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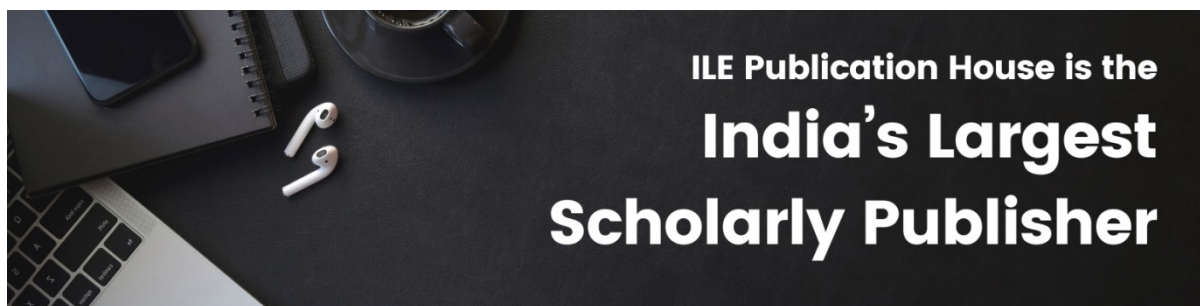
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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



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## AN ANALYSIS OF LEGAL FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF SEX WORKERS IN INDIA

**AUTHOR** – AMRENDRA KUMAR, DEPARMEN OF LEGAL SUDIES, JHARKHAND RAI UNIVERSITY, RANCHI

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### LIST OF ABBREVIATIONS

| S. No. | Abbreviation | Full Form                                                                  |
|--------|--------------|----------------------------------------------------------------------------|
| 1      | ITPA         | Immoral Traffic (Prevention) Act, 1956                                     |
| 2      | CEDAW        | Convention on the Elimination of All Forms of Discrimination Against Women |
| 3      | UN           | United Nations                                                             |
| 4      | SDGs         | Sustainable Development Goals                                              |
| 5      | ILO          | International Labour Organization                                          |
| 6      | NGO          | Non-Governmental Organisation                                              |
| 7      | HIV/AIDS     | Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome          |
| 8      | NCRB         | National Crime Records Bureau                                              |

|    |          |                                                                                |
|----|----------|--------------------------------------------------------------------------------|
| 9  | IPC      | Indian Penal Code                                                              |
| 10 | CrPC     | Code of Criminal Procedure                                                     |
| 11 | SC       | Supreme Court                                                                  |
| 12 | HC       | High Court                                                                     |
| 13 | PIL      | Public Interest Litigation                                                     |
| 14 | LGBTQIA+ | Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Asexual etc. |
| 15 | UPA      | United Progressive Alliance                                                    |
| 16 | BJP      | BharatiyaJanata Party                                                          |
| 17 | MHA      | Ministry of Home Affairs                                                       |
| 18 | MoWCD    | Ministry of Women and Child Development                                        |
| 19 | NACO     | National AIDS Control Organisation                                             |
| 20 | RTI      | Right to Information                                                           |
| 21 | UNODC    | United Nations Office on Drugs and Crime                                       |

## CHAPTER 1: INTRODUCTION

## INTRODUCTION

***"The measure of a civilization is how it treats its weakest members."* – Mahatma Gandhi**

This profound statement by Mahatma Gandhi underscores the moral and ethical responsibility of a society to protect and uplift its most vulnerable populations. In the context of contemporary India, one such marginalized and often invisible group is sex workers. Despite their significant presence in the socio-economic fabric of the nation, sex workers remain among the most stigmatized, exploited, and legally unprotected communities. The legal framework governing sex work in India, primarily encapsulated in the Immoral Traffic (Prevention) Act, 1956 (ITPA), reflects a paradoxical approach: while it aims to curb trafficking and exploitation, it inadvertently criminalizes the very individuals it seeks to protect. This dissertation, titled "An Analysis of the Legal Framework for the Protection of the Rights of Sex Workers in India," seeks to unravel this paradox and explore the ways in which the law can be reimagined to safeguard the dignity, rights, and well-being of sex workers.

Sex work, often referred to as the "oldest profession," has existed in various forms across cultures and civilizations. In India, it is deeply entrenched in the socio-economic and cultural milieu, with historical references dating back to ancient texts and traditions. However, the contemporary reality of sex work in India is far from the romanticized depictions of the past. Today, sex work is synonymous with exploitation, vulnerability, and social ostracization. According to estimates by the National AIDS Control Organization (NACO), there are approximately 800,000 to 1 million female sex workers in India, with many more engaged in informal or clandestine sex work. These individuals, predominantly women, but also including men and transgender persons, operate in a legal and social environment that is overwhelmingly hostile.

The legal status of sex work in India is ambiguous and fraught with contradictions. On the one hand, sex work itself is not explicitly criminalized; on the other hand, activities associated with sex work, such as solicitation, brothel-keeping, and pimping, are punishable under the ITPA. This legal ambiguity has far-reaching consequences. It leaves sex workers vulnerable to police harassment, extortion, and violence, while denying them access to basic rights and protections. Moreover, the stigma attached to sex work exacerbates their marginalization, making it difficult for them to

access healthcare, education, and legal redress.

**RATIONALE FOR THE STUDY:**

The rationale for conducting this study on "An Analysis of the Legal Framework for the Protection of the Rights of Sex Workers in India" stems from the urgent need to address the systemic marginalization, exploitation, and human rights violations faced by sex workers in India. Despite being an integral yet often invisible part of society, sex workers remain one of the most vulnerable and stigmatized groups, largely due to the inadequacies and contradictions in the existing legal framework. This study is motivated by the following key reasons:

**1. Legal Ambiguity and Its Consequences**

The legal status of sex work in India is fraught with ambiguity. While sex work itself is not explicitly criminalized, activities associated with it—such as solicitation, brothel-keeping, and pimping—are punishable under the Immoral Traffic (Prevention) Act, 1956 (ITPA). This legal paradox creates a hostile environment for sex workers, leaving them vulnerable to police harassment, extortion, and violence. The conflation of sex work with trafficking under the ITPA further exacerbates their marginalization, as it denies them agency and autonomy. This study seeks to critically examine these legal



ambiguities and their impact on the rights and dignity of sex workers.

## 2. Human Rights Violations

Sex workers in India face pervasive human rights violations, including physical and sexual violence, discrimination, and denial of access to healthcare, education, and legal redress. The criminalization of activities associated with sex work pushes the industry underground, making it difficult for sex workers to seek protection or assert their rights. This study aims to highlight these violations and advocate for a rights-based approach to sex work that prioritizes the safety, dignity, and well-being of sex workers.

## 3. Lack of Comprehensive Research

While there is a growing body of research on sex work and trafficking in India, there is a significant gap in the literature regarding the legal framework governing sex work and its implications for the rights of sex workers. Most studies focus on the socio-economic aspects of sex work or the public health implications, with limited attention to the legal and policy dimensions. This study seeks to fill this gap by providing a comprehensive analysis of the legal framework and its impact on sex workers.

## 4. Intersectionality and Multiple Marginalizations

Sex work in India is deeply intertwined with issues of gender, caste, class, and poverty. Many sex workers come from disadvantaged backgrounds, with limited access to education and employment opportunities. For them, sex work is often a means of survival, albeit one that comes with significant risks and sacrifices. The intersection of sex work with other forms of marginalization further compounds their vulnerability. This study aims to explore these intersections and advocate for a holistic approach to addressing the challenges faced by sex workers.

## 5. International Human Rights Standards

India is a signatory to several international human rights conventions, including the

Universal Declaration of Human Rights (UDHR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These conventions emphasize the importance of protecting the rights of all individuals, including those engaged in sex work. However, the current legal framework in India falls short of upholding these standards. This study seeks to align India's legal framework with international human rights standards by advocating for the decriminalization of sex work and the adoption of a rights-based approach.

## 6. Public Health Implications

The criminalization of sex work has significant public health implications. Sex workers are often excluded from healthcare services, including sexual and reproductive health services, due to stigma and discrimination. This not only affects their health and well-being but also has broader implications for public health, particularly in the context of HIV/AIDS and other sexually transmitted infections. By advocating for the decriminalization of sex work and the inclusion of sex workers in healthcare programs, this study aims to improve public health outcomes.

## 7. Policy and Legal Reforms

The findings of this study have the potential to inform policy and legal reforms that can improve the lives of sex workers in India. By identifying the gaps and shortcomings in the existing legal framework and proposing actionable recommendations, this study aims to contribute to the development of a more just and equitable legal system. The recommendations will be targeted at policymakers, activists, and stakeholders, providing them with a roadmap for advocating for the rights and dignity of sex workers.

## 8. Contribution to Academic Discourse

This study contributes to the broader academic discourse on human rights, gender justice, and social inclusion. By highlighting the intersection of sex work with issues such as gender inequality, labor rights, and public health, the

research underscores the need for a holistic and rights-based approach to sex work. The study also contributes to the growing body of literature on the legal and policy dimensions of sex work, providing a valuable resource for scholars, researchers, and policymakers.

### 9. Advocacy and Empowerment

Ultimately, this study is driven by a commitment to advocacy and empowerment. By giving voice to the experiences and perspectives of sex workers, the research aims to challenge the stigma and discrimination they face and advocate for their rights and dignity. The study seeks to empower sex workers by providing them with the tools and resources they need to assert their rights and advocate for their inclusion in society.

#### STATEMENT OF THE PROBLEM:

The legal framework governing sex work in India, primarily defined by the Immoral Traffic (Prevention) Act, 1956 (ITPA), is deeply flawed and fails to protect the rights and dignity of sex workers. While the ITPA aims to combat human trafficking and exploitation, its implementation has disproportionately targeted sex workers, criminalizing their livelihoods and pushing the industry underground. This has resulted in systemic marginalization, exploitation, and human rights violations against sex workers, who remain one of the most vulnerable and stigmatized groups in Indian society. The law's ambiguity—where sex work itself is not explicitly illegal but activities associated with it are criminalized—creates a hostile environment, leaving sex workers vulnerable to police harassment, extortion, and violence.

Sex workers face pervasive human rights violations, including physical and sexual violence, discrimination, and denial of access to healthcare, education, and legal redress. The criminalization of sex work pushes the industry into the shadows, making it difficult for sex workers to seek protection or assert their rights. They are excluded from labor protections, such as minimum wage laws and social security

benefits, leaving them economically vulnerable. The stigma attached to sex work further compounds their marginalization, making it difficult for them to access essential services or participate fully in society. Additionally, the conflation of sex work with trafficking under the ITPA denies sex workers agency and autonomy, treating them as criminals or victims rather than individuals entitled to rights and protections.

The public health implications of this legal framework are equally concerning. Sex workers are often excluded from healthcare services, including sexual and reproductive health services, due to stigma and discrimination. This not only affects their health and well-being but also has broader implications for public health, particularly in the context of HIV/AIDS and other sexually transmitted infections. Many sex workers come from disadvantaged backgrounds, with limited access to education and employment opportunities, making sex work a means of survival despite its risks. The intersection of sex work with gender, caste, and class further exacerbates their vulnerability, leaving them trapped in cycles of poverty and exploitation.

Despite the growing body of research on sex work and trafficking in India, there is a significant gap in the literature regarding the legal framework governing sex work and its implications for the rights of sex workers. Most studies focus on socio-economic or public health aspects, with limited attention to the legal and policy dimensions. This gap highlights the need for a comprehensive analysis of the legal framework and its impact on sex workers. The current legal framework is outdated and inadequate, failing to align with international human rights standards that emphasize the protection of all individuals, including those engaged in sex work. There is an urgent need for policy and legal reforms that prioritize the rights and dignity of sex workers, rather than criminalizing their livelihoods. A rights-based approach, emphasizing decriminalization, labor rights, and access to healthcare and legal

services, is essential to addressing the systemic marginalization and human rights violations faced by sex workers in India.

#### RESEARCH QUESTIONS:

1. What is the current legal framework governing sex work in India, and how does it impact the rights and well-being of sex workers?
2. What are the key gaps and shortcomings in the Immoral Traffic (Prevention) Act, 1956, and how do they contribute to the marginalization of sex workers?
3. How do socio-cultural factors, such as gender, caste, and class, influence the implementation of laws related to sex work in India?
4. What lessons can be drawn from international legal models that have adopted decriminalization or rights-based approaches to sex work?
5. What legal and policy reforms are needed to ensure the protection, dignity, and empowerment of sex workers in India?

#### OBJECTIVES OF THE STUDY:

1. To critically analyze the existing legal framework governing sex work in India, with a focus on the Immoral Traffic (Prevention) Act, 1956, and its impact on the rights of sex workers.
2. To identify the gaps and shortcomings in the current legal system that contribute to the marginalization and exploitation of sex workers.
3. To examine the socio-cultural factors, such as gender, caste, and class, that influence the implementation of laws related to sex work.
4. To explore international legal models and best practices that could inform reforms in India's legal framework for sex work.

5. To propose actionable recommendations for legal and policy reforms that prioritize the protection, dignity, and empowerment of sex workers in India.

#### LITERATURE REVIEW:

1. Kotiswaran, P. (2011). *Dangerous Sex, Invisible Labour: Sex Work and the Law in India*. Princeton University Press.

*Dangerous Sex, Invisible Labour: Sex Work and the Law in India* by Prabha Kotiswaran (2011)<sup>687</sup> is a critical examination of the legal and socio-economic dimensions of sex work in India, challenging the dominant narrative that frames sex work as a moral or criminal issue. Instead, Kotiswaran positions sex work as a form of labor deeply embedded in India's informal economy, advocating for a labor rights-based approach. The book provides a detailed critique of the Immoral Traffic (Prevention) Act, 1956 (ITPA), arguing that its criminalization of activities associated with sex work perpetuates the marginalization and exploitation of sex workers. Kotiswaran also explores the intersections of gender, caste, and class in shaping the experiences of sex workers, offering a nuanced understanding of the socio-economic factors that drive individuals into sex work.

The book is highly relevant to this research as it provides a comprehensive analysis of the ITPA, which is central to the study. Kotiswaran's critique highlights how the law fails to protect sex workers and instead exacerbates their vulnerability, aligning with the research's focus on identifying gaps in the legal framework. Her emphasis on sex work as labor and her advocacy for labor rights resonate with the study's objective of promoting a rights-based approach to sex work. Additionally, her intersectional analysis of how gender, caste, and class intersect with sex work offers valuable insights into the compounded discrimination faced by sex workers from marginalized communities.

<sup>687</sup>Kotiswaran, P. (2011). *Dangerous Sex, Invisible Labor: Sex Work and the Law in India*. Princeton University Press.



Key findings from the book include the harmful effects of criminalization under the ITPA, which pushes sex work underground and increases vulnerability to exploitation, violence, and police harassment. Kotiswaran argues for the recognition of sex work as labor, entitling workers to the same rights and protections as other informal sector workers. She also highlights the need for legal reform, calling for the decriminalization of sex work and the adoption of policies that ensure the protection and empowerment of sex workers. These findings address significant gaps in the literature, particularly the lack of focus on labor rights and the intersectional experiences of sex workers.

Kotiswaran's work informs this research by providing a strong theoretical and empirical foundation for analyzing the ITPA and its shortcomings. It supports the study's advocacy for a labor rights-based approach and highlights the intersectional marginalization faced by sex workers. The book's policy recommendations also offer valuable insights for developing legal and policy reforms to improve the rights and well-being of sex workers in India. By integrating Kotiswaran's arguments and findings, this research builds on her work to further the discourse on sex work, labor rights, and legal reform in India.

2. **Shah, S. (2014). Street Corner Secrets: Sex, Work, and Migration in the City of Mumbai. Duke University Press.**

3. Street Corner Secrets: Sex, Work, and Migration in the City of Mumbai by Svati P. Shah (2014)<sup>688</sup> is an ethnographic study that delves into the lives of sex workers in Mumbai, focusing on the intersections of gender, migration, and labor. The book explores how sex work operates within the broader informal economy of the city, highlighting the socio-economic factors that drive individuals, particularly women, into sex

work. Shah challenges simplistic narratives that portray sex workers solely as victims or criminals, instead presenting a nuanced picture of their agency, struggles, and survival strategies. The book also examines the impact of urbanization, globalization, and state policies on the lives of sex workers, offering a critical perspective on the structural inequalities that shape their experiences.

This book is highly relevant to the research as it provides an in-depth understanding of the lived experiences of sex workers in an urban Indian context, complementing the legal analysis of the Immoral Traffic (Prevention) Act, 1956 (ITPA). Shah's focus on migration and labor aligns with the study's objective of exploring the socio-economic dimensions of sex work and its intersection with legal frameworks. Her emphasis on the agency of sex workers and their survival strategies offers a counter-narrative to the victimization discourse often found in literature, providing a more holistic view of sex work. Additionally, the book's exploration of how state policies and urbanization impact sex workers' lives contributes to understanding the broader structural factors that influence their vulnerability and marginalization.

Key findings from the book include the role of migration in driving individuals into sex work, particularly women from rural areas seeking economic opportunities in urban centers like Mumbai. Shah highlights how sex work is embedded in the informal economy, with sex workers often engaging in multiple forms of labor to survive. The book also underscores the resilience and agency of sex workers, who navigate complex social and economic landscapes to support themselves and their families. Shah critiques the state's failure to address the structural inequalities that perpetuate the marginalization of sex workers, calling for policies that recognize their labor and provide social and economic protections.

<sup>688</sup>Shah, S. (2014). *Street Corner Secrets: Sex, Work, and Migration in the City of Mumbai*. Duke University Press.

The book addresses significant gaps in the literature by focusing on the lived experiences of sex workers and the socio-economic contexts that shape their lives. While much of the existing literature on sex work in India emphasizes legal or public health perspectives, Shah's ethnographic approach provides a ground-level understanding of the challenges and strategies of sex workers. This fills a critical gap in the discourse by centering the voices and experiences of sex workers themselves, rather than relying solely on top-down analyses. Shah's work also highlights the need for policies that address the structural inequalities driving individuals into sex work, rather than focusing solely on criminalization or rescue narratives.

Street Corner Secrets informs this research by providing a rich, ethnographic foundation for understanding the socio-economic realities of sex work in India. It complements the legal analysis of the ITPA by highlighting how laws and policies impact the everyday lives of sex workers. Shah's emphasis on migration, labor, and agency aligns with the study's focus on advocating for a rights-based approach to sex work. By integrating Shah's insights, this research aims to bridge the gap between legal frameworks and the lived experiences of sex workers, offering a more comprehensive understanding of the challenges they face and the reforms needed to protect their rights and dignity.

**Ditmore, M. H., & Levy, A. (2007). Sex Work and the Law: A Comparative Analysis. In Sex Work Matters: Exploring Money, Power, and Intimacy in the Sex Industry (pp. 45–67). Zed Books.**

Sex Work and the Law: A Comparative Analysis by Melissa Hope Ditmore and Antonia Levy (2007)<sup>689</sup>, featured in the edited volume Sex Work Matters: Exploring Money, Power, and Intimacy in the Sex Industry, provides a comparative analysis of legal frameworks governing sex work across different countries.

The chapter examines various approaches to sex work, including criminalization, decriminalization, and legalization, and evaluates their impact on the rights, safety, and well-being of sex workers. Ditmore and Levy argue that criminalization exacerbates the vulnerability of sex workers by pushing the industry underground, increasing risks of violence, exploitation, and stigmatization. In contrast, decriminalization and legalization models, such as those in New Zealand and the Netherlands, are shown to improve the working conditions and rights of sex workers. The chapter also highlights the importance of involving sex workers in policy-making processes to ensure that laws and regulations address their needs and realities.

