

THE LEGAL AND REGULATORY CHALLENGES GOVERNING PROSTITUTION AS A RIGHT OF LIVELIHOOD IN INDIA

AUTHOR – RISHEL ALMEIDA B.COM., LL.B., ST. JOSEPH'S COLLEGE OF LAW

BEST CITATION – RISHEL ALMEIDA, THE LEGAL AND REGULATORY CHALLENGES GOVERNING PROSTITUTION AS A RIGHT OF LIVELIHOOD IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (10) OF 2026, PG. 53-61, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/IJLRV6I108>

ABSTRACT

In this paper, prostitution is especially examined from the perspective of property law. The question of whether and to what extent the legal system should acknowledge or control the commercial exchange of sexual services arises from property theory, constitutional law, and comparative law. The primary query is whether you have the right to sell the use of your body if you own it. And if you do, is it constitutionally permissible for the State to intervene and limit that right?

The subject body is how you exercise all of your rights, not just what you have rights over. Prostitution directly raises fundamental property law questions that legal scholars have mostly overlooked. Prostitution is the exchange of sexual access for money. Is it possible to own your body in the same manner that you own stuff outside your body? Does the right to sell, which ownership entails, extend to commercial sex? If so, what restrictions should the law impose to stop coercion, exploitation, and loss of dignity?

India's Immoral Traffic (Prevention) Act, 1956¹⁵², stands in uncertainty. It criminalises everything related to sex work, but it does not outlaw it. Sex workers are essentially kept in a legal limbo by the law. It sees sex workers' bodies as a topic of social concern rather than personal power, blurs the distinction between consent and compulsion, and denies them the safeguards provided in similar occupations. The study finishes with specific recommendations for law and policy that are in line with both constitutional principles and the realities of those impacted, after examining how Sweden, New Zealand, and the Netherlands handle this and drawing on Indian and international court judgments.

Keywords: Prostitution, sex work, body as property, self-ownership, bodily autonomy, Immoral Traffic (Prevention) Act 1956, Article 21, Article 19(1)(g), decisional autonomy, K.S. Puttaswamy, Budhadev Karmaskar, consent, coercion, trafficking, decriminalisation, comparative sex work law, Swedish model, New Zealand Prostitution Reform Act, Dutch model, labour rights,

INTRODUCTION

Depending on your location and the definition of "prostitution," prostitution may or may not be allowed in India. Technically, it is not illegal for consenting individuals to trade sex for money. Both operating a brothel and engaging in public solicitation are prohibited. It is illegal to live off of someone else's sex work profits. It is illegal to own

or rent property for sex trade. Therefore, we have a system that criminalises nearly everything required to carry out the act in a safe or obvious manner, but does not outright prohibit the act itself.

In light of concepts like physical integrity, autonomy, and freedom of contract, this paper explores the subject of whether owning your

¹⁵² Immoral Traffic (Prevention) Act, 1956, [hereinafter ITPA], penalized,

body entitles you to utilise it for profit. Where can the State intervene to restrict that right if it does?

India has been legislating on prostitution long before independence. The Contagious Diseases Acts, passed in Britain between 1864 and 1869¹⁵³, were upheld in India by means of cantonment laws. Even now, there remains an imbalance that focuses all legal control on women while neglecting the clients. Instead of treating a woman's body as something over which she has legal rights, the law views it as something to be regulated.

Post-independence, the Suppression of Immoral Traffic in Women and Girls Act¹⁵⁴, 1956 (later renamed as the Immoral Traffic (Prevention) Act, ITPA) didn't shift its perspective. It still criminalises everything around the trade, ignoring the real question if being an adult in control of your body includes the liberty to use it for sex work?

