (NNSW) have been instrumental in educating sex workers about their legal rights, healthcare, and HIV prevention.

c) **HIV/AIDS Prevention**: The Avahan program, funded by the Bill and Melinda Gates Foundation, has played a significant role in promoting safe sex practices and providing healthcare services to sex workers, aiming to reduce the prevalence of HIV/AIDS among this vulnerable population.

d) **Economic Alternatives**: Initiatives that provide vocational training and alternative livelihood opportunities to sex workers can help them transition out of the trade, reducing economic vulnerability.

XIV RECENT DEVELOPMENTS

In recent years, there have been efforts to reform the legal framework surrounding prostitution in India:

a) **Justice Verma Committee Report (2013):** Following the Nirbhaya case, a committee led by Justice Verma recommended decriminalizing prostitution and providing legal protections for sex workers. While not yet implemented, it stirred discussions on the

need for legal reforms.

b) **The Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018**: This proposed legislation seeks to provide a comprehensive legal framework to combat human trafficking, including trafficking for sexual exploitation. It emphasizes the rehabilitation and support of victims.

c) **Efforts towards Decriminalization**: Activists and organizations have been advocating for the decriminalization of voluntary adult sex work to protect sex workers from exploitation and violence.

XV CONCLUSION

Prostitution in India is a contentious issue, deeply entangled with questions of morality and legality. The historical context, complex legal framework, moral perspectives, and challenges faced by sex workers all contribute to this multifaceted problem. While significant strides have been made in recognizing the rights and dignity of sex workers, there is still a long road ahead to achieve comprehensive reform. Decriminalizing adult consensual sex work and providing comprehensive support for sex workers can be the way forward. Legal reform, combined with awareness and education, can help transform the lives of sex workers and mitigate the societal stigma attached to their profession. Ultimately, the goal should be to create an environment where sex workers can live with dignity, free from violence and discrimination, and have access to the same rights and opportunities as any other citizen of India. In today's India, where conversations around individual rights and social justice are gaining momentum, the approach toward prostitution demands urgent and thoughtful reform. While the law currently exists in a grey area neither fully criminalizing nor recognizing sex work as legitimate employment-this ambiguity often leaves sex workers vulnerable to exploitation, violence, and systemic neglect. Decriminalizing consensual adult sex work, along with instituting protective laws, healthcare access, financial inclusion, and social security, can empower sex workers to live with dignity and autonomy. More importantly, this must be accompanied by widespread public education to challenge deep-seated moral prejudices and reduce stigma. The path forward lies not in moral policing but in ensuring equality, justice, and human rights for all regardless of profession. Only then can India claim to uphold the constitutional promise of dignity and freedom for every citizen.

India has criminalised commercial prostitution and the new criminal code i.e. the BNS, 2023

has called it an organised crime if human trafficking is done to recruit the victims in sex work for which death penalty or life imprisonment can also be imposed on conviction. According to the existing Indian laws, anybody running a brothel, pimping and publicly asking people for availing the services of sex workers or trafficking victims for prostitution is said to be committing a cognisable offence and hence the culprit is severely punished on conviction. But the Indian laws are silent on the status of paid and consensual sex work at private places. It shows that people involved in the paid and consensual sexual activities in any private place or premises cannot be punished because Indian laws do not formally declare it as a crime. In this way sex workers who provide sexual services need to be protected from shame and torture. For protecting sex workers from unnecessary legal disputes, interrogations, shame, tortures, etc. it is suggested that India should formally declare paid and consensual sex work at private places or private premises as a legal act. The formal declaration must also explain in detail all the rights of sex workers which is currently not formally explained in any Indian laws.