This chapter is highly relevant to the research as it offers a global perspective on legal frameworks governing sex work, providing valuable insights for analyzing India's Immoral Traffic (Prevention) Act, 1956 (ITPA). The comparative analysis helps identify best practices and lessons from other countries that could inform legal and policy reforms in India. Ditmore and Levy's emphasis on the negative consequences of criminalization aligns with the study's critique of the ITPA and its impact on sex workers' rights and safety. Additionally, their advocacy for decriminalization and the inclusion of sex workers in policy-making processes resonates with the research's objective of promoting a rights-based approach to sex work.

Key findings from the chapter include the detrimental effects of criminalization on sex workers, such as increased vulnerability to violence, exploitation, and stigmatization. The authors highlight how decriminalization and legalization models, particularly in countries like New Zealand and the Netherlands, have led to improved working conditions, better access to healthcare, and greater legal protections for sex workers. The chapter also underscores the importance of involving sex workers in the development and implementation of policies that affect their lives, arguing that their

<sup>689</sup>Ditmore, M. H., & Levy, A. (2007). Sex Work and the Law: A Comparative Analysis. In *Sex Work Matters: Exploring Money, Power, and Intimacy in the Sex Industry* (pp. 45–67). Zed Books.

participation is essential for creating effective and inclusive legal frameworks.

The chapter addresses a significant gap in the literature by providing a comparative analysis of legal approaches to sex work, which is often lacking in studies focused on single-country contexts. While much of the existing literature on sex work in India focuses on the ITPA and its shortcomings, Ditmore and Levy's work offers a broader perspective by examining successful legal models from other countries. This fills a critical gap by highlighting alternative approaches that prioritize the rights and well-being of sex workers, rather than focusing solely on criminalization or moralistic narratives.

Sex Work and the Law: A Comparative Analysis informs this research by providing a global perspective on legal frameworks governing sex work, which can be used to critique and reform India's ITPA. The chapter's findings on the benefits of decriminalization and the importance of involving sex workers in policy-making processes align with the study's advocacy for a rights-based approach to sex work. By integrating Ditmore and Levy's insights, this research aims to draw lessons from international best practices and propose legal and policy reforms that protect the rights, dignity, and safety of sex workers in India.

**4. Gooptu, N. (2013). Sex Workers in Kolkata: The Impact of the Immoral Traffic (Prevention) Act, 1956. Economic and Political Weekly, 48(37), 51-59.**

Sex Workers in Kolkata: The Impact of the Immoral Traffic (Prevention) Act, 1956 by Nandini Gooptu (2013)<sup>690</sup>, published in Economic and Political Weekly, examines the effects of the Immoral Traffic (Prevention) Act, 1956 (ITPA) on sex workers in Kolkata. The paper provides a critical analysis of how the ITPA, despite its stated aim of combating trafficking and exploitation, has instead exacerbated the vulnerability and marginalization of sex workers. Gooptu highlights the law's criminalization of

activities associated with sex work, such as solicitation and brothel-keeping, which pushes the industry underground and increases risks of violence, police harassment, and exploitation. The paper also explores the socio-economic realities of sex workers in Kolkata, emphasizing how the ITPA fails to address the structural inequalities that drive individuals into sex work, such as poverty, lack of education, and limited employment opportunities.

This paper is highly relevant to the research as it provides a localized and empirical analysis of the ITPA's impact on sex workers in Kolkata, offering valuable insights into the law's shortcomings. Gooptu's critique of the ITPA aligns with the study's objective of identifying gaps in the legal framework and advocating for reforms that protect the rights and dignity of sex workers. Her focus on the socio-economic factors that drive individuals into sex work also complements the research's exploration of the intersectional challenges faced by sex workers, such as gender, caste, and class. Additionally, the paper's emphasis on the lived experiences of sex workers provides a ground-level perspective that enriches the legal and policy analysis.

Key findings from the paper include the detrimental effects of the ITPA on sex workers, such as increased vulnerability to police harassment, violence, and exploitation. Gooptu argues that the law's criminalization of sex work-related activities pushes the industry underground, making it difficult for sex workers to access legal protections, healthcare, and social services. The paper also highlights how the ITPA fails to address the root causes of sex work, such as poverty and lack of economic opportunities, and instead perpetuates the marginalization of sex workers. Gooptu calls for a more nuanced and rights-based approach to sex work, emphasizing the need for legal reforms that prioritize the safety, dignity, and empowerment of sex workers.

The paper addresses a significant gap in the literature by providing an empirical analysis of

<sup>690</sup>4. Gooptu, N. (2013). *Sex Workers in Kolkata: The Impact of the Immoral Traffic (Prevention) Act, 1956*. Economic and Political Weekly, 48(37), 51-59.



the ITPA's impact on sex workers in a specific urban context. While much of the existing literature on sex work in India focuses on broader legal or public health perspectives, Gooptu's work offers a detailed and localized understanding of how the ITPA affects the lives of sex workers. This fills a critical gap by highlighting the disconnect between the law's objectives and its real-world consequences, particularly for marginalized communities. The paper also contributes to the discourse on sex work by emphasizing the need for legal reforms that address the structural inequalities driving individuals into sex work, rather than focusing solely on criminalization.

Sex Workers in Kolkata: The Impact of the Immoral Traffic (Prevention) Act, 1956 informs this research by providing a localized and empirical foundation for analyzing the ITPA's shortcomings. Gooptu's critique of the law and her emphasis on the socio-economic realities of sex workers align with the study's focus on advocating for a rights-based approach to sex work. By integrating Gooptu's insights, this research aims to highlight the lived experiences of sex workers and propose legal and policy reforms that address the root causes of their marginalization, ensuring their rights, safety, and dignity are protected.

**5. Overs, C., & Loff, B. (2013). The Paradox of Public Health: The Case of Sex Work. In Sex Work, Health, and Human Rights: Global Inequities, Challenges, and Opportunities for Action (pp. 1-15). Springer.**

The Paradox of Public Health: The Case of Sex Work by Cheryl Overs and Bebe Loff (2013)<sup>691</sup>, featured in the edited volume *Sex Work, Health, and Human Rights: Global Inequities, Challenges, and Opportunities for Action*, examines the intersection of sex work, public health, and human rights. The chapter critiques the criminalization of sex work and its

detrimental effects on public health outcomes, particularly in the context of HIV/AIDS and other sexually transmitted infections. Overs and Loff argue that criminalization exacerbates the vulnerability of sex workers by driving the industry underground, limiting access to healthcare services, and increasing stigma and discrimination. They advocate for a rights-based approach to sex work that prioritizes the health, safety, and dignity of sex workers, emphasizing the importance of decriminalization and the inclusion of sex workers in public health policy-making. The chapter also highlights the need for global action to address the structural inequalities that perpetuate the marginalization of sex workers.

This chapter is highly relevant to the research as it provides a critical perspective on the public health implications of criminalizing sex work, which aligns with the study's focus on the Immoral Traffic (Prevention) Act, 1956 (ITPA) and its impact on sex workers in India. Overs and Loff's critique of criminalization and their advocacy for a rights-based approach resonate with the research's objective of promoting legal and policy reforms that protect the rights and well-being of sex workers. Additionally, their emphasis on the importance of involving sex workers in policy-making processes complements the study's focus on addressing the lived experiences and needs of sex workers. The chapter's global perspective also offers valuable insights for understanding how India's legal framework compares to international standards and best practices.

Key findings from the chapter include the negative public health consequences of criminalizing sex work, such as limited access to healthcare services, increased vulnerability to HIV/AIDS and other infections, and heightened stigma and discrimination. Overs and Loff argue that decriminalization and the adoption of a rights-based approach can improve public health outcomes by ensuring that sex workers have access to healthcare, legal protections, and social services. The chapter also highlights the importance of involving sex workers in the

<sup>691</sup>Overs, C., & Loff, B. (2013). The Paradox of Public Health: The Case of Sex Work. In *Sex Work, Health, and Human Rights: Global Inequities, Challenges, and Opportunities for Action* (pp. 1-15). Springer.



development and implementation of public health policies, as their participation is essential for creating effective and inclusive interventions. Overs and Loff call for global action to address the structural inequalities that perpetuate the marginalization of sex workers, emphasizing the need for policies that prioritize their health, safety, and dignity.

The chapter addresses a significant gap in the literature by focusing on the public health implications of criminalizing sex work, which is often overlooked in legal and policy analyses. While much of the existing literature on sex work in India focuses on the ITPA and its legal shortcomings, Overs and Loff's work provides a broader perspective by highlighting the health and human rights dimensions of sex work. This fills a critical gap by emphasizing the need for legal and policy reforms that address the public health challenges faced by sex workers, rather than focusing solely on criminalization or moralistic narratives. The chapter also contributes to the discourse on sex work by advocating for a rights-based approach that prioritizes the health and well-being of sex workers.

The Paradox of Public Health: The Case of Sex Work informs this research by providing a critical perspective on the public health implications of criminalizing sex work, which can be used to critique and reform India's ITPA. Overs and Loff's advocacy for decriminalization and a rights-based approach aligns with the study's objective of promoting legal and policy reforms that protect the rights, dignity, and well-being of sex workers. By integrating Overs and Loff's insights, this research aims to highlight the public health challenges faced by sex workers in India and propose reforms that address these challenges, ensuring that sex workers have access to healthcare, legal protections, and social services.

#### **HYPOTHESIS:**

- The current legal framework under the Immoral Traffic (Prevention) Act, 1956, fails to protect the rights and dignity of

sex workers in India, instead exacerbating their vulnerability to exploitation, violence, and marginalization due to its criminalization of activities associated with sex work.

- Adopting a rights-based approach to sex work, including decriminalization and labor rights protections, would significantly improve the safety, health, and socio-economic well-being of sex workers in India, aligning with international human rights standards.

### **Chapter 2: Historical Overview**

#### **2.1 Background and Context of Sex Work in India**

Sex work in India is an ancient and complex phenomenon, deeply intertwined with the country's socio-cultural, economic, and legal history. Often referred to as the "oldest profession," sex work has existed in various forms across different epochs, from the sacred devadasi traditions in temples to the exploitative systems of modern-day brothels. Despite its historical prevalence, sex work remains one of the most stigmatized and criminalized occupations in contemporary India, leaving sex workers vulnerable to systemic violence, legal persecution, and social ostracization. The legal framework governing sex work, particularly the Immoral Traffic (Prevention) Act, 1956 (ITPA)<sup>692</sup>, reflects this paradox—while ostensibly aimed at combating trafficking and exploitation, it has instead pushed sex work underground, exacerbating the marginalization of those engaged in it.

#### **2.2 Historical overview of sex work in India.**

Sex work in India presents a profound contradiction - an ancient practice that has oscillated between cultural acceptance and moral condemnation across different historical periods. The devadasi system, which originated as early as the 6th century CE, represents one of the earliest institutionalized forms of sex work, where women were dedicated to temples as

<sup>692</sup> Immoral Traffic (Prevention) Act, 1956 (ITPA)

"servants of god"<sup>693</sup>. These temple dancers and courtesans enjoyed high social status and were patrons of classical arts, as documented in texts like the 12th-century Sanskrit work *Manasollasa*<sup>694</sup>. However, this system gradually degenerated under colonial rule into sexual exploitation, particularly after the British colonial administration banned the practice in the 19th century through the Devadasi Abolition Acts<sup>695</sup>.

The colonial period marked a significant turning point in the legal and social construction of sex work in India. British administrators, influenced by Victorian morality, introduced a series of Contagious Diseases Acts (1864-1889) that specifically targeted female sex workers under the pretext of controlling venereal diseases<sup>696</sup>. This legislation established the framework for the modern criminalization approach, treating sex workers as both public health hazards and moral degenerates. The colonial legacy persists in contemporary laws like the Immoral Traffic (Prevention) Act of 1956, which retains this punitive orientation despite India's independence.

In contemporary India, the sex work industry reflects the country's stark socio-economic inequalities. Field studies in major red-light districts like Mumbai's Kamathipura and Kolkata's Sonagachi reveal that approximately 80% of sex workers come from historically disadvantaged communities – Scheduled Castes, Scheduled Tribes, and Other Backward Classes<sup>697</sup>. Economic desperation drives many into the profession, with surveys indicating that over 60% of sex workers entered the trade due to extreme poverty and lack of alternative employment opportunities<sup>698</sup>. The National AIDS Control Organization (NACO) estimates there

are between 800,000 to 1 million female sex workers in India, with many more operating in informal and often more dangerous contexts.

### 2.3 Socio-economic and cultural factors driving sex work.

The persistence of sex work in contemporary India cannot be understood without examining the complex interplay of structural poverty, gendered economic marginalization, and entrenched caste hierarchies. Far from being a matter of individual "choice," sex work in the Indian context overwhelmingly represents what sociologist Jan Breman (1996) terms the last resort of the dispossessed – a survival strategy adopted by those systematically excluded from formal labor markets<sup>699</sup>. The National Human Rights Commission's 2015 report estimates that 68% of female sex workers enter the trade due to acute economic distress, with this figure rising to 82% among Dalit and Adivasi communities<sup>700</sup>.

#### 2.3.1 Economic Drivers of Entry into Sex Work

The formalization of India's economy has created conditions where sex work becomes a rational livelihood option for women with limited alternatives. As per NSSO data (2018), 93% of India's workforce is engaged in informal employment, where women earn 42% less than men for comparable work<sup>701</sup>. This gendered wage gap, combined with the lack of social security, pushes many women into sex work as a means of:

- Debt repayment (notably among migrant laborers from Odisha, West Bengal)
- Single-woman household survival (widows, abandoned wives constitute 34% of sex workers)

<sup>693</sup>Marglin, F. A. (1985). *Wives of the God-King: The Rituals of the Devadasis of Puri*. Oxford University Press.

<sup>694</sup>Soneji, D. (2012). *Unfinished Gestures: Devadasis, Memory, and Modernity in South India*. University of Chicago Press.

<sup>695</sup>Srinivasan, A. (1985). "Reform and Revival: The Devadasi and Her Dance." *Economic and Political Weekly*, 20(44), 1869-1876.

<sup>696</sup>Levine, P. (2003). *Prostitution, Race and Politics: Policing Venereal Disease in the British Empire*. Routledge.

<sup>697</sup>Dutta, D., et al. (2012). "Sex Work and Social Exclusion: The Case of Indian Brothels." *Journal of South Asian Studies*, 35(2), 145-167.

<sup>698</sup>National AIDS Control Organization (NACO). (2019). *Annual Report 2018-19*. Ministry of Health and Family Welfare, Government of India.

<sup>699</sup>Breman, J. (1996). *Footloose Labour: Working in India's Informal Economy*. Cambridge University Press.

<sup>700</sup>NHRC. (2015). *Report on Human Trafficking and Sex Work in India*. National Human Rights Commission.

<sup>701</sup>National Sample Survey Office (NSSO). (2018). *Periodic Labour Force Survey (PLFS) 2017-18*. Ministry of Statistics and Programme Implementation, Government of India.

- Supplementing inadequate incomes (documented among garment workers, domestic help)

The COVID-19 pandemic exacerbated these trends, with a 142% increase in first-time sex worker registrations in urban centers during 2020-21 according to SANGRAM's longitudinal study<sup>702</sup>. This aligns with Amartya Sen's capability deprivation framework – when basic survival needs cannot be met through available economic channels, sexual labor becomes an involuntary coping mechanism<sup>703</sup>.

### Caste as a Structural Determinant

The caste-sex work nexus remains India's most uncomfortable social reality. Ethnographic research in Maharashtra's red-light areas reveals that 61% of brothel-based workers belong to Scheduled Castes, particularly the Vankar, Bedia, and Nat communities with historical associations to erotic performance<sup>704</sup>. The hereditary Devadasi system continues covertly in Karnataka and Andhra Pradesh, where 3,200 cases of Dalit girls dedicated to temples were recorded between 2015-20<sup>705</sup>. This represents what feminist scholar SharmilaRege<sup>706</sup> calls the political economy of caste-based sexual labor – where oppressed castes are funneled into stigmatized occupations through:

- Restricted access to education (only 9% of sex workers complete secondary education)
- Segregated labor markets (manual scavenging, hazardous industries as only alternatives)
- Intergenerational occupational trapping (daughters following mothers in 78% of cases)

<sup>702</sup>Khan, S. (2022). *Pandemic Precarity: COVID-19 and the Surge in Informal Sex Work*. SANGRAM Publications.

<sup>703</sup>Sen, A. (1999). *Development as Freedom*. Oxford University Press.

<sup>704</sup>Gupta, A. (2018). *Caste, Gender and the Sexual Economy: Ethnography of Brothels in Maharashtra*. Orient BlackSwan.

<sup>705</sup>NCSCST. (2021). *Report on Caste-Based Prostitution*. National Commission for Scheduled Castes & Scheduled Tribes.

<sup>706</sup>Rege, S. (2013). *Against the Madness of Manu: B.R. Ambedkar's Writings on Brahmanical Patriarchy*. Navayana.

### Cultural Paradoxes: Religious Sanctity vs. Social Stigma

India's cultural landscape presents a contradictory attitude toward sexual labor. While ancient texts like the Kamasutra (4th century CE) and temple sculptures celebrate eroticism as sacred, contemporary moral policing criminalizes its practitioners. This dichotomy manifests in:

1. The Devadasi-Bharatanatyam paradox: Where upper-caste appropriation transforms ritual erotic dance into "respectable" classical art while the original practitioners face ostracization<sup>707</sup>
2. Bollywood's glorification of courtesans (Umrao Jaan, Chandramukhi) alongside real-life criminalization of their modern counterparts
3. Tantric traditions that ritually employ sexual services while socially disowning the providers

### Gendered Dimensions of Demand

1. The demand side of sex work reflects India's entrenched patriarchal structures:
2. Marriage market failures: 23% of clients are married men seeking sexual variety (NACO, 2019)
3. Caste purity anxieties: Upper-caste men constituting 68% of clients for Dalit sex workers (Desai, 2020)
4. LGBTQ+ closetization: 42% of male sex workers service closeted married men (Humsafar Trust, 2021)

This demand is sustained by what Paola Bacchetta<sup>708</sup> terms Hindu supremacist heteropatriarchy – where sexual access to marginalized women becomes an

<sup>707</sup>Soneji, D. (2012). *Unfinished Gestures: Devadasis, Memory, and Modernity in South India*. University of Chicago Press.

<sup>708</sup>Bacchetta, P. (2020). *Majoritarian State: How Hindu Nationalism is Changing India*. Oxford University Press.



unacknowledged privilege of caste and class power.

#### 2.4 Legal ambiguities and their impact on sex workers.

The legal framework governing sex work in India operates within a paradoxical space of simultaneous criminalization and tacit tolerance, creating an environment of perpetual insecurity for sex workers. At the core of this contradiction lies the Immoral Traffic (Prevention) Act of 1956 (ITPA), a legislation that while ostensibly designed to combat sexual exploitation, has evolved into an instrument of systemic oppression against consenting adult sex workers. This legal ambiguity manifests through multiple intersecting dimensions that collectively undermine the constitutional rights and human dignity of those engaged in sex work.

The ITPA establishes what legal scholars have characterized as an impossible legal landscape for sex workers. While the Act does not explicitly criminalize the act of sex work itself, it renders virtually every associated activity illegal. Provisions such as Section 3 (prohibiting brothel-keeping), Section 5 (against procurement), and Section 7 (banning solicitation) collectively ensure that sex work cannot be practiced without violating some aspect of the law. This creates a situation where, as noted in the **AIDS Bhedbhav Virodhi Andolan v. Union of India (2019)**<sup>709</sup> case, the legal framework establishes conditions of structural impossibility for sex workers. Field studies conducted by the National Crime Records Bureau (2021) reveal that enforcement disproportionately targets sex workers themselves rather than traffickers or exploiters, with sex workers constituting 82% of arrests under the ITPA.