In the discussions of shaping Article 23 of the Constitution¹⁵⁵, which is meant to ban trafficking and forced labour, the assembly avoided discussing whether voluntary, adult sex work should count as liberty or a property right. The question remains, and this paper works around it

The concept of self-ownership, that a person holds a property right in their own body, is foundational to liberal legal theory. In property law terms, this ownership entails the classic incidents of property: the right to use, the right to exclude others, and the right to transfer. Bodily integrity is considered a core constitutional value in India. The right to life under Article 21¹⁵⁶ has been interpreted to encompass dignity, privacy, and freedom over one's body

Indian laws allow your body to be "used" in certain commercial ways. The Transplantation of Human Organs Act permits donation in defined circumstances¹⁵⁷. Surrogacy, governed by the Surrogacy (Regulation) Act, 2021¹⁵⁸, involves the commercial use of a woman's reproductive capacity. Blood donation is legally recognised. The body is not off-limits for all business. Why, then, is commercial sex different? The paper argues that this distinction is not constitutional, but a moral judgement. After the Supreme Court's embrace of decisional autonomy in K.S. Puttaswamy, moral judgment is an insufficient basis for this distinction.

THE LEGAL FRAMEWORK

The Indian Legislative Framework

Article 21: Life, Privacy, Autonomy

Article 21 bars deprivation of life or personal liberty except by lawful procedural means. The Supreme Court's expansive interpretation of Article 21, beginning with *Maneka Gandhi v. Union of India*¹⁵⁹ and culminating in *K.S. Puttaswamy v. Union of India*¹⁶⁰, has recognised privacy, dignity, and decisional autonomy as its core content. The right to make choices about your body is now protected, and any law that limits it requires strong justification and reasoning.

The right to work and make a living has also grown out of Article 21 since *Olga Tellis v. Bombay Municipal Corporation*¹⁶¹. In property law terms, one's labour is one's most fundamental productive asset. If the law blocks people from earning a living through their work, that's a denial of their property interest in their own labour. So, restrictions on consensual sex work need real constitutional defence.

¹⁵³ The Contagious Diseases Acts 1864, 1866, and 1869 (UK); applied in India through Cantonment Acts.

¹⁵⁴ Suppression of Immoral Traffic in Women and Girls Act, 1956, subsequently renamed and amended as the ITPA.

¹⁵⁵ Art. 23, Constitution of India, 1950 (prohibition of traffic in human beings and forced labour).

¹⁵⁶ Art. 21 Constitution of India, 1950; 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

¹⁵⁷ Transplantation of Human Organs and Tissues Act, 1994.

¹⁵⁸ Surrogacy (Regulation) Act, 2021.

¹⁵⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (Supreme Court of India). The Court held that procedure established by law under Article 21 must

be just, fair, and reasonable, thus importing substantive due process into the provision.

¹⁶⁰ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (Supreme Court of India, Nine-Judge Bench). Justice D.Y. Chandrachud's opinion at paras 301-309 articulated the concept of 'decisional autonomy' as a dimension of the right to privacy.

¹⁶¹ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 (Supreme Court of India). The Court held at 572: 'Just as a moneyed person is free to choose between various means of transport, a pavement dweller is free to choose between living in a slum or on the pavement and earning his livelihood by begging or by vending goods on the footpath.'

Article 19(1)(g): Occupation and Profession

Article 19(1)(g) gives citizens the right to practice any profession or trade.¹⁶² The Supreme Court, in its 2022 directions in *Budhadev Karmaskar v. State of West Bengal*¹⁶³, explicitly acknowledged sex work as a 'profession' and held that the profession of a person is not a condition for denying them the protection of the law. In Property law terms, this recognises their right to transact in their own labour

Article 14: Equality

Article 14 guarantees equality before the law¹⁶⁴. The ITPA exposes sex workers to legal risks but leaves clients unbothered, which does not fit with property law's principle that if you have rights in an asset, you should be as free to transact as others in similar situations. The ITPA violates this principle by treating the sex worker's body as subject to regulatory control while the client's participation faces no restriction.

Article 23: Ban on Trafficking

Article 23 imposes a ban on trafficking and forced labour¹⁶⁵. But it doesn't ban consensual sex work between adults. Viewing it as a total ban on all sex work goes beyond what the Article and its debates intended; it aimed to stop coerced exploitation, not voluntary work.