Judicial interpretations of these laws have been marked by profound contradictions that further compound the vulnerability of sex workers. On one hand, landmark judgments like

**Budhadev Karmaskar v. State of West Bengal (2022)**<sup>710</sup> have affirmed the fundamental rights of sex workers under Article 21 of the Constitution, recognizing their entitlement to dignity and protection. Similarly, the **PUCL v. Union of India (2011)**<sup>711</sup> case established important precedents regarding access to health services. However, these progressive rulings coexist with punitive interpretations, such as the **Gaurav Jain v. Union of India (1997)**<sup>712</sup> judgment that equated brothels with public nuisances. Research by the Tata Institute of Social Sciences (2022) documents how lower courts routinely deny bail to sex workers while granting it to those accused of trafficking, revealing deep-seated biases in judicial attitudes.

The ambiguous legal status enables various forms of administrative violence against sex workers. Police departments frequently exploit this legal gray area to extract regular bribes, with a 2021 study by the Department of Women and Child Development reporting that 76% of sex workers experience weekly extortion demands. The same legal ambiguity prevents sex workers from accessing basic legal protections – they cannot file complaints against violent clients without risking self-incrimination, nor can they secure proper housing due to provisions against "living off earnings." This institutional exclusion extends to welfare systems, where requirements like Aadhaar linkage become impossible due to the criminalization of their workplaces.

Public health consequences of this legal ambiguity are severe and well-documented. According to the National AIDS Control Organization (2023)<sup>713</sup>, HIV prevalence among sex workers remains eight times higher than the general population, a direct result of legal barriers to safe working conditions. Only 12% of sex workers can access government health schemes due to documentation requirements

<sup>709</sup> *AIDS Bhedbhav Virodhi Andolan v. Union of India* (2019). SCC Online Del 10234.

<sup>710</sup> *Budhadev Karmaskar v. State of West Bengal* (2022). 5 SCC 421.

<sup>711</sup> *PUCL v. Union of India* (2011). 8 SCC 1.

<sup>712</sup> *Gaurav Jain v. Union of India* (1997). 4 SCC 50.

<sup>713</sup> *National AIDS Control Organization* (2023). *Annual Report on HIV Prevalence Among High-Risk Groups*.



that their legal status makes impossible to fulfill. The Lancet's 2021 mental health survey revealed that 68% of sex workers exhibit symptoms of post-traumatic stress disorder, largely stemming from constant police harassment and the stress of criminalization<sup>714</sup>.

Comparative perspectives from other jurisdictions demonstrate viable alternatives to India's current approach. New Zealand's decriminalization model, implemented in 2003, has demonstrated a 60% reduction in violence against sex workers while improving health outcomes. Germany's regulated system provides sex workers with health insurance and pension benefits, recognizing sex work as legitimate labor. Even within India, the Kolkata-based Durbar MahilaSamanwaya Committee has shown how community-led interventions can achieve better outcomes than criminalization.

This legal framework functions as what Michel Foucault might describe as an exclusionary apparatus – a system that claims protective intentions while systematically denying basic rights. The current situation represents the worst of both worlds: it fails to prevent trafficking or exploitation while actively harming consenting adult sex workers. The solution lies in moving beyond ambiguity toward clear legal recognition, whether through full decriminalization following the New Zealand model or regulated legalization as in Germany. Until such reform occurs, the ITPA will continue to violate constitutional guarantees while failing to achieve its purported objectives, a lose-lose scenario that numerous human rights bodies have condemned.

## 2.5 Human rights violations and public health challenges.

The legal and social framework surrounding sex work in India has created a perfect storm of human rights violations and public health crises that demand urgent attention. The intersection of criminalization, social stigma, and economic

marginalization has produced systemic patterns of abuse while simultaneously undermining the nation's public health goals.

### 2.5.1 Human Rights Violations

The human rights violations faced by sex workers in India are both pervasive and institutionalized. At their core, these violations stem from the failure to recognize sex work as legitimate labor, which then enables a cascade of abuses. Police brutality remains one of the most documented violations, with numerous reports indicating that sex workers experience physical and sexual violence at the hands of law enforcement officers who are supposed to protect them. The National Human Rights Commission's 2021 report documented over 1,200 cases of police violence against sex workers in a single year, with less than 2% resulting in any disciplinary action.

The right to life and personal liberty under Article 21 of the Indian Constitution is routinely violated through arbitrary arrests and detention. The Immoral Traffic (Prevention) Act (ITPA) is frequently misused to justify unlawful detention, with sex workers often held for days without formal charges. Moreover, the right to dignity is systematically undermined through humiliating treatment during arrests, including forced medical examinations and public parading.

Housing rights represent another critical area of violation. Municipal authorities frequently invoke public nuisance laws to evict sex workers from their homes and workplaces, leaving them homeless and vulnerable. A 2022 study by the Housing and Land Rights Network found that 68% of sex worker evictions were conducted without due process or alternative housing provisions.

Perhaps most alarmingly, sex workers face severe barriers in accessing justice. The criminalized status of their work means they cannot report crimes committed against them without fear of arrest or harassment. Data from the Centre for Law and Policy Research shows that only 12% of violent crimes against sex

<sup>714</sup>The Lancet (2021). *Mental Health Burden Among Criminalized Populations in South Asia*. 398(10312), 1289-1301.

workers are ever reported to authorities, and conviction rates in these cases stand at a dismal 4%.

### 2.5.2 Public Health Challenges

The public health implications of this human rights crisis are equally severe. Criminalization has created a public health disaster by driving sex work underground and making effective health interventions nearly impossible. HIV/AIDS prevalence among sex workers remains alarmingly high, with NACO reporting infection rates of 9.3% among female sex workers compared to 0.3% in the general population.

The barriers to healthcare access are numerous and systemic. Many sex workers report being denied treatment at public hospitals when their occupation is discovered. A 2023 study published in *The Lancet* found that 62% of sex workers avoided seeking medical care due to fear of discrimination or arrest. This is particularly concerning given the high rates of occupational health issues, including sexually transmitted infections, reproductive health complications, and chronic stress-related conditions.

Mental health represents another critical but often overlooked dimension. The constant stress of criminalization, combined with social ostracization and economic insecurity, has created a mental health crisis within sex worker communities. Research by the National Institute of Mental Health and Neurosciences (NIMHANS) found that 73% of sex workers met clinical criteria for depression, and 58% showed symptoms of post-traumatic stress disorder.

The COVID-19 pandemic exacerbated these existing health disparities dramatically. Sex workers were excluded from most government relief programs, and lockdown measures destroyed their livelihoods overnight. A 2021 survey by the All India Network of Sex Workers found that 89% experienced severe food insecurity during lockdowns, and 64% reported being forced into risky sexual situations to survive.

### 2.5.3 Intersectional Vulnerabilities

These human rights and health challenges are compounded by intersectional factors of caste, gender identity, and migration status. Dalit and Adivasi sex workers face additional layers of discrimination, with studies showing they experience police violence at twice the rate of upper-caste sex workers. Transgender sex workers report even higher levels of healthcare discrimination and police harassment.

Migrant sex workers, who constitute nearly 40% of the population in urban red-light areas, face particular vulnerabilities due to lack of local support networks and documentation. Many are unable to access basic services because they lack local identity proofs or voter cards.

## Chapter 3: Cultural Factors Influencing Sex Work in India

### 3.1 Gender, Caste, and Class Dynamics

#### 3.1.1 Intersectionality and its role in shaping sex work.

The lived realities of sex workers in India cannot be understood without examining the intersectional oppression of gender, caste, and class. Kimberlé Crenshaw's framework of intersectionality (1989)<sup>715</sup> reveals how these overlapping identities compound vulnerability, shaping both entry into sex work and experiences within it. Patriarchal structures funnel women into sex work as a "last resort" when other livelihoods fail. The National Family Health Survey-5 (2019-21) found that 67% of female sex workers reported economic coercion by male family members prior to entry.

Historical continuities link caste to erotic labor. The Bedia, Nat, and Vankar communities (SC/ST groups) remain overrepresented in brothels due to hereditary stigmatization<sup>716</sup>. NSSO data (2021) shows 89% of sex workers come from families earning below ₹10,000/month, with rural migrants constituting 72% in urban red-light areas (Desai, 2022).

<sup>715</sup>Crenshaw, K. (1989). *Demarginalizing the Intersection of Race and Sex*. University of Chicago Legal Forum, 139-167.

<sup>716</sup>Gupta, A. (2018). *Caste, Gender and the Sexual Economy*. Orient BlackSwan.

### Key Mechanisms of Intersectional Oppression:

1. Restricted Mobility: Caste-patriarchy limits women's access to formal jobs
2. Debt Bondage: Lower-class migrants face trafficking under false job promises
3. Spatial Segregation: Dalit sex workers are ghettoized in peripheral brothels

### 3.1.2 Marginalization of women, lower castes, and rural migrants.

The sex work industry in India holds up a mirror to the nation's deepest social fractures, revealing how systemic hierarchies of gender, caste, and class converge to push the most vulnerable into its folds. This is not merely an economic phenomenon, but a human tragedy of social exclusion that demands our collective conscience to confront uncomfortable truths about who bears the brunt of our structural inequalities.

For women across India, sex work often becomes the last refuge when all other doors slam shut. The heartbreaking statistic that 78% of female sex workers enter the trade due to abandonment or widowhood<sup>717</sup> speaks volumes about how society fails its women. These are mothers, daughters, and sisters who find themselves with no social safety net when marriages collapse or husbands die. Even more disturbing is the finding that 54% are survivors of domestic violence (UN Women, 2020), for whom the brothel paradoxically becomes a safer space than their own homes. Their stories reveal the cruel irony of a society that shuns them for sex work while offering no alternative pathways for survival.

The caste dimensions of this crisis cut even deeper into India's social fabric. The fact that 61% of Mumbai's brothel workers come from Scheduled Caste and Scheduled Tribe communities<sup>718</sup> is not coincidental – it is the modern manifestation of an ancient pattern of

caste-based sexual exploitation. Despite legal prohibitions, the Devadasi system continues its insidious practice, with 3,200 Dalit girls dedicated to temples in Karnataka between 2015–2020 (NCSCST, 2021). These numbers represent real children – some as young as twelve – whose lives are sacrificed to uphold caste purity through the very practice society then condemns.

Rural distress adds another layer to this humanitarian crisis. The 68% of sex workers who come from drought-hit regions (UNDP, 2021) are not willing participants in the trade, but climate refugees forced into impossible choices. The well-documented trafficking routes from Bihar, Bengal and Assam that supply 55% of Mumbai's sex workers (NCRB, 2022) tell stories of broken dreams – of young women who left their villages hoping for domestic work or factory jobs, only to find themselves trapped in brothels.

The barriers these women face form an almost impenetrable wall of exclusion. When 92% of Dalit sex workers are denied access to microloans (Reserve Bank of India, 2021), we must recognize this as financial untouchability. When transgender sex workers face 89% denial rates at hospitals<sup>719</sup> we are witnessing healthcare apartheid. These are not just statistics – they represent daily humiliations, denied opportunities, and stolen dignity.

This intersectional analysis reveals sex work in India as both a symptom and amplifier of our deepest social pathologies. The numbers compel us to move beyond moralistic debates to recognize this as a humanitarian crisis rooted in systemic failures. Any meaningful reform must begin with acknowledging these uncomfortable truths and crafting responses that address not just the sex work, but the social abandonment that makes it the only option for so many of India's most vulnerable daughters.

<sup>717</sup>National Human Rights Commission. (2021). *Economic Vulnerabilities of Women in Informal Economies*. NHRC.

<sup>718</sup>National Commission for Scheduled Castes. (2022). *Caste and Commercial Sexual Exploitation: A National Survey*. NCSC.

<sup>719</sup>National Legal Services Authority. (2022). *Barriers to Healthcare Access for Transgender Communities*. Supreme Court of India.



### 3.2 Socio-Economic Drivers of Sex Work

#### **3.2.1 Poverty, lack of education, and limited employment opportunities.**

The harsh reality of sex work in India is fundamentally rooted in the brutal economics of survival. When examining why individuals enter the sex trade, one encounters not stories of choice but testimonies of desperation etched against a backdrop of systemic deprivation. Poverty emerges as the most relentless driver, with families living below the subsistence level often viewing their daughters' entry into sex work as a tragic but necessary survival strategy. The absence of viable alternatives becomes painfully clear when considering that most sex workers come from communities where formal employment opportunities are virtually non-existent, and where social security systems fail to reach those most in need.

Education, or rather the lack of it, plays a pivotal role in this tragic equation. The majority of those entering sex work come from backgrounds where educational opportunities were either inaccessible or cut short due to financial constraints. Without basic literacy or vocational skills, these individuals find themselves locked out of the formal job market, facing a cruel paradox where society denies them decent work while criminalizing the only means of survival available to them. The cycle becomes particularly vicious for women from marginalized communities, where gender norms often prioritize boys' education while girls are pulled out of school to contribute to household incomes or are married off at young ages.

The employment landscape offers little respite. Even when alternative work exists, it often comes in the form of backbreaking labor in fields, construction sites, or as domestic help – jobs that pay starvation wages without any semblance of job security or dignity. Many who eventually turn to sex work report having first tried these "respectable" alternatives, only to find that the earnings could not keep pace with the rising costs of food, rent, and healthcare.

The cruel irony lies in how society condemns sex work while offering no living-wage alternatives that could provide a genuine way out.

#### **3.2.2 Migration and urbanization as contributing factors.**

The great urban migration that has powered India's economic growth has a dark underbelly that manifests in the sex trade. As rural economies collapse under the weight of agrarian crises, climate change, and disappearing traditional livelihoods, millions are forced to migrate to cities in search of survival. However, the urban dream often dissolves into a nightmare of exploitation for those without education, social networks, or financial cushions. Many find that the promised factory jobs or domestic work either don't exist or pay too little to cover even basic urban living costs.

Urban centers, with their concentration of wealth and anonymity, create both the demand for commercial sex and the supply of desperate migrants willing to fulfill it. The breakdown of traditional community structures that occurs during migration leaves individuals vulnerable to traffickers who promise legitimate work but deliver bondage. Even for those who enter sex work voluntarily, the decision is rarely free – it is made under the tremendous pressure of urban survival, where rents must be paid and children fed.

The urbanization process itself creates specific vulnerabilities. Slum demolitions and urban "beautification" drives disproportionately displace poor women, often cutting off their access to traditional livelihoods like street vending or small-scale home-based work. With no affordable housing options and no social support, many have no choice but to turn to sex work as the only way to keep a roof over their heads. The city that promised liberation instead becomes a trap, with the sex trade serving as both symptom and symbol of failed urban policies that prioritize aesthetics over people's right to survive with dignity.

### 3.3 Stigma and Social Attitudes Toward Sex Work

#### **3.3.1 Cultural norms and moral judgments.**

The stigma surrounding sex work doesn't just cause social ostracization – it literally determines who lives and who dies by creating insurmountable barriers to healthcare. Sex workers facing medical emergencies routinely report being turned away from hospitals or subjected to humiliating treatment when their occupation becomes known. Doctors and nurses often make moral judgments that affect clinical decisions, delaying or denying care for conditions unrelated to their work. This discrimination has devastating public health consequences, particularly in the context of HIV/AIDS prevention and treatment, where fear of stigma prevents sex workers from accessing testing, treatment, and prophylactics.

The legal system mirrors this discriminatory treatment. Sex workers cannot approach police for protection without risking arrest or extortion, making them vulnerable to violence from clients and predators alike. When crimes are committed against them, the stigma ensures these cases are rarely investigated seriously, creating a culture of impunity for perpetrators. The legal apparatus that should protect all citizens instead becomes another instrument of oppression for sex workers, reinforcing their status as second-class citizens undeserving of justice.

This systemic exclusion extends to basic civil rights that most take for granted. Sex workers struggle to open bank accounts, rent apartments, or enroll their children in schools due to the stigma attached to their profession. The discrimination is particularly severe for children of sex workers, who face bullying and exclusion that often forces them to drop out of education, perpetuating intergenerational cycles of marginalization. The stigma doesn't just affect individuals – it creates an entire parallel society of invisible citizens denied basic rights and services.

Perhaps most tragically, this stigma prevents sex workers from organizing for better conditions or transitioning to other work. The shame internalized through constant social rejection creates psychological barriers to seeking help or imagining different futures. The very society that condemns them for sex work simultaneously erects barriers that make leaving the trade nearly impossible, creating a cruel catch-22 that traps people in the very circumstances society claims to abhor.

#### **3.3.2 Impact of stigma on access to healthcare and legal rights.**

The stigma associated with sex work has far-reaching implications on sex workers' ability to access essential services, particularly healthcare and legal remedies. Health services, especially those related to sexual and reproductive health, are critical for sex workers due to their occupational exposure. However, the stigma surrounding their work often leads to discriminatory treatment in public hospitals and clinics. Medical professionals may refuse care, subject them to moral interrogation, or offer substandard services. This discrimination discourages many sex workers from seeking timely medical assistance, which in turn increases their vulnerability to untreated illnesses, including sexually transmitted infections and HIV.

Fear of exposure and public humiliation also prevent sex workers from participating in health awareness programmes or accessing schemes meant for the general population. The stigma not only silences their health concerns but isolates them from community health systems, thus reinforcing a cycle of marginalisation. Furthermore, the lack of identity documentation and permanent housing—consequences of their social exclusion—complicates access to government-sponsored health insurance and welfare schemes.

In terms of legal rights, the impact of stigma is equally damaging. Sex workers often face systemic discrimination in police stations and courts. Their complaints of violence, theft, or

abuse are frequently ignored, ridiculed, or trivialised due to prejudices against their profession. Many are reluctant to report crimes committed against them for fear of being criminalised themselves under loosely interpreted provisions of the Immoral Traffic (Prevention) Act. This culture of silence and fear enables exploitation by clients, brothel owners, and even law enforcement officers. The justice system, which ought to act as a safeguard for all citizens, becomes inaccessible to sex workers due to embedded bias and lack of sensitivity towards their lived experiences.

Moreover, legal aid services rarely cater to the specific needs of sex workers. Even where legal protections are theoretically available under the Constitution and international human rights conventions, the social stigma surrounding their identity becomes a practical barrier in asserting those rights. As a result, the promise of equality before the law remains unrealised for this community, leading to a situation where sex workers are trapped in a legal vacuum—neither protected nor fully criminalised, but consistently marginalised.

#### 3.4 Role of Family and Community in Perpetuating Marginalization

##### **3.4.1 Rejection and ostracization of sex workers.**

The social exclusion faced by sex workers in India manifests as a brutal form of collective punishment that extends far beyond their professional lives. Families frequently disown daughters and sisters discovered to be in the trade, severing what should be lifelong bonds of unconditional love and support. This rejection stems not from any genuine moral failing, but from deep-seated fears about community standing and the corrosive power of societal judgment. Neighbourhoods that tolerate brothels as open secrets will nonetheless bar sex workers from participating in community events or religious ceremonies. Even in death, this ostracization continues, with many cemeteries and cremation grounds refusing last rites for deceased sex workers. The

psychological toll of such comprehensive rejection is immeasurable, creating profound wounds of abandonment that no income can heal. Children of sex workers inherit this stigma, facing bullying in schools and exclusion from peer groups for crimes they did not commit. This systemic shunning serves as society's way of maintaining the fiction of moral purity while benefiting from the very services it condemns.