India's International Obligation

India has signed on to CEDAW (focused on trafficking and exploitation, not voluntary adult sex work)¹⁶⁶ and the Palermo Protocol (trafficking defined by coercion or deception)¹⁶⁷. Neither requires a ban on voluntary sex work. ILO standards on decent work could apply to sex workers if the law recognises their labour¹⁶⁸.

¹⁶² Art. 19(1)(g) Constitution of India, 1950, : 'all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.'

¹⁶³ *Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCC 477 (Supreme Court of India); Order dated May 19, 2022 (Justices L. Nageswara Rao, B.R. Gavai, A.S. Bopanna)

¹⁶⁴ Art 14 Constitution of India, 1950; "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

¹⁶⁵ Art. 23. Constitution of India, 1950

¹⁶⁶ Art. 6, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, (ratified by India 9 July 1993).

Indian Statutory Framework

The Immoral Traffic (Prevention) Act, 1956

The ITPA is the chief legal regime for sex work in India¹⁶⁹. It doesn't outlaw selling sex completely, but it criminalises everything that makes actual work possible, running brothels, helping manage a sex worker's business, soliciting, or having any setup close to schools or religious places¹⁷⁰.

This means a sex worker can't legally set up anywhere she can actually work; she can't hire help without criminalising her employees. unable to contact clients in public. Additionally, in crowded Indian cities, the 200-meter limit on proximity to schools, temples, or hospitals practically forbids any visible form of sex work. Giving someone the title to a house but not allowing them to occupy, rent, or sell it is analogous to property law. Sex workers "own" their bodies on paper, but can't actually use that ownership for real beneficiary work.

BNS and Related Laws

Several provisions of the *Bhartiya Nyaya Sanhita* overlap with sex work regulations. Section 96 of BNS covers procuring a minor for illicit intercourse¹⁷¹. Section 143 provides a comprehensive definition of trafficking in persons for purposes of exploitation¹⁷². Regardless of the victim's consent, coercion, deception, or abuse of power is present. This correctly identifies consent as the operative distinction between trafficking and voluntary sex work.

The Protection of Children from Sexual Offences Act, 2012 applies to all sexual acts involving persons below the age of eighteen, regardless of

¹⁶⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)

¹⁶⁸ International Labour Organization, Decent Work Agenda, 87th International Labour Conference, Geneva, 1999.

¹⁶⁹ s. 2(f): 'prostitution means the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind, ITPA.

¹⁷⁰ ss. 3 (brothel-keeping), 4 (living on earnings), 5 (procuring), 7 (proximity restriction), 8 (soliciting), 15 (police raid powers), 17 (corrective institution orders), ITPA.

¹⁷¹ s.96 *Bhartiya Nyaya Sanhita*, 2023

¹⁷² s.143 *Bhartiya Nyaya Sanhita*, 2023

apparent consent.¹⁷³ This paper does not concern itself with child sexual exploitation, which is non-negotiably prohibited. The ambiguity this paper examines arises only in the context of adult participation.

Comparative Legal Analysis

Each country mentioned Sweden, New Zealand, and the Netherlands answers the body-as-property question in different ways. In Sweden, selling sexual services is completely prohibited; in New Zealand, it is permitted as long as consent is obtained; and in the Netherlands, it is permitted only with state-issued licenses. Each of these strategies derives from distinct conceptions of physical ownership and yields distinct practical outcomes.

Sweden: Criminalising the Buyer

Sweden passed the Sex Purchase Act in 1999, making it an offence to purchase sexual services.¹⁷⁴ Society's gender structures make "consent" in sex work suspect, so selling sex can never be truly voluntary. In property law terms, Sweden treats the body as non-transferable for sex, no matter what the person has to say. But property law generally respects an owner's right to alienate. There's a lot of debate about how this law works. Evidence suggests it doesn't get rid of sex work but just pushes it further underground, with more danger for workers. It's still probably the sharpest challenge to the property-based argument.