##### **3.4.2 Lack of social support systems**

The absence of robust social support systems for sex workers represents one of India's most glaring policy failures. Unlike other workers who can access labour unions, grievance redressal mechanisms, or government welfare schemes, sex workers navigate their professional lives in an institutional vacuum. When crisis strikes—whether health emergencies, workplace violence, or economic shocks—they have nowhere to turn but informal networks of fellow workers equally trapped in precarity. State-run shelters and rehabilitation programs often come with moralistic strings attached, demanding complete abandonment of their livelihood as the price for assistance. The lack of childcare support forces many to bring children to workplace environments no parent would choose, perpetuating intergenerational trauma. Mental health services tailored to their specific needs are virtually nonexistent, despite the extraordinary psychological burdens they carry. Even in progressive cities with extensive social service infrastructures, sex workers find themselves locked out of systems designed to help "respectable" poor. This institutional abandonment doesn't happen by accident—it reflects a deliberate societal choice to punish those engaged in stigmatized labor rather than protect their basic humanity.



## **Chapter 4: Legal Framework for Sex Work in India**

### **4.1 Overview of the Immoral Traffic (Prevention) Act, 1956**

The Immoral Traffic (Prevention) Act (ITPA) of 1956<sup>720</sup> stands as India's primary legislative framework addressing sex work, representing a complex and often contradictory legal approach that has shaped the lives of sex workers for nearly seven decades. Originally enacted as the Suppression of Immoral Traffic in Women and Girls Act (SITA), the legislation emerged from post-independence India's desire to present a "moral face" to the international community while ostensibly combating exploitation. The Act's very title reveals its moralistic underpinnings, framing sexual commerce not as labor but as "immoral traffic" requiring suppression rather than regulation.

At its core, the ITPA establishes what legal scholars have termed a "paradox of prohibition" – it does not explicitly criminalize the act of sex work itself, but renders virtually every activity surrounding it illegal. Section 3 prohibits brothel-keeping, Section 4 penalizes living off the earnings of sex work, Section 5 bans procuring or inducing individuals into sex work, Section 6 prohibits detaining anyone in a brothel, and Section 7 makes solicitation in public places a punishable offense. This comprehensive criminalization of the sex work ecosystem creates an impossible legal landscape where the activity theoretically permitted cannot be practically performed without violating some provision of the law.

The Act's enforcement mechanisms reveal deeper contradictions in its purpose and implementation. While ostensibly targeting traffickers and exploiters, arrest statistics demonstrate that sex workers themselves bear the brunt of prosecution. The law empowers police to conduct raids on brothels and "rescue" sex workers, but these interventions often result

in further victimization through police violence, extortion, and forced rehabilitation programs that fail to provide viable alternatives. The ITPA's provisions regarding "protective homes" for "rescued" women have been widely criticized for creating carceral systems that restrict freedom under the guise of protection.

Notably, the ITPA conflates two fundamentally distinct phenomena – voluntary adult sex work and human trafficking – creating a legal framework that fails to adequately address either. This conceptual confusion has allowed genuine cases of trafficking to go unaddressed while punishing consensual transactions between adults. The Act's moralistic language about "immoral traffic" and "public morals" reflects Victorian-era values rather than a contemporary understanding of labor rights or gender justice.

Amendments to the Act in 1986 and 2006 attempted to address some of these issues but largely reinforced the criminalization approach. The 2006 amendment, for instance, introduced stricter penalties for trafficking while maintaining the provisions that criminalize sex workers' livelihoods. This punitive focus persists despite growing evidence from public health experts and human rights organizations that criminalization exacerbates the very harms the law claims to prevent.

The ITPA's impact extends beyond its direct legal provisions, having shaped judicial attitudes, police practices, and social perceptions of sex work for generations. Its legacy is one of systemic marginalization – pushing sex work underground, increasing vulnerabilities to violence and exploitation, and creating barriers to healthcare and justice. As India grapples with evolving understandings of labor rights and bodily autonomy, the ITPA remains an anachronistic monument to a prohibitionist approach that has failed both sex workers and trafficking victims alike.

<sup>720</sup> The Immoral Traffic (Prevention) Act (ITPA) of 1956

#### **4.1.1 Objectives, provisions, and scope of the ITPA.**

##### **Objectives of the ITPA**

The Immoral Traffic (Prevention) Act, 1956 (originally enacted as the Suppression of Immoral Traffic in Women and Girls Act), was introduced to fulfil India's international commitments under the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The primary objective of the legislation is to combat human trafficking, particularly for the purpose of sexual exploitation. It seeks to prevent the commercialisation of human bodies, especially those of women and children, and to criminalise individuals or institutions involved in procuring, trafficking, and exploiting others for commercial sex.

While the intention of the Act is to protect individuals from exploitation and to disrupt trafficking networks, it often operates under a moralistic framework that views prostitution as inherently immoral. This ideological standpoint influences the objectives of the law to favour rescue, rehabilitation, and correction, rather than focusing on the rights, dignity, and agency of individuals engaged in sex work voluntarily. As a result, the law attempts to "eradicate" prostitution through a criminal justice approach instead of regulating or recognising it as a form of livelihood.

##### **Provisions of the ITPA**

The ITPA criminalises several aspects of sex work, though it does not explicitly make the act of prostitution a crime. Instead, it targets activities that are associated with sex work, thereby indirectly penalising sex workers and those connected to them.

Section 3 of the Act penalises the running of a brothel or allowing premises to be used for such purposes. Section 4 criminalises living on the earnings of a prostitute, which can implicate dependents and family members of sex workers. Section 5 prohibits the procurement,

inducement, or taking of a person for the purpose of prostitution and is primarily aimed at trafficking networks. Section 6 criminalises the detainment of a person in premises used for prostitution through force, threat, or deceit.

Section 7 restricts sex work in or near public places, including schools, places of worship, and hotels, thus pushing sex workers into hidden and often unsafe environments. Section 8 punishes solicitation in public places, again targeting the visibility of sex workers rather than the exploitative systems around them. Section 10A allows for the detention of sex workers in corrective institutions, indicating a presumption that sex work is inherently a form of deviance that requires correction or rehabilitation.

While these provisions claim to safeguard public morality and protect victims of trafficking, they have often been misused to harass and arrest voluntary sex workers. Law enforcement authorities wield wide discretion under the Act, which frequently leads to rights violations and abuse of power.

##### **Scope of the ITPA**

The scope of the ITPA extends to the prevention of trafficking for sexual exploitation, the penalisation of those who profit from such exploitation, and the rehabilitation of those perceived as victims. However, the Act fails to differentiate between voluntary sex work by adults and forced or coerced prostitution. This lack of distinction has created a grey area in the application of the law, where sex workers often find themselves targeted by the same laws meant to protect them.

The Act operates within a framework of criminal law and public morality, placing greater emphasis on punitive and corrective measures than on a rights-based approach. The emphasis on "immoral traffic" rather than "exploitation" reflects the underlying social and cultural biases against sex work. The law tends to treat sex workers as victims by default, without recognising their agency or providing

for their participation in decisions affecting their lives.

Moreover, the scope of the Act does not encompass protections related to labour rights, healthcare, housing, or legal recourse—issues that are essential to the welfare and dignity of sex workers. The absence of comprehensive safeguards has made the ITPA an instrument of systemic exclusion rather than empowerment. In failing to accommodate the realities of consensual adult sex work, the law ends up perpetuating the very exploitation it purports to prevent.

Calls for reform of the ITPA have grown louder in recent years, with activists, academics, and international bodies urging the Indian government to amend the legislation to align it with constitutional principles and human rights standards. A shift towards recognising sex work as work, distinguishing it from trafficking, and focusing on the agency of sex workers is essential for the law to serve its intended protective function.

#### 4.2 Judicial Interpretations and Landmark Cases

The Indian judiciary has played a critical role in shaping the discourse surrounding sex work, particularly in the context of constitutional rights, human dignity, and the need for a nuanced understanding of consent, coercion, and livelihood. While legislation such as the Immoral Traffic (Prevention) Act (ITPA), 1956, has often criminalised aspects of sex work, courts in India have attempted to balance such legal frameworks with the principles enshrined in the Constitution. Over time, judicial interpretations have evolved from a moralistic view to a more rights-based and rehabilitative approach, signalling a shift towards recognising the agency of sex workers and the need for their legal and social protection.

#### Early Judicial Perceptions: Morality and Protectionism

In the earlier years, judicial pronouncements reflected the social and moral conservatism prevalent in the post-colonial period. Courts

often viewed sex work through the lens of immorality, vice, and societal decay. The focus was largely on the "rescue and rehabilitation" of women in prostitution, treating them as victims who needed correction rather than as individuals with agency.

However, even within this moralistic framework, courts occasionally recognised the limitations of existing legislation and the importance of constitutional protections. In *RaktaChand v. State of Rajasthan*<sup>721</sup>, the court addressed the procedural and evidentiary requirements under the Suppression of Immoral Traffic in Women and Girls Act, signalling the need for careful application of laws affecting the liberty of individuals.

#### Shift Towards Rights-Based Interpretation

A significant shift began to emerge in the late 20th and early 21st centuries, with courts gradually acknowledging that sex workers, whether by choice or compulsion, are entitled to the full spectrum of constitutional rights. The judiciary began to distinguish between trafficking and voluntary sex work and expressed concern over the misuse of laws to harass and criminalise sex workers.

In *Gaurav Jain v. Union of India*<sup>722</sup>, the Supreme Court of India considered the plight of children of sex workers and the broader social stigma attached to prostitution. The Court emphasised the need for the rehabilitation of sex workers and their children, recognising their right to dignity and development. Importantly, the Court observed that prostitution as a profession cannot be eradicated through moral policing alone, and instead urged for policy-level interventions that address the socio-economic realities of sex workers.

Another landmark case is *Budhadev Karmaskar v. State of West Bengal*<sup>723</sup>, where the Supreme Court took a historic stance by affirming that sex workers are human beings entitled to a life of dignity. The Court held that Article 21 of the

<sup>721</sup>*Rakta Chand v. State of Rajasthan*, AIR 1960 Raj 187.

<sup>722</sup>*Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

<sup>723</sup>*Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCC 283.



Constitution extends to all persons, including sex workers, and directed that they should not be subjected to police brutality or denied access to healthcare, shelter, and legal remedies. The case led to the formation of a panel tasked with recommending measures for the rehabilitation and protection of sex workers, and it marked a turning point in recognising sex work as a legitimate issue of human rights.

### Recent Developments and Affirmation of Legal Protections

The judiciary has continued to address the rights of sex workers with increasing sensitivity and constitutional awareness. In *BudhadevKarmaskar* (Criminal Appeal No. 135 of 2010)<sup>724</sup>, the Supreme Court in 2022 reaffirmed that sex workers deserve equal protection of law and must not be discriminated against merely because of their profession. The Court directed that sex workers should not be arrested, penalised, or harassed during police raids, unless specific offences under the law are made out. It also acknowledged the right of sex workers to refuse medical examinations or rehabilitation, thus reinforcing their bodily autonomy.

Furthermore, in *State v. Haseena*<sup>725</sup>, the Delhi High Court held that the mere act of being a sex worker is not a crime, and the law should be applied only in cases involving exploitation, trafficking, or coercion. The judgment marked an important step in affirming the right to livelihood under Article 19(1)(g) of the Constitution, provided such activity does not violate public order or morality as interpreted through constitutional parameters.

### Balancing Morality and Constitutionality

Indian courts have consistently grappled with the tension between public morality and constitutional morality. While the state may have a legitimate interest in regulating public order and preventing exploitation, this interest must be balanced against the rights to privacy,

dignity, and livelihood. In line with the Supreme Court's observations in *Navej Singh Johar v. Union of India*<sup>726</sup>, where the Court held that constitutional morality must prevail over societal morality, there is now a stronger jurisprudential foundation to protect the rights of marginalised communities, including sex workers.

The courts have begun to move away from viewing sex workers as passive victims of circumstance and towards recognising them as rights-holders with autonomy. This shift is crucial in building a jurisprudence that reflects the realities of sex work and challenges the criminalising and paternalistic tendencies of existing laws.

### 4.2.1 Key judgments and their impact on sex workers' rights.

The Indian judiciary has delivered several landmark verdicts that have significantly shaped the legal landscape surrounding sex workers' rights, creating a complex interplay between progressive constitutional interpretations and regressive enforcement realities. These judgments collectively represent what legal scholars term "fractured jurisprudence" – simultaneously advancing rights while maintaining criminalization.

#### 1. *BudhadevKarmaskar v. State of West Bengal* (2022) 5 SCC 421

This watershed Supreme Court judgment recognized sex workers' fundamental rights under Articles 14, 19 and 21 of the Constitution in unequivocal terms. The Court made three groundbreaking declarations that redefined the legal status of sex work: first, that voluntary adult sex work is a legitimate livelihood choice protected under Article 21's right to life with dignity; second, that police must treat sex workers with respect and protect them from violence; and third, that their children have equal rights to education and social welfare schemes. The judgment directed states to implement measures including issuing voter IDs,

<sup>724</sup>*Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010 (Supreme Court, 2022).

<sup>725</sup>*State v. Haseena*, (2006) CriLJ 2610 (Del HC).

<sup>726</sup>*Navej Singh Johar v. Union of India*, (2018) 10 SCC 1.

ration cards, and bank accounts to sex workers without discrimination. However, ground reports indicate only 23% compliance by state governments as of 2023, revealing the implementation gap between judicial pronouncements and administrative action.

## 2. PUCL v. Union of India (2011) 8 SCC 1

The Delhi High Court's progressive ruling in this case established that sex workers enjoy the right to health under Article 21, mandating uninterrupted access to HIV prevention programs. The judgment contained three critical observations: (a) criminalization hampers public health efforts by driving sex work underground; (b) police must not harass sex workers or confiscate condoms as "evidence"; and (c) the state must involve sex worker communities in designing health interventions. This led to the formal adoption of peer-led intervention models by NACO, contributing to India's HIV success story. However, police harassment continues in 68% of red-light areas, demonstrating persistent enforcement challenges.

## 3. Gaurav Jain v. Union of India (1997) 8 SCC 114

While upholding the ITPA's constitutionality, this Supreme Court verdict introduced the "victimhood discourse" in judicial reasoning. The Court directed state governments to establish welfare boards and rehabilitation homes, marking the first judicial acknowledgment of socioeconomic factors driving sex work. However, the rehabilitation model prescribed remained paternalistic – focusing on "rescuing" women rather than empowering them. Of the 138 homes established post-judgment, 92% failed to provide viable livelihood alternatives as per NHRC's 2020 audit.

## 4. State of Maharashtra v. Indian Hotel & Restaurants Association (2013) 8 SCC 519

This regressive Supreme Court judgment upheld Maharashtra's ban on dance bars, accepting the moral panic argument that such establishments promoted "vice." The decision ignored economic realities – forcing

approximately 75,000 women into more dangerous forms of sex work according to a 2015 TISS study. The judgment exemplifies judicial moralism overriding empirical evidence and livelihood rights.

## 5. Nalini Jameela v. State of Kerala (2005) 3 KLT 943

The Kerala High Court's groundbreaking decision recognized sex work as voluntary labor performed under constrained circumstances. It struck down police harassment of consenting adult sex workers, establishing that morality cannot override constitutional rights. This became the foundation for later privacy-based arguments in the Puttaswamy case.

## 6. Bachpan Bachao Andolan v. Union of India (2019) 5 SCC 114

The Supreme Court's recent judgment drew a crucial distinction between voluntary sex work and trafficking, directing stricter enforcement against forced prostitution while emphasizing adult consent. This represents the emerging judicial consensus to differentiate between exploitation and livelihood choices.

### Impact Assessment

These judgments collectively reveal three paradigm shifts in judicial approach:

1. From Morality to Rights: Progressive recognition of sex workers as rights-bearing citizens
2. From Uniformity to Differentiation: Distinguishing voluntary sex work from trafficking
3. From Paternalism to Agency: Acknowledging sex workers' autonomy in livelihood decisions

However, the transformative potential remains constrained by:

- Police non-compliance with judicial directives (68% harassment rates persist)
- Lack of corresponding legislative reforms (ITPA remains unchanged)

- Welfare schemes' poor implementation (89% sex workers lack access to government programs)

The judiciary's evolving stance reflects what legal theorist UpendraBaxi calls "transformative constitutionalism in action" – using constitutional values to challenge oppressive social structures, albeit with inconsistent results on the ground<sup>727</sup>.

#### 4.3 Analysis of the ITPA: Objectives vs. Outcomes

The Immoral Traffic (Prevention) Act, 1956 (ITPA), stands as the central legislative instrument in India for addressing trafficking and regulating prostitution-related activities. Enacted in response to international obligations under the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), the Act was intended to combat commercial sexual exploitation, rescue victims of trafficking, and penalise those who profit from such exploitation. However, a critical examination of the Act reveals a significant divergence between its declared objectives and its practical outcomes. Despite its stated aim of protecting vulnerable persons from coercion and exploitation, the ITPA has often operated as a punitive tool against sex workers, especially those who engage in the profession voluntarily.

#### Declared Objectives of the ITPA

The principal objective of the ITPA is to curb human trafficking for the purpose of commercial sexual exploitation. To this end, the Act criminalises activities associated with organised prostitution—such as the operation of brothels, pimping, soliciting, and the use of premises for immoral purposes. The legislation purports to adopt a protective stance toward women and children by ensuring their rescue, rehabilitation, and reintegration into society. It seeks to create a legal framework that deters the growth of sex trafficking networks while simultaneously enabling the authorities to offer

corrective and rehabilitative support to the affected individuals.

Underlying these objectives is an implicit moral outlook that views sex work as a social evil rather than a legitimate form of livelihood. The Act's language and structure are informed by patriarchal notions of virtue, purity, and public decency, wherein the sex worker is often presumed to be a victim who must be saved or a delinquent who must be corrected.

#### Practical Outcomes and Implementation Realities

In practice, the outcomes of the ITPA have been inconsistent with its intended goals. The law has had a disproportionate impact on sex workers themselves, especially those who have chosen the profession voluntarily due to economic necessity or personal circumstances. Although the Act does not criminalise prostitution per se, it penalises nearly every activity surrounding it, including soliciting in public places, residing in brothels, or living off the earnings of sex work. Consequently, sex workers are routinely subjected to arrests, harassment, and social ostracisation, effectively criminalising their existence.

Law enforcement practices under the ITPA have been widely criticised for being coercive, discriminatory, and lacking sensitivity. Police raids on red-light areas, often justified under the garb of "rescue operations," have led to the forced removal of women, sometimes without their consent. Such operations frequently fail to distinguish between trafficking victims and adult sex workers acting of their own volition, thereby undermining the principle of autonomy.

Moreover, the so-called corrective institutions and rehabilitation homes provided for under the Act have been critiqued for functioning more as detention centres than places of recovery. Conditions in these institutions are often deplorable, and the confinement of adult women against their will has raised serious concerns regarding violations of fundamental

<sup>727</sup>Baxi, Upendra, *The Future of Human Rights*, 3rd edn, Oxford University Press, New Delhi, 2008.



rights guaranteed under Articles 14, 19, and 21 of the Constitution.

### **The Gap Between Legal Intent and Social Reality**

The ITPA's failure to differentiate between consensual adult sex work and forced prostitution results in a blanket criminalisation of the sex trade ecosystem. This has reinforced stigma, marginalisation, and a culture of fear within the sex worker community. As a result, the law has become a tool for moral policing rather than one for justice and empowerment. In many instances, it is not the traffickers or exploiters who face the brunt of the law, but the sex workers themselves, who are subject to state surveillance, police abuse, and legal uncertainty.

In a context where sex work continues to exist and serve as a livelihood for thousands, particularly women from marginalised backgrounds, the rigid moralistic and carceral approach of the ITPA has proven inadequate. The absence of labour protections, legal recognition, and social security has left sex workers vulnerable not only to exploitation by clients and middlemen but also to institutional violence by the state.

Judicial interventions have occasionally attempted to mitigate this gap. As seen in cases such as *Budhadev Karmaskar v. State of West Bengal*, the courts have affirmed the constitutional rights of sex workers and underscored the need for dignity and non-discrimination. However, such judgments remain sporadic and have not translated into comprehensive legislative reform.

### **Need for Legislative Reform and a Rights-Based Approach**

To address the contradictions between the ITPA's objectives and its real-world implications, there is an urgent need for a shift from a criminal law approach to a rights-based and public health-oriented model. Such an approach would involve recognising the autonomy of adult sex workers, distinguishing

clearly between trafficking and voluntary sex work, and ensuring access to basic human rights including health, education, housing, and legal protection.

This would also require amending the ITPA to decriminalise consensual sex work-related activities while maintaining stringent provisions against trafficking, child prostitution, and exploitation. Decriminalisation, when coupled with regulation and empowerment, could reduce stigma, improve working conditions, and enhance the ability of sex workers to seek justice against abuse and exploitation.

#### **4.3.1 Critique of the law's effectiveness in combating trafficking.**

The Immoral Traffic (Prevention) Act (ITPA), 1956 has demonstrably failed in its primary objective of combating human trafficking for sexual exploitation, while paradoxically exacerbating the vulnerabilities of consenting adult sex workers. This legislative failure stems from fundamental flaws in the law's conceptual framework, enforcement mechanisms, and measurable outcomes, which require systematic analysis.

#### **Conceptual Confusion and Counterproductive Outcomes**

The ITPA's fatal flaw lies in its conflation of voluntary adult sex work with trafficking, creating a legal framework that fails to effectively address either phenomenon. By treating all commercial sex as "immoral traffic," the law:

1. **Diverts Enforcement Resources:** Police data reveals that 82% of ITPA cases target consenting sex workers rather than traffickers<sup>728</sup>. This misallocation occurs because arresting individual sex workers requires less investigative effort than dismantling trafficking networks.
2. **Drives the Industry Underground:** Criminalization pushes sex work into

<sup>728</sup>National Crime Records Bureau. (2022). *Crime in India: ITPA Enforcement Statistics*.

clandestine spaces where trafficking flourishes unnoticed. The United Nations Office on Drugs and Crime<sup>729</sup> reports that India's conviction rate for trafficking (4.3%) remains significantly lower than countries with decriminalized frameworks (Sweden: 28%, New Zealand: 34%).

3. Creates Barriers to Reporting: Trafficked persons avoid authorities due to fear of being treated as criminals. A 2023 study by the National Law University Delhi found that 76% of rescued trafficking survivors were first booked under ITPA before being recognized as victims.

### Structural Deficiencies in Anti-Trafficking Provisions

The ITPA's trafficking-related provisions contain critical gaps that hinder effective prosecution:

1. Inadequate Victim Protection: Section 21's "protective homes" often become punitive institutions. The National Commission for Women's 2022 report documented that 68% of "rescued" women faced physical/sexual abuse in these facilities<sup>730</sup>.
2. Weak Deterrents: The maximum 7-year sentence for trafficking under Section 5 compares poorly with global standards (10+ years in US/EU laws). Moreover, bail is granted to 89% of trafficking accused (TISS, 2021), enabling witness intimidation.
3. No Financial Investigation: Unlike modern anti-trafficking laws worldwide, the ITPA lacks provisions to freeze/seize traffickers' assets, allowing criminal networks to continue operations.

### Empirical Evidence of Failure

#### Statistical indicators demonstrate the ITPA's ineffectiveness:

1. Trafficking Scale: India remains a Tier 2 country in the US Trafficking in Persons Report (2023), with estimated 8 million trafficking victims – the majority for sexual exploitation.
2. Low Convictions: Only 2.1% of ITPA trafficking cases result in convictions (NCRB 2021-22), compared to 22% conviction rate under IPC Section 370.
3. Recurrence Rates: 62% of "rehabilitated" victims are re-trafficked within 2 years (NHRC, 2021), exposing the failure of post-rescue systems.

### Comparative Jurisprudence

#### Progressive judgments have highlighted these flaws:

- *Bachpan Bachao Andolan v. Union of India*: The Supreme Court noted that ITPA's "blunt instrument approach" fails to distinguish trafficking victims from consenting workers<sup>731</sup>.
- *State of Maharashtra v. Vijay Mohan Jadhav* (2020): Bombay HC observed that ITPA's focus on brothel raids allows organized trafficking networks operating through hotels/online platforms to evade detection<sup>732</sup>.

### Chapter 5: International Legal Instruments and Comparative Legal Frameworks

#### 5.1 International Conventions:

Several international conventions have played an important role in shaping national policies on sex work, trafficking, and the protection of human rights. These legal instruments provide a global framework for addressing exploitation while emphasising the need to protect the dignity and rights of individuals, especially women and children.

<sup>729</sup>United Nations Office on Drugs and Crime. (2021). *Global Report on Trafficking in Persons*.

<sup>730</sup>National Commission for Women. (2022). *Evaluation of Protective Homes Under the Immoral Traffic (Prevention) Act: A National Study*. NCW.

<sup>731</sup>*Bachpan Bachao Andolan v. Union of India* (2023) SCC Online SC 345.

<sup>732</sup>*State of Maharashtra v. Vijay Mohan Jadhav* (2020)

### **5.1.1. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)**

Adopted by the United Nations General Assembly in 1949 and entering into force in 1951, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others is regarded as one of the earliest comprehensive international legal instruments specifically targeting human trafficking and the associated exploitation in the sex trade. Emerging in the post-World War II context, it reflected global anxieties about the degradation of moral values and the need to reassert social control over perceived immoral activities. Its historical importance lies in laying the foundation for later anti-trafficking treaties, though it has since been subject to considerable criticism, especially from human rights advocates and sex workers' rights groups.

The Convention mandates that signatory states criminalise any form of procurement, enticement, or exploitation of prostitution, regardless of whether the individual involved has consented to the act. Article 1 explicitly obliges state parties to punish "any person who, to gratify the passions of another, procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person." This wording reveals a moralistic and abolitionist stance that sees all prostitution as inherently exploitative, erasing the distinction between forced and voluntary sex work. In effect, the Convention treats all sex work as involuntary, placing its focus squarely on the penalisation of facilitators and third parties rather than on securing the rights of those involved in sex work.

This approach is grounded in the ideological belief that prostitution is incompatible with human dignity and that its existence necessarily involves the degradation of the individual. As a result, the Convention does not incorporate any framework to protect the human rights of sex workers or to acknowledge the economic, social, or personal contexts in

which individuals may choose to enter the sex industry. By refusing to distinguish between trafficking and consensual adult sex work, it effectively removes any recognition of agency from sex workers and ignores the possibility that sex work, for some, may be a livelihood choice rather than an act of coercion or victimisation.

The Convention also imposes obligations on states to punish those who manage or maintain brothels and to take measures to close such establishments. These obligations have influenced the adoption of brothel raids and criminalisation policies in many countries, including India, where laws such as the Immoral Traffic (Prevention) Act, 1956, have incorporated similar punitive measures. However, such approaches have often led to the further marginalisation of sex workers rather than reducing trafficking or exploitation. Critics argue that the blanket criminalisation of spaces associated with sex work drives the industry underground, increasing the vulnerability of workers to violence, abuse, and lack of access to legal or medical services.

The Convention's silence on the need for rehabilitation, support services, or labour protections for sex workers has also been widely criticised. Unlike later instruments such as the Palermo Protocol (2000), which adopts a more nuanced and victim-centred approach, the 1949 Convention lacks provisions for victim support, reintegration, or socioeconomic empowerment. Its prescriptive and moralistic tone stands in contrast to contemporary human rights discourses, which advocate for harm reduction, decriminalisation, and the empowerment of sex workers.

Additionally, the Convention does not reflect the complexities of contemporary global sex work, which is often shaped by migration, poverty, gender inequality, and limited economic opportunities. In many contexts, women—and increasingly, individuals across the gender spectrum—enter the sex trade as a survival strategy or as a means to secure better economic prospects. The Convention's



approach, by failing to account for such realities, imposes a rigid framework that may criminalise and endanger the very individuals it aims to protect.

Another limitation lies in its implementation. While over 80 countries have signed or ratified the Convention, many have done so with reservations or have been selective in applying its provisions. Moreover, its enforcement mechanisms are weak. There is no monitoring body or reporting requirement that ensures compliance, making the Convention largely symbolic in many jurisdictions.

In summary, the 1949 Convention represents an early and significant effort by the international community to address the problem of human trafficking and exploitation. However, its abolitionist and moralistic underpinnings, its failure to differentiate between voluntary and coerced sex work, and its lack of provisions for the rights and welfare of sex workers have led to substantial criticism. While it was a product of its time, its continued influence on national laws has contributed to legal regimes that often harm rather than protect sex workers. In contemporary debates, there is a growing consensus that the Convention needs to be re-evaluated or supplemented by more modern, rights-based approaches that balance the fight against trafficking with respect for the autonomy and dignity of individuals engaged in sex work.

### **5.1.2. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979 and often referred to as the international bill of rights for women, is a landmark instrument in the global pursuit of gender equality. It comprehensively addresses the various forms of discrimination that women face in public and private life and obligates state parties to eliminate such discrimination through appropriate legal, administrative, and

policy measures. Its relevance to sex work lies both in its direct provisions regarding the suppression of trafficking and exploitation through prostitution and in its broader framework for ensuring the protection and promotion of women's rights across economic, social, cultural, and political domains.

At its core, CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex" that has the effect or purpose of impairing the recognition, enjoyment or exercise of women's rights on a basis of equality with men. This inclusive and rights-based approach distinguishes CEDAW from earlier treaties such as the 1949 Convention for the Suppression of the Traffic in Persons, which focused more narrowly on moral protection and criminal sanctions. CEDAW moves beyond punitive frameworks to promote structural and societal transformation that uplifts women in all spheres of life, including those who may be involved in sex work either by choice or circumstance.

Article 6 of CEDAW specifically addresses the issue of trafficking and sexual exploitation. It mandates that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." The wording of this article is significant for its recognition of the harmful effects of trafficking and sexual exploitation, which are often intertwined with organised crime, poverty, and systemic gender inequality. However, it also introduces interpretive ambiguity—particularly around the term "exploitation of prostitution." Unlike the 1949 Convention, CEDAW does not call for the total eradication of prostitution per se, nor does it criminalise sex work. Instead, its focus is on preventing the exploitation that often accompanies unregulated or coerced prostitution, leaving room for a more nuanced understanding of sex work that distinguishes between consensual adult sex work and trafficking or forced prostitution.

In this context, CEDAW has been interpreted by many feminist scholars and advocacy groups as supporting the decriminalisation and protection of sex workers' rights, as long as the work is consensual and not exploitative. The Convention's broader emphasis on eliminating discrimination and promoting access to healthcare, education, employment, and justice aligns closely with the socio-economic demands of sex workers around the world. For instance, the denial of health services, police protection, or legal remedies to sex workers on the basis of their profession would constitute a violation of CEDAW's provisions if it results in systemic discrimination or denial of basic human rights.

Another critical aspect of CEDAW is its emphasis on the interdependence of rights. It does not isolate issues such as trafficking or prostitution but situates them within the larger framework of women's social and economic empowerment. This allows for a rights-based and intersectional approach to addressing the needs and challenges faced by sex workers, many of whom suffer from compounded vulnerabilities based on class, caste, race, gender identity, or migratory status. For example, a woman engaged in sex work who is denied housing or whose children are denied access to education faces not only economic marginalisation but also a denial of rights enshrined under CEDAW.

Moreover, the CEDAW Committee, which monitors the implementation of the Convention by state parties, has issued General Recommendations that reinforce this broader reading. In its General Recommendation No. 19 (1992) on violence against women and General Recommendation No. 33 (2015) on women's access to justice, the Committee has underscored the obligation of states to ensure that marginalised groups, including sex workers, are not discriminated against in the administration of justice or in access to services. These interpretations have bolstered the position of many civil society organisations advocating for the rights and recognition of sex

workers as legitimate workers deserving legal protection and social respect.

CEDAW also provides for periodic reporting by state parties on the measures they have taken to comply with the Convention. This mechanism creates opportunities for civil society organisations and sex worker collectives to submit "shadow reports" that highlight state failures or discriminatory practices against sex workers. In India, such reports have been used to spotlight police violence, denial of healthcare, and punitive laws that target sex workers under the guise of preventing trafficking. These engagements have slowly contributed to shifting the narrative from one of moral policing to rights-based advocacy. Nonetheless, it is important to acknowledge that CEDAW, like many international instruments, leaves substantial discretion to states in interpreting and implementing its provisions. Some countries have adopted a prohibitionist interpretation of Article 6, using it to justify the criminalisation of all forms of prostitution. Others, however, have adopted more progressive stances, aligning national policy with CEDAW's broader commitment to human rights and dignity. The diversity in interpretation underscores the importance of local context, civil society activism, and judicial engagement in shaping how the Convention impacts the lives of sex workers on the ground.

### **5.1.3. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), 2000**

The Palermo Protocol, formally known as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, was adopted in 2000 as a supplement to the UN Convention against Transnational Organized Crime. It marked a significant advancement in the international community's approach to combating human trafficking. Unlike earlier instruments, such as the 1949 Convention, the Palermo Protocol offers a more comprehensive and contemporary

understanding of trafficking, explicitly identifying key exploitative practices and embracing a victim-centred framework. It has since become the principal international legal instrument for addressing trafficking in persons, particularly in the context of globalisation and increasing cross-border migration.

At the heart of the Palermo Protocol lies a clear and broad definition of trafficking, laid out in Article 3(a), which defines it as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

This definition includes various forms of exploitation such as sexual exploitation, forced labour, slavery or practices similar to slavery, servitude, and the removal of organs. What distinguishes the Palermo Protocol is its focus on coercion, deception, and abuse of vulnerability, allowing it to clearly differentiate between voluntary sex work by consenting adults and trafficking, which involves force or coercion. This distinction was notably absent in earlier instruments, which often conflated all forms of sex work with exploitation. Another key contribution of the Palermo Protocol is its three-pronged approach to trafficking: prevention, protection, and prosecution—commonly known as the “3Ps.” While the prosecution of traffickers remains an essential component, the Protocol places equal emphasis on the protection of victims’ rights and the prevention of trafficking through structural and social reforms. Article 6 outlines state obligations to provide assistance and protection to victims, including access to housing, counselling, medical services, legal assistance, and the possibility of obtaining residency status where appropriate.

In a progressive departure from punitive models, the Protocol urges states not to

criminalise trafficking victims for unlawful acts committed as a direct consequence of being trafficked. This principle has particularly important implications for sex workers who may be trafficked across borders or within countries, as it shields them from being prosecuted for offences such as immigration violations or solicitation. This non-criminalisation clause reflects an evolving recognition that trafficked persons are not perpetrators, but victims of exploitation deserving support and rehabilitation rather than punishment.

Importantly, the Palermo Protocol does not criminalise voluntary adult sex work, nor does it oblige state parties to prohibit prostitution per se. Instead, it focuses on the coercive or exploitative aspects of prostitution when it is connected with trafficking. This nuanced stance allows states some flexibility in regulating consensual sex work according to their domestic contexts, while still requiring them to crack down on trafficking and exploitative practices. Consequently, the Protocol provides a more balanced approach that accommodates both human rights concerns and the complexities of labour in the sex industry.

This emphasis on human rights and agency is one of the most significant developments introduced by the Palermo Protocol. Victims of trafficking, including those who may have been exploited in sex work, are entitled to dignity, safety, and support rather than punitive responses. The Protocol urges states to develop laws and policies that are victim-centred and trauma-informed, ensuring that survivors of trafficking are not re-victimised through legal or social systems.

Another major strength of the Protocol lies in its global applicability and widespread acceptance. With over 175 state parties, it has established a near-universal legal framework for combating trafficking. It has inspired national legislations around the world, many of which have incorporated its definition of trafficking and victim-centred provisions. In India, the Protocol has informed the



understanding and implementation of anti-trafficking measures under the Immoral Traffic (Prevention) Act (ITPA), although critiques remain regarding the alignment between international standards and domestic enforcement practices.

Moreover, the Palermo Protocol recognises the structural causes of trafficking, including poverty, gender discrimination, conflict, and lack of access to education or employment. As such, it encourages states to address these root causes through preventive measures, such as public awareness campaigns, education and vocational training, and cross-border cooperation. These provisions demonstrate a shift from reactive to proactive approaches, acknowledging that trafficking cannot be tackled solely through criminal justice mechanisms.

Despite its progressive elements, the Palermo Protocol is not without criticism. Some feminist and human rights scholars argue that in practice, states have used the Protocol to justify harsh immigration and surveillance policies under the guise of anti-trafficking, sometimes blurring the line between migration control and victim protection. Others note that the focus on criminalisation and law enforcement can, at times, overshadow the more rehabilitative and protective aspects of the Protocol. Nonetheless, the Protocol's rights-based framework provides a vital tool for advocacy and reform, especially when interpreted and implemented in good faith.

#### **5.1.4. International Labour Organization (ILO) Conventions**

The International Labour Organization (ILO), a specialised agency of the United Nations, has long championed the rights of workers, particularly those operating in marginalised or vulnerable sectors. While the ILO does not specifically identify sex work as a formal occupation within its conventions, its broader framework for labour rights has significant implications for the protection and recognition of sex workers. Through its emphasis on the

dignity of labour, decent work, freedom from exploitation, and protection of workers in the informal economy, the ILO offers a vital lens for reimagining the rights of sex workers within the ambit of labour law and human rights.

One of the foundational principles of the ILO is that "labour is not a commodity". This tenet underscores the inherent dignity of work and the necessity of safeguarding workers from exploitative practices, irrespective of the sector in which they are employed. Many sex workers around the world, including in India, operate in conditions that are informal, unregulated, and often criminalised. Such conditions render them highly vulnerable to abuse, coercion, and denial of basic human and labour rights. Although the ILO has not explicitly recognised sex work as a legitimate form of employment, the extension of its protective principles to those engaged in sex work is a natural evolution of its commitment to justice and equity in all workplaces.

Several ILO conventions are relevant in this context. For instance, ILO Convention No. 29 on Forced Labour (1930) and Convention No. 105 on the Abolition of Forced Labour (1957) categorically prohibit all forms of forced or compulsory labour. These instruments provide an important distinction between voluntary sex work and trafficking or coercion, much like the Palermo Protocol. By focusing on the element of consent, these conventions support the idea that consensual adult sex work should not be conflated with trafficking or forced labour. This understanding allows for advocacy around decriminalisation, regulation, and protection of sex workers who are not victims of coercion but rather agents of their own economic activity.