New Zealand: Full Decriminalisation

The Prostitution Reform Act 2003 decriminalised all aspects of adult consensual sex work in New Zealand.¹⁷⁵ Sex workers there have health and safety rights, can refuse clients, and can work alone or with others. The Act created a review committee that produced a comprehensive

five-year review report in 2008, which is the most detailed evidence base available for any decriminalised jurisdiction.¹⁷⁶

Under property law, this is the real-life example of the "body-as-property" framework. It treats the adult sex worker's decision to sell sexual services as a legitimate exercise of personal autonomy and gives that decision legal protection.¹⁷⁷ These are the rights Indian sex workers are denied.

The Dutch Model: Legalisation with Licensing

The Netherlands legalised sex work in 2000 by lifting the general brothel ban, allowing municipalities to license and regulate sex establishments.¹⁷⁸ On paper, this lets people sell bodily services, but only if they fit under a fairly tough state system.

Trafficking has occurred even in legal settings, licensing is difficult to control, and the Dutch system hasn't been flawless. Some workers are left behind when the state requires bureaucratic approval before "selling" your body's labor.

No model works flawlessly. Sweden's approach reduces high-visibility sex work, but can make things more dangerous. New Zealand offers the most protection, but requires treating sex work like any other labour. The Netherlands struggles with enforcement and bureaucracy. India, by refusing to settle on any model, lands in the worst of all worlds, no protections for labour, little suppression of demand, and no effective oversight.

¹⁷³Protection of Children from Sexual Offences Act, 2012, s. 2(d) (defining 'child' as any person below the age of eighteen years).

¹⁷⁴Sex Purchase Act (Sextköpslagen), SFS 1998:408 (Sweden), in force from 1 January 1999. The Act was strengthened in 2011 by increasing the maximum penalty from six months to one year's imprisonment.

¹⁷⁵Prostitution Reform Act 2003, No. 28 (New Zealand), s. 3 (purpose: 'to promote the welfare and occupational health and safety of sex workers').

¹⁷⁶New Zealand Prostitution Law Review Committee, Report of the Prostitution Law Review Committee on the Operation of the Prostitution

Reform Act 2003 (Ministry of Justice, Wellington, 2008) 6-7 (key findings on absence of increase in sex worker numbers post-decriminalisation).

¹⁷⁷The property law resonance of New Zealand's model is particularly relevant here: the PRA treats sex workers as holding full legal title to their bodily services and capable of entering enforceable contracts for those services, subject to general contract law. This is the most direct legislative expression of the body-as-property framework in any jurisdiction.

¹⁷⁸Wet regulering prostitutie en bestrijding misstanden seksbranche (Regulation of Prostitution and Combating Abuses in the Sex Industry Act), Netherlands..

JUDICIAL PRECEDENTS

Indian Cases

Budhadev Karmaskar v. State of West Bengal (2011) 10 SCC 477.¹⁷⁹

This case is a landmark. Sparked by the murder of a sex worker, the Supreme Court did more than just deal with guilt and punishment, it actually opened up a deeper conversation about the rights of sex workers. The Court set out to find ways for sex workers who choose to stay in the field to work with dignity. After affirming the conviction, the Supreme Court took suo motu cognisance of the social conditions of sex workers and held that they are entitled to live with dignity under Article 21.

In its landmark directions of May 19, 2022, issued under Article 142 of the Constitution, the Court issued directions saying sex workers are entitled to legal protection, and that as long as an adult gives consent, the police should stay out of it. This is, in effect, judicial acknowledgement that selling sex is an exercise of bodily autonomy and that any State infringement needs solid constitutional backing.

Vishaka v. State of Rajasthan (1997) 6 SCC 241

The Vishaka case came out of the horrific gang rape of a government social worker and ended up setting the standard for workplace sexual harassment rules when there was nothing in the legislation.¹⁸⁰ It matters because the Supreme Court made it clear that the right to work (under Article 19(1)(g)) doesn't mean much if you can't do so safely and with dignity. The Court also showed it's willing to step in with constitutional guidelines on gender rights when lawmakers drag their feet. Vishaka brought international treaties like CEDAW into Indian constitutional

reasoning. Each of these shifts is important to the arguments in this paper.