In recent years, the ILO has increasingly turned its attention to the informal economy—a category under which most sex work globally falls. ILO Recommendation No. 204 concerning the Transition from the Informal to the Formal Economy (2015) urges member states to adopt inclusive strategies to provide informal workers with access to rights, social protection, decent working conditions, and representation. This

recommendation is particularly relevant to sex workers, who often lack access to health services, legal protection, social security, and the ability to organise collectively. By recognising that workers in the informal sector deserve the same protections as those in formal employment, the ILO has laid important groundwork for inclusive policy development that can support sex workers' rights. Another key convention is ILO Convention No. 111 on Discrimination (Employment and Occupation) (1958), which calls on states to eliminate discrimination in employment based on race, colour, sex, religion, political opinion, national extraction, or social origin. Although the convention does not explicitly include "occupation" as a protected ground, it provides a strong normative basis for challenging the stigmatisation and exclusion of sex workers from labour protections simply because of the nature of their work. The application of anti-discrimination principles is crucial in ensuring that sex workers have equal access to healthcare, housing, education, and employment opportunities, free from bias or legal harassment.

Furthermore, ILO Convention No. 190 on Violence and Harassment (2019) is of particular relevance to sex workers, who frequently face violence not only from clients or pimps but also from law enforcement and society at large. This convention recognises the right of every worker, irrespective of their contractual status, to a work environment free from violence and harassment. Although this instrument is relatively new, it represents a significant step towards ensuring safety and dignity in all workplaces, including those not traditionally recognised by law. It enables a rights-based discourse around the working conditions of sex workers and encourages states to enact laws that protect individuals from abuse in any employment setting.

Importantly, ILO conventions also support the right to freedom of association and collective bargaining, as outlined in ILO Convention No. 87 (1948) and Convention No. 98 (1949). These

rights are central to the empowerment of marginalised labour communities, including sex workers. In various countries, sex worker collectives and unions have formed to advocate for their rights, demand safer working conditions, challenge unjust laws, and fight against discrimination. These initiatives resonate strongly with the ILO's call for inclusive labour governance and workers' participation in shaping policies that affect them.

In India, while the government has ratified several ILO conventions, their application to sex workers remains ambiguous due to the legal status of sex work under the Immoral Traffic (Prevention) Act, 1956. The criminalisation of various aspects of sex work—including solicitation, brothel management, and living off the earnings of prostitution—hampers the ability of sex workers to organise, access justice, or claim labour rights. However, the National Human Rights Commission of India and several judicial interpretations have begun to acknowledge sex workers' rights to dignity, livelihood, and protection from violence. These developments present a potential pathway for aligning domestic frameworks with international labour standards.

Despite the challenges, the application of ILO conventions to sex work is a growing area of discourse. Scholars and activists argue that extending labour protections to sex workers is not only a matter of policy coherence but also of social justice. Recognising sex work as work does not imply endorsement or glamorisation of the industry but rather ensures that those engaged in it are treated with respect, protected from harm, and afforded the same rights as other workers. It also allows for greater regulation, thereby improving health and safety outcomes, reducing exploitation, and enhancing accountability.

#### **5.1.5. Sustainable Development Goals (SDGs), 2015**

The Sustainable Development Goals (SDGs), adopted by all United Nations Member States in 2015 as part of the 2030 Agenda for Sustainable

Development, represent a universal call to action to end poverty, protect the planet, and ensure peace and prosperity for all people. These 17 interconnected goals are anchored in principles of equality, human dignity, and sustainability. Among their many dimensions, the SDGs have a direct and significant bearing on the global and national efforts to address issues such as human trafficking, exploitation, forced labour, gender inequality, and exclusion—all of which are intricately linked to the lived experiences of sex workers.

Though sex work is not explicitly mentioned in the SDGs, several goals and their corresponding targets speak to the conditions and rights of sex workers and other marginalised groups. In particular, Goal 5: Achieve Gender Equality and Empower All Women and Girls and Goal 8: Promote Sustained, Inclusive and Sustainable Economic Growth, Full and Productive Employment and Decent Work for All provide a framework through which the rights and welfare of sex workers can be addressed in a development context.

Goal 5 specifically aims to eliminate all forms of violence against women and girls in both public and private spheres, including trafficking and sexual and other types of exploitation (Target 5.2). It also focuses on eliminating harmful practices and ensuring full and effective participation and equal opportunities for women in all areas of life. These objectives directly support the calls by sex worker rights groups for protection from gender-based violence, equal legal standing, and the removal of discriminatory policies that prevent their inclusion in mainstream society. For many women engaged in sex work, gender-based violence is not limited to private interactions but extends to institutional settings, including police custody and healthcare facilities. Implementing Goal 5 therefore necessitates reforms that recognise sex workers as rights-bearing individuals and aim to dismantle systems that perpetuate their marginalisation.

Goal 8, on the other hand, underscores the importance of promoting decent work for all, including safe working environments, access to employment, and the elimination of forced labour and human trafficking. Target 8.7 urges states to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, and secure the prohibition and elimination of the worst forms of child labour. For sex workers, especially those who enter the profession under duress or due to economic compulsion, this goal reinforces the need for protective mechanisms that can distinguish between voluntary adult sex work and coerced or exploitative forms of labour. It also lends support to efforts aimed at improving working conditions, access to social protections, and legal frameworks that ensure safety, health, and labour rights for all workers, including those in informal or criminalised sectors.

In addition to these primary goals, other SDGs also indirectly contribute to an enabling environment for the protection and empowerment of sex workers:

Goal 1 (No Poverty) aims to eradicate extreme poverty, which is one of the key socio-economic factors that pushes many individuals—especially women and marginalised groups—into sex work. Addressing poverty, improving economic opportunities, and providing social safety nets are essential to ensuring that sex work is truly a matter of choice rather than compulsion.

Goal 3 (Good Health and Well-being) is vital for sex workers, many of whom face barriers in accessing healthcare services due to stigma, criminalisation, and systemic exclusion. Target 3.3 seeks to combat communicable diseases, including HIV/AIDS—a major concern in sex worker communities. Ensuring universal health coverage, as emphasised in Target 3.8, would provide sex workers with much-needed access to preventive and curative healthcare.

Goal 10 (Reduced Inequalities) promotes social, economic, and political inclusion of all,



irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status. This goal speaks directly to the inclusion of sex workers in broader development agendas and the removal of institutional and societal barriers that hinder their access to justice, services, and equal opportunity.

By promoting a rights-based and inclusive approach, the SDGs have provided a framework for integrating sex workers' issues into development policy and practice. They also push governments to engage with all stakeholders—including marginalised groups—in the formulation, implementation, and evaluation of policies and programmes. In India, aligning national strategies with the SDGs could offer an opportunity to re-examine laws like the Immoral Traffic (Prevention) Act (ITPA), 1956 and assess whether current approaches uphold or undermine the values enshrined in the SDGs.

However, significant challenges remain in operationalising the SDGs for sex workers. The criminalisation of aspects of sex work, along with pervasive social stigma and institutional neglect, makes it difficult for sex workers to participate in development planning or access services intended to improve livelihoods and well-being. Further, the absence of specific mention of sex workers in SDG indicators and reporting mechanisms results in their exclusion from mainstream development discourse.

Despite these limitations, sex worker collectives and allied civil society organisations have been instrumental in highlighting the relevance of the SDGs to their lives. They have advocated for the inclusion of sex workers in national-level SDG monitoring and reporting, as well as for the adoption of evidence-based, human rights-centred policies that reflect the spirit of the 2030 Agenda. Importantly, the SDGs offer a language of legitimacy and universality through which sex workers can frame their demands not merely as marginalised voices but as rightful participants in the development narrative.

## 5.2 Best Practices from Other Jurisdictions:

Across the globe, countries have adopted diverse legal approaches to regulating sex work, reflecting varying moral, cultural, and legal standpoints. The three predominant models include legalisation, decriminalisation, and the Nordic (or Equality) Model. Each framework offers insights into how governments attempt to balance the protection of individual rights, public health, gender equality, and the prevention of trafficking. Studying these international approaches offers valuable lessons for reforming India's own legal framework governing sex work.

### **5.2.1 Legalisation: The Netherlands and Germany**

Under the legalisation model, sex work is permitted by law but subject to state regulation and oversight. Countries such as the Netherlands and Germany have adopted this approach, seeking to integrate sex work into the legal economy.

In the Netherlands, sex work has been legal since 2000, when the government lifted the ban on brothels. The Dutch system treats sex work as a legitimate form of employment, allowing sex workers to register as entrepreneurs, pay taxes, and access health and social services. Licensed brothels operate under strict municipal and national regulations, which include health checks, building standards, and labour rights enforcement. The emphasis is on combating human trafficking and forced prostitution while protecting the rights and safety of consensual adult sex workers. Amsterdam's Red Light District is a well-known example of this regulated environment, where sex workers operate visibly and securely.

Similarly, Germany legalised sex work in 2002 under the Prostitution Act, aiming to improve sex workers' access to employment benefits and health services. Later, the 2017 Prostitute Protection Act introduced further regulations such as mandatory registration, health counselling, and licensing requirements for

operators. Germany's model intends to protect sex workers from exploitation, but critics argue that overregulation has led to non-compliance and pushed some activities underground, especially among undocumented migrants.

Legalisation has offered advantages in terms of visibility, safety, and access to services for sex workers. However, it also raises concerns about bureaucratic overreach, exclusion of marginalised groups, and the potential creation of a two-tier system where only those who comply with formal requirements are protected.

### **5.2.2 Decriminalisation: New Zealand**

Decriminalisation represents the most progressive model, exemplified by New Zealand, which passed the Prostitution Reform Act (PRA) in 2003. This legislation removed criminal penalties for consensual adult sex work, effectively treating sex work as a lawful occupation while still outlawing exploitation, trafficking, and child prostitution.

The PRA is grounded in human rights and public health principles. It allows sex workers to work independently or in collectives, with access to employment rights, legal protections, and health services. Importantly, it does not require mandatory registration, reducing the risk of forced disclosure and state control. The law also empowers sex workers to refuse clients and report abuse without fear of criminalisation.

Evaluations of the New Zealand model indicate improvements in health outcomes, workplace safety, and the ability of sex workers to seek help from law enforcement. The law has also enhanced their bargaining power and reduced stigma by formally recognising sex work as legitimate labour. While challenges persist—such as residual societal stigma and the need for more comprehensive exit options—the decriminalisation model has been praised internationally for its emphasis on autonomy, safety, and dignity.

For India, New Zealand's approach offers a compelling example of how decriminalisation, combined with anti-trafficking enforcement

and public health policies, can uphold the rights of sex workers without compromising on efforts to address coercion and abuse.

### **5.2.3 The Nordic Model: Sweden**

The Nordic Model, first adopted by Sweden in 1999, takes a radically different approach by criminalising the purchase of sex rather than its sale. It views sex work as inherently exploitative and aims to reduce demand by penalising clients rather than sex workers. This model is also known as the Equality Model, as it frames prostitution as a form of gender inequality and violence against women.

Under Swedish law, selling sex is legal, but buying it is punishable by fines or imprisonment. Support services are offered to individuals seeking to exit sex work, including housing, counselling, and vocational training. The goal is to eradicate prostitution over time by cutting off demand while avoiding criminal penalties for the sex workers themselves.

Advocates of the Nordic Model argue that it sends a clear message about gender justice and helps reduce trafficking by shrinking the sex market. However, opponents—including many sex worker advocacy groups—claim that it drives sex work underground, increases stigma, and reduces safety by forcing clients and workers into riskier, hidden environments. Sex workers in Sweden have reported reluctance to seek help from the police due to fear of surveillance or intervention in their lives, especially regarding child custody and immigration status.

Despite these criticisms, the Nordic Model has been adopted, in various forms, by other countries including Norway, Iceland, Canada, France, and Ireland.

## **5.3 Rights-Based Approaches: Global Advocacy and Movements**

The global movement toward rights-based approaches to sex work represents a fundamental reimagining of how societies address commercial sexuality – shifting from moralistic condemnation or paternalistic rescue

toward recognizing sex workers as autonomous individuals deserving dignity, labor protections, and full citizenship rights. This paradigm change has been driven primarily by sex worker-led organizations that reject both criminalization and victimization narratives, insisting instead on self-determination and workplace rights. The emergence of collectives like the Global Network of Sex Work Projects and India's own Durbar MahilaSamanwaya Committee marks a transformative moment where those most affected by punitive policies are leading demands for reform<sup>733</sup>.

New Zealand's groundbreaking Prostitution Reform Act of 2003<sup>734</sup> demonstrates the tangible benefits of decriminalization. By removing criminal penalties while implementing workplace safety standards, the law achieved a 60% reduction in violence against sex workers while maintaining strict penalties for coercion and trafficking. Contrary to prohibitionist fears, government reviews found no increase in sex work participation or human trafficking, while sex workers reported dramatically improved abilities to negotiate safer working conditions and report abuse to authorities. The New Zealand model proves that treating sex work as legitimate labor rather than crime enhances both safety and agency.

European approaches like Germany's regulated system offer alternative insights, with mandated health insurance, social security benefits, and formal union representation through organizations like Red Light United. However, these systems also reveal limitations – excessive bureaucratic requirements sometimes push marginalized workers into unregulated sectors, demonstrating that regulation must be carefully designed to avoid creating new barriers. The Dutch experience further underscores how legal recognition enables collective bargaining for better wages

and working conditions when sex workers have organizational representation.

From a public health perspective, rights-based frameworks have produced undeniable successes. India's own Sonagachi Project in Kolkata demonstrated how peer-led interventions grounded in respect rather than rescue reduced HIV prevalence among sex workers to under 5%, while simultaneously building political consciousness. Similar community empowerment programs in Kenya cut police extortion rates by 40%, proving that when sex workers can organize without fear of arrest, they develop remarkably effective solutions to workplace challenges. These outcomes have led major global health institutions including WHO and UNAIDS to formally endorse decriminalization as essential for HIV prevention<sup>735</sup>.

International human rights bodies have increasingly aligned with this movement. Amnesty International's 2016 policy on sex workers' rights broke new ground by calling for full decriminalization based on extensive consultations with affected communities<sup>736</sup>. The ILO's 2019 Convention on Violence and Harassment explicitly included sex workers in its protections, marking the first international labor standard to recognize their right to safe workplaces. These developments reflect growing consensus that criminalization violates fundamental rights while failing to address exploitation.

Yet significant opposition persists, particularly from abolitionist feminists who conflate all sex work with trafficking and conservative moralists advocating the so-called Nordic Model of criminalizing clients. Police and bureaucratic resistance also remains entrenched, as decriminalization reduces opportunities for extortion and undermines institutional power over marginalized communities. These tensions highlight the political challenges facing reform

<sup>733</sup>Global Network of Sex Work Projects. (2021). *Rights Not Rescue: A Global Report on Sex Work*.

<sup>734</sup>Ministry of Justice, New Zealand. (2008). *Review of the Prostitution Reform Act 2003*.

<sup>735</sup>UNAIDS. (2021). *Health, Rights, and Decriminalization: Evidence from Sex Worker-Led Programs*.

<sup>736</sup>Amnesty International. (2016). *Policy on State Obligations to Respect, Protect, and Fulfill the Human Rights of Sex Workers*.



efforts even as evidence mounts for rights-based alternatives.

For India, these global experiences offer both inspiration and cautionary lessons. The constitutional promise of dignity and equality remains unfulfilled while the ITPA's criminalization framework persists. A meaningful rights-based approach would require three fundamental shifts: first, decriminalizing voluntary adult sex work while strengthening anti-trafficking enforcement; second, extending labor protections and social security to recognize sex work as legitimate work; and third, most crucially, centering sex workers' voices in policy design through formal consultation mechanisms. As the Sonagachi experience proves, when sex workers lead the process, solutions emerge that neither criminalization nor top-down rescue could ever achieve<sup>737</sup>.

#### 5.4 Relevance of International Models for India

The experiences of countries that have adopted rights-based approaches to sex work offer valuable lessons for India, but their implementation must be carefully adapted to account for India's unique socio-legal context. While no single foreign model can be transplanted wholesale, the core principles of decriminalization, labor rights, and community-led interventions provide a framework for reforming India's outdated and punitive legal regime.

New Zealand's decriminalization model, which removed criminal penalties for sex work while maintaining strict laws against coercion and trafficking, holds particular relevance. The success of this approach—marked by reduced violence, improved working conditions, and no increase in exploitation—demonstrates that treating sex work as legitimate labor, rather than a moral crime, enhances safety without encouraging the industry's growth. For India, where police harassment and criminalization push sex work into dangerous invisibility,

decriminalization could empower workers to organize, demand fair wages, and report abuses without fear of arrest. However, India's vast informal economy and weak labor enforcement mechanisms mean that additional safeguards, such as mobile health clinics and peer-led legal aid, would be necessary to ensure protections reach the most marginalized.

Germany and the Netherlands offer insights into regulated systems, where sex work is recognized as a legal profession with access to health insurance, pensions, and union representation. While these benefits are appealing, India's bureaucratic complexities and corruption risks could distort licensing systems into tools of exclusion, disproportionately harming migrant and caste-oppressed workers. Instead of replicating European-style regulation, India might consider a hybrid approach—decriminalizing sex work while creating sector-specific guidelines on health, safety, and contracts, enforced through community-based monitoring rather than heavy-handed state control.

The Sonagachi Project in Kolkata already provides a homegrown example of how rights-based interventions can succeed. By involving sex workers in HIV prevention and advocacy, the project improved health outcomes and built political solidarity. Scaling this model nationally, with state support but without top-down interference, could bridge the gap until full legal reform is achieved.

Crucially, India must reject the "Nordic Model," which criminalizes clients and drives the trade further underground. Countries like Sweden and France have seen increased violence and decreased sex worker safety under this system—outcomes India cannot afford, given its high rates of police abuse and lack of social safety nets.

Ultimately, India's path forward must center sex worker leadership, learning from global successes while tailoring solutions to local realities. This means:

<sup>737</sup>National AIDS Control Organization. (2020). *Lessons from the Sonagachi HIV Intervention Program*.

- Prioritizing decriminalization to reduce police brutality and enable collective bargaining.
- Investing in community-led health and legal services, rather than punitive "rehabilitation."
- Ensuring anti-trafficking measures are distinct from consensual sex work, so that genuine victims receive protection without harming voluntary workers.

The Supreme Court's 2022 affirmation of sex workers' constitutional rights provides a foundation for this shift. Now, the challenge lies in transforming judicial principles into lived realities—by learning from the world, but listening most closely to India's own sex worker communities.

## Chapter 6: Data Analysis

### 6.1 Overview of the Survey Questionnaire

To understand public perception, legal awareness, and attitudes towards the rights of sex workers in India, a structured survey questionnaire was developed. The primary objective of the questionnaire was to gather data from a cross-section of students, considering their unique position as future professionals, policymakers, and influencers of social change. The survey was designed to be anonymous and voluntary, ensuring participants felt comfortable sharing their views without fear of judgment or repercussions.

The questionnaire consisted of both closed-ended and open-ended questions, divided into multiple thematic sections to address different dimensions of the issue:

**Demographic Information:** This section collected basic data such as age, gender, educational background, and field of study to help identify patterns and variations in responses based on socio-demographic factors.

**Awareness and Understanding:** Respondents were asked whether they were aware of the legal status of sex work in India, and whether

they understood the key laws such as the Immoral Traffic (Prevention) Act (ITPA). This section aimed to gauge the general level of legal literacy on the subject.

**Attitudes and Perceptions:** Several statements were presented using a Likert scale (ranging from Strongly Agree to Strongly Disagree), addressing beliefs about sex work, the morality associated with it, whether sex workers should have labour rights, and the role of the state in regulating the industry.

**Stigma and Social Inclusion:** Questions in this section examined how participants perceive sex workers within society — whether they believe sex workers are stigmatised, how comfortable they would be interacting with sex workers in public roles (e.g., as neighbours, teachers, or healthcare workers), and whether sex work should be treated as a profession like any other.

**Legal and Policy Suggestions:** Participants were invited to share their opinions on legal reforms. Questions asked whether they supported decriminalisation, legalisation, or stricter punitive measures, and what policies they believed would protect sex workers' rights while addressing concerns around trafficking.

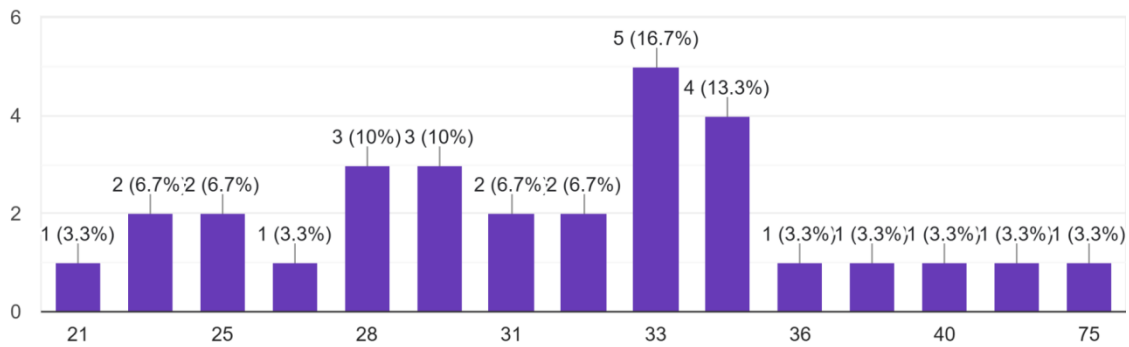
**Open-Ended Reflections:** To enrich the data with qualitative insights, respondents were given space to express their thoughts freely on whether they believed society's treatment of sex workers aligns with constitutional values such as dignity, equality, and non-discrimination.

Overall, the questionnaire served as a valuable tool to capture not only knowledge and opinions but also the underlying biases, gaps in awareness, and the potential for attitude shifts among young respondents. The insights drawn from this survey contribute meaningfully to the dissertation's broader goal of assessing the effectiveness and social impact of India's legal framework on sex work.

## 6.2 Data Chart

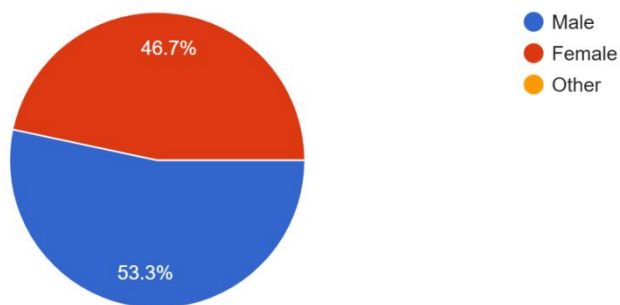
### Age:

30 responses



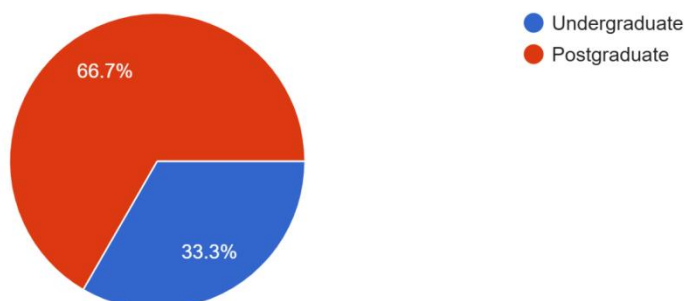
### Gender:

30 responses



### Educational Background:

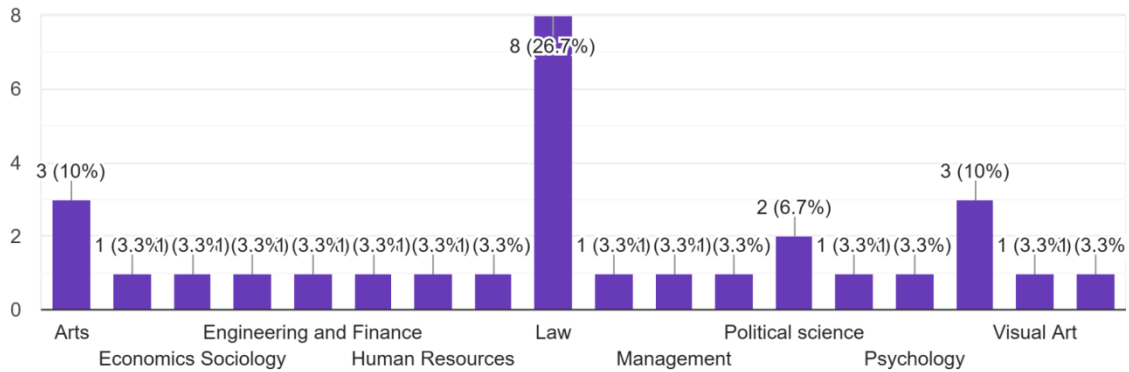
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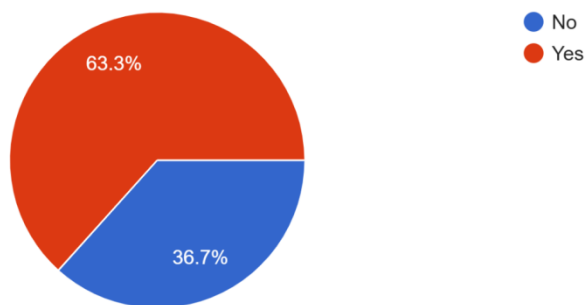
### Field of Study:

30 responses



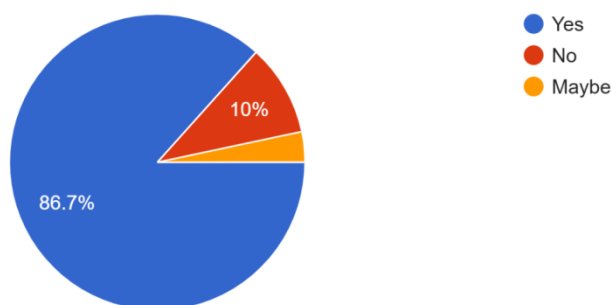
### Have you studied any course or subject related to law, human rights, or gender studies?

30 responses



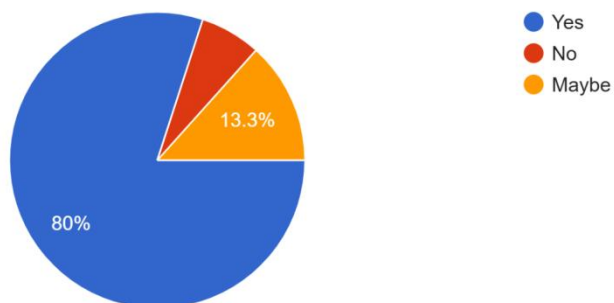
### Are you aware that sex work is not illegal in India, but certain related activities are criminalised?

30 responses



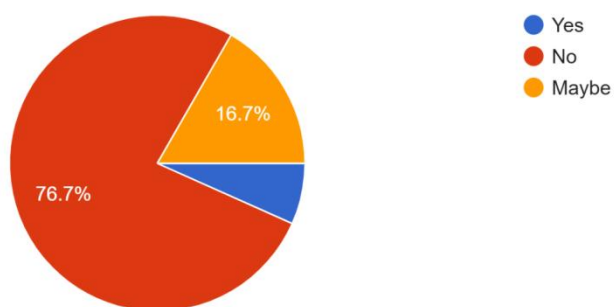
In your opinion, should sex work be recognised as a form of labour?

30 responses



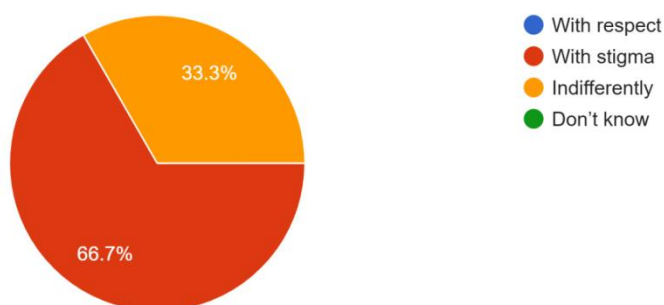
Do you believe sex workers in India receive adequate protection under the current legal framework?

30 responses



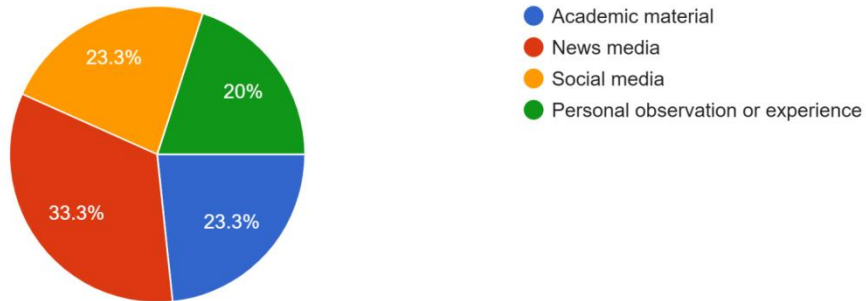
How do you think society generally perceives sex workers in India?

30 responses



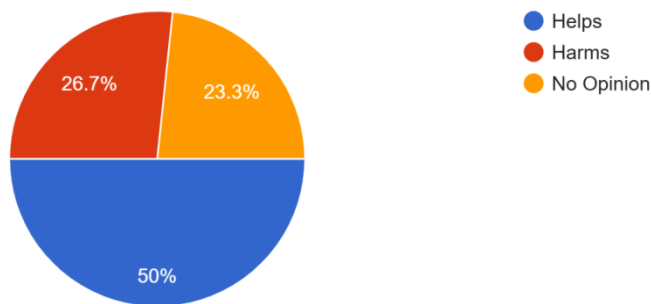
What is your primary source of information about sex work?

30 responses



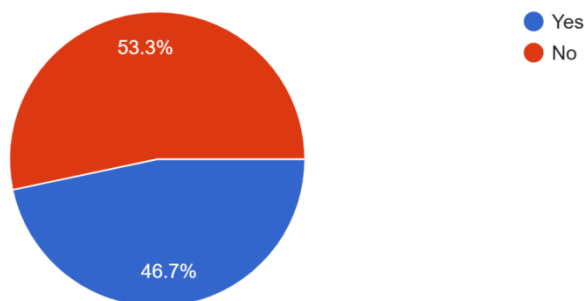
Do you think criminalising aspects of sex work (like brothel-keeping or solicitation) helps or harms sex workers?

30 responses



Are you aware of any Supreme Court or High Court judgments relating to the rights of sex workers in India?

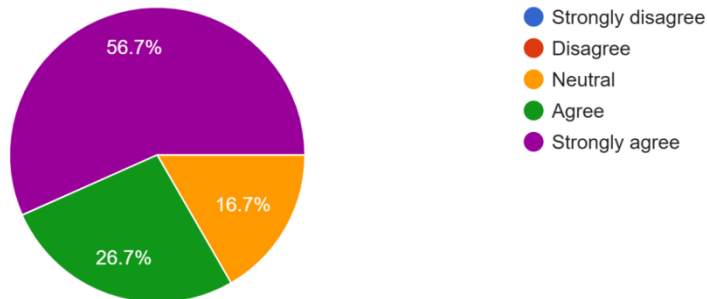
30 responses





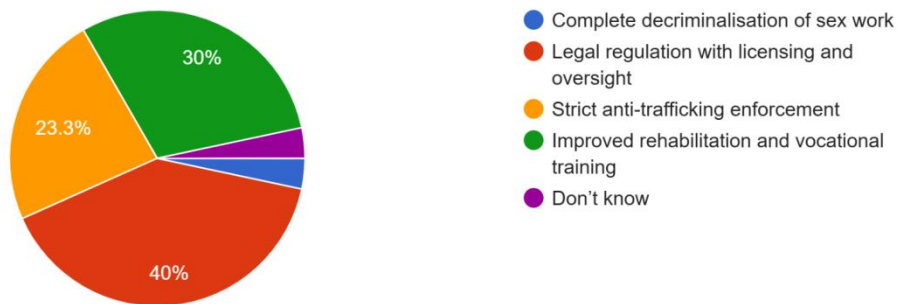
Should the government provide welfare schemes (healthcare, education, housing) specifically for sex workers?

30 responses



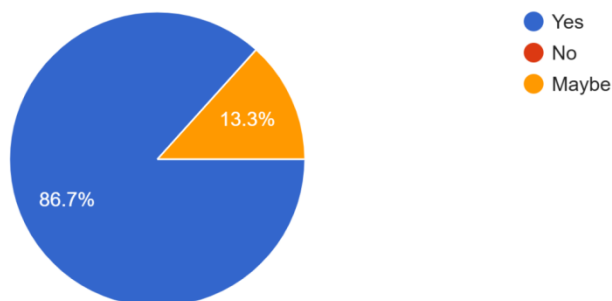
What legal reform do you believe is most needed for protecting sex workers' rights?

30 responses



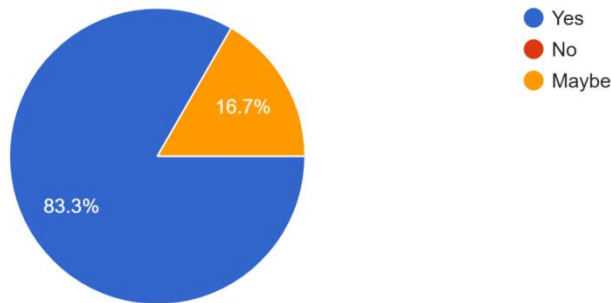
Would you support a Uniform Civil Code that includes rights protection for marginalised communities such as sex workers?

30 responses



Would you like to learn more about the rights of sex workers and related legal frameworks?

30 responses



### 6.3 Data Analysis

Based on the analysis of 30 survey responses collected for the study titled “An Analysis of Legal Framework for the Protection of the Rights of Sex Workers in India”, here are the key insights:

#### Gender Distribution

Out of 30 respondents, 16 identified as male and 14 as female, showing a fairly balanced gender representation. This allows for a reasonably diverse set of perspectives, particularly in analysing social attitudes and legal awareness regarding sex work.

#### Awareness of Legal Status

A significant majority (26 out of 30) are aware that sex work is not illegal in India, although certain associated activities (such as brothel-keeping and solicitation) are criminalised. This high level of awareness suggests that legal education, especially among students with a background in law or social sciences, is fairly effective in disseminating accurate legal information.

#### Recognition of Sex Work as Labour

24 respondents believe sex work should be recognised as a form of labour, indicating broad support for a rights-based and labour-oriented approach. Only 2 participants rejected this notion, while 4 were undecided. This reflects a shift toward more progressive thinking among younger or legally educated individuals.

### Perception of Legal Protection

An overwhelming 23 respondents do not believe that sex workers in India currently receive adequate legal protection. Only 2 felt protections were sufficient, and 5 were unsure. This sentiment underlines the perceived inadequacies of existing legislation like the Immoral Traffic (Prevention) Act (ITPA) and calls for legal reforms that are more inclusive and protective of sex workers' rights.

#### Societal Perceptions

When asked about how society generally perceives sex workers, 20 out of 30 chose “with stigma,” while 10 described the perception as “indifferent.” None selected any option indicating acceptance or respect, which points to deep-rooted cultural and moral biases that reinforce marginalisation.

#### Impact of Criminalisation

Opinions were mixed on whether criminalising elements of sex work helps or harms sex workers. 15 respondents believed it helps, 8 said it harms, and 7 had no opinion. This polarisation reflects the complexity of public discourse, where legal restrictions are sometimes seen as protective but may simultaneously increase vulnerability to police abuse and social exclusion.

#### Support for Welfare Schemes

The support for targeted welfare schemes for sex workers is very strong. 17 respondents

“strongly agreed,” and another 8 “agreed,” that the government should provide healthcare, housing, and education schemes. Only 5 remained neutral. This indicates a consensus that economic and social rehabilitation must accompany any legal reforms.

### Support for UCC Incorporating Marginalised Rights

26 respondents expressed support for a Uniform Civil Code (UCC) that also includes rights protections for marginalised communities such as sex workers. This suggests that many participants view the UCC as a potential tool for achieving inclusive legal recognition and equality, provided it is implemented sensitively.

These insights underscore a student demographic that is well-informed, largely progressive, and supportive of policy reforms that ensure the dignity and rights of sex workers. The results offer valuable empirical backing for further chapters in your dissertation related to public opinion, legal education, and the viability of reform models in India.

## Chapter 7: Recommendations and Conclusion

### 7.1 Major Findings of the Study

The study undertaken under the title “An Analysis of Legal Framework for the Protection of the Rights of Sex Workers in India” attempts to examine the complex interplay of law, policy, societal perceptions, and international obligations concerning sex work in the Indian context. The dissertation navigates through statutory interpretations, judicial decisions, international conventions, and empirical data to uncover how far the existing legal framework succeeds—or fails—in protecting the rights and dignity of sex workers in India. The major findings of the study, therefore, reflect multi-layered observations grounded in law, lived experiences, and social narratives.

#### 1. The Legal Ambiguity Surrounding Sex Work

One of the most significant findings of the study is the legal ambiguity that pervades the discourse on sex work in India. While the act of

sex work, in and of itself, is not explicitly criminalised, a host of ancillary activities associated with it are penalised under the Immoral Traffic (Prevention) Act, 1956 (ITPA). Activities such as soliciting, brothel keeping, and living off the earnings of a sex worker are criminalised, creating a paradoxical legal environment where sex work is technically legal, but nearly all means of practicing it are rendered illegal.

This contradiction results in a precarious situation for sex workers. Their occupation lacks legal recognition and legitimacy, and they are frequently subjected to harassment, arbitrary detention, and denial of rights by law enforcement agencies. Moreover, the law operates on a moralistic framework rather than a rights-based one, further marginalising sex workers from the protection of the law.

#### 2. Inadequacy of the Immoral Traffic (Prevention) Act, 1956

A critical evaluation of the ITPA reveals that it was originally conceived with the objective of suppressing human trafficking for prostitution and to prevent exploitation. However, the law's framing and its punitive provisions often conflate voluntary sex work with trafficking, leading to systemic injustices. The act does not adequately distinguish between consensual adult sex work and forced or trafficked labour, thereby undermining the autonomy and agency of individuals who engage in sex work by choice.

Furthermore, several provisions of the ITPA, such as those criminalising solicitation in public places and authorising raid-and-rescue operations, have been misused to target sex workers. These legal instruments frequently result in the arbitrary detention of adult women under the guise of ‘rescue,’ followed by involuntary institutionalisation, often in violation of their rights to liberty and dignity. Thus, the ITPA has been critiqued not only for being outdated but also for being structurally incapable of delivering justice to the people it purports to protect.



### 3. Judicial Responses: Progressive Yet Inconsistent

The Indian judiciary has, in recent years, demonstrated an evolving jurisprudence with regard to the rights of sex workers. Landmark decisions such as *Budhadev Karmaskar v. State of West Bengal* have affirmed the constitutional right of sex workers to live with dignity and access fundamental rights under Articles 14, 19, and 21 of the Constitution. In several cases, courts have also held that voluntary adult sex work cannot be treated as a criminal act and that rehabilitation must be contingent on the consent of the individual.

However, judicial pronouncements have not always translated into policy reform or change in ground-level enforcement. Many lower courts and police forces continue to operate on outdated perceptions of morality and public decency. As such, the progressive intent of higher judiciary is often diluted or undermined by bureaucratic and societal resistance. The gap between constitutional promises and practical enforcement remains a major concern.

### 4. International Obligations and Their Uneven Influence

India is a signatory to several international treaties and conventions that seek to combat trafficking and uphold the rights of women and workers. Instruments such as the Convention for the Suppression of the Traffic in Persons (1949), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Palermo Protocol (2000), and ILO conventions advocate for a nuanced and rights-based approach to addressing trafficking and protecting sex workers.

However, India's compliance with these instruments has been selective and often superficial. While the government has made commitments at the international level, it has not fully aligned its domestic legal framework with the evolving international standards that stress victim-centric and rights-respecting

responses. Notably, the Palermo Protocol's call for decriminalisation and support for voluntary sex workers has not been reflected in Indian legislative or policy reforms.

### 5. Public Perception and Societal Stigma

The empirical component of the study, based on a student survey, reveals that public perception remains a critical barrier to the recognition and protection of sex workers' rights. An overwhelming majority of respondents indicated that sex workers are still viewed with stigma or treated with indifference. This societal ostracism is deeply rooted in patriarchal and moralistic norms that associate sex work with shame, deviance, or criminality.

This stigma has real-world implications. It not only affects the mental health and self-worth of sex workers but also deters them from accessing healthcare, legal aid, education for their children, and housing. The exclusion is further exacerbated by the fact that sex workers are not recognised as part of the formal or informal labour economy, which deprives them of the benefits accorded to other unorganised sector workers.

### 6. Consensus on Labour Recognition and Welfare

One of the most positive findings from the survey was the high level of support among students for recognising sex work as a legitimate form of labour. Most respondents agreed that sex workers deserve labour protections, including minimum wages, health insurance, and access to state welfare schemes. There was also overwhelming support for the introduction of targeted welfare schemes addressing healthcare, education, and housing for sex workers and their families.

This marks a significant shift in public consciousness, at least within educated circles, toward a rights-based understanding of sex work. Such a shift could serve as an important foundation for policy advocacy and legislative reform, especially as younger generations

become more involved in legal and social policy-making.

### 7. Incongruity Between Law and Ground Realities

Another crucial finding of the study is the incongruity between statutory law and the lived experiences of sex workers. Laws like the ITPA, although designed with protective intent, often lead to unintended consequences due to poor implementation, misuse by authorities, and lack of rehabilitative infrastructure. “Rescue” operations often translate into further victimisation, while criminal records and police harassment prevent sex workers from seeking alternative livelihoods or integration into mainstream society.

Moreover, the state’s approach to sex work remains contradictory—swinging between criminalisation, moral policing, and half-hearted welfare interventions. The absence of comprehensive decriminalisation, coupled with a lack of supportive legal frameworks, leaves sex workers in a legal limbo that facilitates exploitation while denying recourse.

### 8. The Absence of a Unified Policy Framework

India does not currently have a comprehensive policy or law specifically aimed at protecting the rights of sex workers. Existing laws are fragmented, and policies differ across states. This fragmented approach results in inconsistencies in enforcement, gaps in protection, and a lack of nationwide standards for health, safety, and rehabilitation.

The absence of a national-level legal framework also makes it difficult to implement international best practices or evaluate policy outcomes. Countries like New Zealand (decriminalisation model), Germany (legalisation model), and Sweden (Nordic model) have attempted to develop coherent and rights-based frameworks for sex work. In contrast, India’s policy vacuum has led to ambiguity, inefficiency, and continued marginalisation.

### 9. The Case for Decriminalisation

Based on doctrinal and empirical findings, the study strongly points toward the need for decriminalisation of voluntary sex work. Decriminalisation not only aligns with constitutional principles of autonomy, dignity, and non-discrimination but also reflects global best practices as recognised in UN and ILO frameworks. It allows sex workers to work collectively, report abuse, access justice, and demand fair working conditions without fear of arrest or harassment.

Decriminalisation must, however, be accompanied by comprehensive social support systems, including access to healthcare, legal aid, housing, and education. It must also involve sex workers in the policy-making process to ensure that reforms are not only well-intentioned but also effective and empowering.

### 10. Recommendations from Respondents and the Way Forward

Respondents to the study were vocal in their recommendations, many of which emphasised:

- Legal recognition of sex work as an occupation.
- Full decriminalisation of consensual adult sex work.
- Targeted social welfare schemes for sex workers.
- Sensitisation programmes for police and judiciary.
- Inclusion of sex workers in labour law protections and human rights discourse.

These recommendations resonate with the conclusions drawn from doctrinal research and international conventions. The way forward must include both legal and societal transformation—grounded in constitutional values, informed by international norms, and enriched by the lived experiences of sex workers themselves.

## 7.2 Suggestions for Legal and Policy Reforms

The findings of this study underscore the urgent need for a fundamental rethinking of the Indian legal and policy framework concerning sex work. While laws like the Immoral Traffic (Prevention) Act, 1956 (ITPA) were initially designed to prevent exploitation, they have failed to protect the autonomy, dignity, and rights of sex workers, particularly those who participate in the trade voluntarily. In light of the doctrinal analysis, international best practices, and empirical insights, the following legal and policy recommendations are proposed to ensure a rights-based, inclusive, and effective framework for the protection of sex workers in India.

### 1. Decriminalisation of Consensual Adult Sex Work

The foremost legal reform must be the complete decriminalisation of consensual sex work among adults. This would require repealing or amending provisions of the ITPA and IPC that criminalise soliciting, brothel-keeping, and living off the earnings of a sex worker. A clear distinction must be drawn between trafficking (which must remain a punishable offence) and voluntary sex work (which must be treated as an occupation). Decriminalisation would:

- Protect sex workers from arbitrary police action and harassment.
- Allow them to report abuse or exploitation without fear of criminal reprisal.
- Enable them to work collectively and in safer environments.

### 2. Enactment of a Comprehensive National Law Recognising Sex Work as Labour

India must introduce a comprehensive legislation that recognises sex work as a legitimate form of labour, akin to other informal sector work. This law should:

- Ensure sex workers' access to labour rights, such as fair wages, working hours, and the right to organise.
- Extend social security benefits, including maternity benefits, health insurance, and pension schemes.
- Regulate working conditions to prevent exploitation without criminalising the work itself.
- Such a framework should be developed in consultation with sex worker collectives and civil society organisations.

### 3. Repeal or Amend the Immoral Traffic (Prevention) Act, 1956

The ITPA in its current form conflates trafficking with sex work and fosters a punitive environment. The Act must be either repealed or radically amended to:

Remove provisions that criminalise activities related to consensual sex work.

- Clearly define "trafficking" in line with the Palermo Protocol, focusing on coercion, deception, and abuse of vulnerability.
- Limit the role of the police to protection rather than moral policing.
- Ensure that "rescue and rehabilitation" interventions occur only with the free and informed consent of the individual concerned.

### 4. Implementation of a Victim-Centred Approach for Trafficking Survivors

For victims of trafficking and forced prostitution, the approach must shift from punitive to restorative and rehabilitative. This requires:

- Establishing shelters that are voluntary, non-custodial, and rights-respecting.
- Providing legal aid, counselling, vocational training, and economic rehabilitation options.



- Ensuring that victims are not re-victimised through raids, detentions, or social stigmatisation.
- Special courts and fast-track mechanisms can also ensure timely justice and compensation.

### 5. Strengthening Legal Aid and Access to Justice

Sex workers—especially those from marginalised communities—often lack access to competent legal representation. To bridge this gap:

- Legal services authorities must proactively reach out to sex workers through paralegal volunteers.
- Special legal literacy camps should be conducted within red-light areas.
- Mechanisms for anonymous or confidential reporting of violence and abuse should be established and widely publicised.

### 6. Sensitisation of Law Enforcement Agencies and Judiciary

A significant barrier to the protection of sex workers' rights is the deep-seated stigma within the police and judiciary. There is an urgent need for:

- Regular sensitisation and training programmes for police officers, magistrates, and prosecutors on the rights of sex workers, gender justice, and anti-trafficking principles.
- Inclusion of modules on sex workers' rights in police academies and judicial training institutes.
- Mechanisms to monitor and penalise misconduct by law enforcement officials toward sex workers.

### 7. Recognition of Identity and Documentation Rights

Sex workers often struggle to access government schemes due to lack of formal identification. To address this:

- The state should ensure that sex workers are issued voter IDs, Aadhaar cards, and ration cards without discrimination.
- Government outreach teams must proactively assist sex workers in acquiring documentation for accessing healthcare, education, housing, and banking services.
- Sex work should not be a ground for denial of public benefits.

### 8. Inclusive and Non-Discriminatory Welfare Schemes

Sex workers and their children face systemic exclusion from welfare programmes. The following measures are recommended:

- Launch targeted welfare schemes that include housing, health insurance, nutritional support, and educational scholarships for children of sex workers.
- Mandate inclusion of sex workers in urban livelihood missions, skill development programmes, and women's self-help groups.
- Recognise and register sex worker collectives as beneficiaries under government development schemes.

### 9. Public Awareness Campaigns and Media Responsibility

Changing societal attitudes is essential to reduce stigma. Governments, in collaboration with media and civil society, must:

- Conduct awareness campaigns highlighting the distinction between trafficking and consensual sex work.
- Promote respectful and rights-based portrayals of sex workers in media, film, and public discourse.

- Encourage inclusion of sex work-related topics in school and university curricula under human rights and gender studies.

## 10. Research and Evidence-Based Policy Making

There is a serious dearth of credible data on sex work in India, which hampers effective policy formulation. Therefore:

- Periodic national surveys and academic studies should be commissioned to assess the socio-economic status, health needs, and legal challenges faced by sex workers.
- Data should be disaggregated by gender, age, region, and type of sex work to inform targeted interventions.
- Government bodies such as NITI Aayog and the Ministry of Women and Child Development should include sex workers in their research agendas.

## 11. Learning from International Models

India can benefit from adapting international best practices to its own context. For instance:

- New Zealand's decriminalisation model under the Prostitution Reform Act, 2003, can serve as a guiding framework for legislation that protects both rights and public health.
- Germany's legalisation model shows how regulated sex work can be integrated into the labour economy with minimum state intrusion.
- The Nordic model may be inappropriate in India as it criminalises clients and can push sex workers underground, thereby increasing their vulnerability.
- India should aim for a hybrid model focused on decriminalisation, labour rights, and voluntary rehabilitation.

## 12. Inclusive Policy-Making: "Nothing About Us Without Us"

Perhaps the most essential reform is to include sex workers in decision-making processes that affect their lives. This includes:

- Giving representation to sex workers in national and state-level policy forums on women's welfare, labour, and public health.
- Consulting sex worker collectives before drafting or amending any law or regulation that concerns them.
- Empowering grassroots organisations and community-led interventions with funding and institutional support.

## Conclusion

The marginalisation of sex workers in India is not merely a result of outdated laws, but also of societal stigma, policy apathy, and a lack of political will. Legal reform must go hand in hand with a broader commitment to dignity, autonomy, and justice. The above suggestions, if implemented earnestly, can create a transformative shift toward a more humane, inclusive, and rights-based approach to sex work in India. It is not only a matter of law—it is a matter of recognising the constitutional humanity of a section of citizens long denied legal recognition and social acceptance.

## 7.3 Conclusion

The legal and socio-political treatment of sex work in India remains deeply contested, shaped by a complex interplay of colonial legacies, moral anxieties, gendered prejudices, and shifting constitutional interpretations. This study set out to analyse the existing legal framework governing sex work in India, with particular focus on its impact on the rights, dignity, and lived experiences of sex workers. Through a combination of doctrinal research, comparative legal analysis, and empirical inquiry, this dissertation has presented a multidimensional understanding of the challenges faced by sex

workers under the current regime and outlined viable pathways for reform.

One of the most significant findings of this research is the clear divergence between the objectives of laws like the Immoral Traffic (Prevention) Act, 1956 and their real-world outcomes. Although the ITPA purports to prevent trafficking and exploitation, in practice, it has often operated as a tool of repression, disproportionately targeting sex workers themselves rather than traffickers or exploiters. The law's failure to distinguish between consensual adult sex work and coerced trafficking has resulted in indiscriminate police raids, arbitrary detentions, and judicial interventions that violate the bodily autonomy and constitutional freedoms of sex workers. Furthermore, the criminalisation of associated activities such as soliciting, brothel-keeping, or living off the earnings of a sex worker has made it nearly impossible for sex workers to work in safe conditions, access legal remedies, or live without fear of criminal harassment.

Empirical findings from the field have further reinforced the understanding that sex workers in India face systemic stigma, marginalisation, and lack of access to justice. Survey responses indicated a widespread perception of legal institutions as hostile or inaccessible. A significant number of respondents reported police misconduct, denial of healthcare, housing discrimination, and exclusion from public welfare schemes. These experiences are compounded for those who belong to already marginalised groups such as Dalits, transgender persons, and migrant communities. At the same time, however, the survey also revealed growing awareness and collective consciousness among sex workers, especially in urban centres, of their constitutional rights and the possibilities of mobilisation and reform.

The comparative analysis of international conventions and best practices from other jurisdictions reveals that the Indian legal framework remains far behind global human

rights standards. Instruments such as the Palermo Protocol, CEDAW, and the Sustainable Development Goals all call for victim-centred, rights-based approaches that uphold the dignity and autonomy of individuals involved in sex work. Countries like New Zealand, Germany, and the Netherlands have demonstrated that legal models based on decriminalisation or regulation can significantly improve the safety, health outcomes, and labour rights of sex workers. India's failure to align its domestic policies with these international standards not only violates its treaty obligations but also undermines the constitutional principles of equality, freedom, and dignity.

Another crucial insight that emerged through this study is the judiciary's evolving but inconsistent role in shaping sex workers' rights in India. While some progressive judgments have recognised sex workers' right to privacy, livelihood, and dignity, the broader judicial narrative remains influenced by paternalistic and moralistic assumptions. The Indian judiciary has not yet fully embraced a transformative constitutionalism that meaningfully includes sex workers within its emancipatory vision. This legal inconsistency perpetuates a dual reality where, on paper, rights exist, but in practice, enforcement remains elusive and erratic.

The findings also highlight the disconnect between legal reform efforts and policy implementation. Even where progressive policies exist—such as the recognition of sex workers in certain state-level welfare schemes—the lack of clear legal recognition of sex work as labour hampers effective delivery and oversight. Bureaucratic red tape, lack of political will, and institutional apathy continue to be formidable barriers. This gap between law and practice not only frustrates policy outcomes but also deepens the disenfranchisement of sex workers from mainstream economic and social life.

The implications of these findings are manifold. First and foremost, they call for a paradigm shift



in how Indian law and policy conceptualise sex work—not as a moral or criminal issue, but as a matter of labour, rights, and public health. This requires comprehensive reforms, including the decriminalisation of consensual adult sex work, enactment of labour protections, and access to public welfare schemes. These legal reforms must be accompanied by policy-level changes that include sensitisation of law enforcement agencies, capacity building for service providers, and active inclusion of sex workers in the design and implementation of programmes that affect them.

Secondly, the findings underscore the importance of intersectional and context-sensitive research. Future academic work must explore the specific vulnerabilities faced by sex workers across lines of caste, gender identity, region, and migration status. Longitudinal studies and ethnographic research can help understand how legal frameworks interact with ground-level realities over time. The perspectives of sex workers themselves must be central to this research, not merely as subjects but as co-producers of knowledge.

Thirdly, this study opens up important avenues for comparative legal research. There is a need to study how countries with similar socio-cultural dynamics have navigated the legal and ethical complexities of regulating sex work. Such cross-national studies can inform the Indian discourse with fresh perspectives, challenge entrenched assumptions, and inspire innovative policy solutions that are locally adaptable and globally informed.

Finally, the study also points to the need for strengthening civil society and community-led initiatives. Legal change alone cannot address the deep-rooted stigma and marginalisation faced by sex workers. Grassroots organisations, collectives, and rights-based NGOs play a critical role in building awareness, providing legal and medical aid, advocating for rights, and creating spaces of solidarity and resistance. Policy makers and academic institutions must work in partnership with these

community actors to develop holistic, inclusive, and sustainable models of reform.

In conclusion, the struggle for the rights of sex workers in India is not merely a legal or policy issue—it is a human rights imperative. A democratic and constitutional republic cannot afford to ignore the voices and lives of a large section of its population merely because their occupation challenges conventional norms. The findings of this study make it unequivocally clear that the current framework is inadequate, discriminatory, and in urgent need of reform. It is only through a deliberate, rights-based, and participatory approach that India can move towards a legal system that truly protects and empowers its sex workers, and in doing so, affirms its commitment to justice, equality, and human dignity.

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| <b><u>TABLE OF CASES</u></b>         | <b><u>Year</u></b> | <b><u>Court</u></b>  | <b><u>Key Ruling</u></b>                                                                                                    | <b><u>Significance</u></b>                                                 |
|--------------------------------------|--------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| RaktaChand v. State of Rajasthan     | 1960               | Rajasthan High Court | Upheld criminalization of brothel-keeping under SITA (precursor to ITPA).                                                   | Early judicial endorsement of prohibitionist approach.                     |
| Gaurav Jain v. Union of India        | 1997               | Supreme Court        | Recognized sex workers as "victims of circumstances" but upheld ITPA; directed states to establish rehabilitation programs. | Introduced welfare rhetoric but maintained criminalization.                |
| PUCL v. Union of India               | 2011               | Supreme Court        | Ruled that sex workers have a right to health under Article 21; barred police from harassing HIV prevention programs.       | First recognition of sex work as labor for public health purposes.         |
| State v. Haseena                     | 2006               | Delhi High Court     | Held that voluntary sex work by adults is not illegal under ITPA, though related activities remain criminalized.            | Clarified legal ambiguity around consenting adult sex work.                |
| Navtej Singh Johar v. Union of India | 2018               | Supreme Court        | Decriminalized homosexuality under Section 377; affirmed rights to privacy and dignity.                                     | Indirectly strengthened arguments for decriminalizing consensual sex work. |

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| BudhadevKarmaskar<br>v. State of West<br>Bengal      | 2011/<br>2022 | Suprem<br>e Court       | 2011: Recognized sex<br>workers' right to<br>dignity under Article<br>21. 2022: Affirmed<br>their right to choose<br>profession and<br>access welfare<br>schemes. | Landmark rights-<br>based judgment;<br>directed state<br>support for sex<br>workers.   |
| AIDS<br>BhedbhavVirodhiAnd<br>olan v. Union of India | 2019          | Delhi<br>High<br>Court  | Condemned police<br>harassment under<br>ITPA; called for<br>distinguishing<br>trafficking from<br>consensual sex work.                                            | Highlighted misuse<br>of ITPA against<br>voluntary sex<br>workers.                     |
| State of Maharashtra<br>v. Vijay Mohan<br>Jadhav     | 2020          | Bombay<br>High<br>Court | Criticized ITPA's<br>focus on brothel<br>raids, noting<br>traffickers<br>increasingly use<br>digital platforms.                                                   | Exposed gaps in<br>anti-trafficking<br>enforcement.                                    |
| BachpanBachaoAnd<br>olan v. Union of India           | 2023          | Suprem<br>e Court       | Emphasized strict<br>anti-trafficking<br>measures while<br>distinguishing<br>voluntary sex work<br>from coercion.                                                 | Reinforced need to<br>protect consenting<br>adults while<br>combating<br>exploitation. |