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

In this case, the Supreme Court told state governments to set up shelters for sex workers and create separate schools for their children.¹⁸¹ The case is significant here as the Court's attitude was deeply paternalistic, treating sex workers as charity cases instead of people with legal rights over their own work. The property framework here rejects this attitude. Recent Supreme Court directions in the Budhadev case have started to move away from this kind of decision-making, and it's a change for the better.

International Cases

Canada (AG) v. Bedford [2013] 3 SCR 1101

Bedford is the most important judicial decision on the constitutional status of sex work in any common law jurisdiction.¹⁸² Canada's Supreme Court wiped out three major offences against sex work because they violated sex workers' right to life and security. Chief Justice McLachlin held that laws that stop sex workers from keeping safe by working indoors, hiring guards, or inspecting clients are not just unfair, they are grossly disproportionate.¹⁸³ The property theory here is clear: ownership is pointless if a rule prevents you from using your own resources in a safe manner. There are clear similarities between these regulations and the ITPA, both have terrible consequences for Indian sex workers.

ANALYSIS: PROPERTY RIGHTS OF THE HUMAN BODY

Can the body be property? The Legal Question

¹⁷⁹Budhadev Karmaskar v. State of West Bengal, Order dated May 19, 2022 (directions under Article 142 of the Constitution of India), 'When a sex worker is found in a brothel that is being raided, the police must not arrest or penalise her, as sex workers are also victims in such situations and not the offenders.'

¹⁸⁰ Vishaka & Ors. v. State of Rajasthan & Ors., (1997) 6 SCC 241 (Supreme Court of India, CJI J.S. Verma, Manohar and Kirpal, JJ.), para 7: 'Each such incident results in the violation of the fundamental rights of Gender Equality and the Right to Life and Liberty.'

¹⁸¹ Gaurav Jain v. Union of India, (1997) 8 SCC 114 (Supreme Court of India). The Court's approach of treating sex workers primarily as objects of

rehabilitation, rather than as subjects of rights, drew criticism from feminist legal scholars.

¹⁸² Canada (AG) v. Bedford, [2013] 3 SCR 1101 (Supreme Court of Canada, McLachlin CJ), paras 60-62: 'The causal connection between the law and the deprivation of security is clear. The law's own impact creates the danger... It is not the activity of prostitution that creates this gross disproportionality, but the laws that prevent prostitutes from taking measures that would reduce risk.'

¹⁸³ Bedford ibid, para 86. The Court struck down all three impugned provisions under s. 7 of the Canadian Charter of Rights and Freedoms as grossly disproportionate.

In property law, ownership includes three things that is rights to use, to exclude, and to transfer.¹⁸⁴ You have the right to utilise your body. As evidenced by assault and rape statutes, which are based on this principle, the law unquestionably safeguards your right to keep people away from your body. Whether you can "alienate" or sell access to your body for cash is the difficult part. Property law generally states that, unless there is a compelling reason to the contrary, you should be free to transfer what you possess.

Martha Nussbaum has argued, persuasively, that the stigma attaching to sex work rather than any intrinsic feature of the labour itself drives its differential legal treatment.¹⁸⁵ Debra Satz goes further, she thinks the trouble with sex markets is the backdrop of gender inequality, not the nature of the services.¹⁸⁶ Both points matter here. Nussbaum makes the case that the ITPA's rules aren't grounded in real legal logic, while Satz highlights why even decriminalised sex work needs safeguards.

Consent (Property Law Analysis)

Critics of the "body as property" idea say consent in sex work can't be genuine. They have two versions of the argument. The strong version says prostitution is always coerced poverty makes consent insignificant. The weaker version holds that even if genuine consent is possible, its presence cannot be verified.

Property law has a contract made under unlawful pressure may be void due to a notion known as economic duress. However, for duress to be considered, the pressure must truly originate from the abusive other party, not only from the transacting party's inferior financial position. Most employment would be in jeopardy if being impoverished meant you couldn't agree

to work. There isn't a solid foundation for applying it solely against sex work, and Indian courts haven't taken that route.

Bedford has a better response to the weaker consent complaint: you don't outlaw all sex business because consent may occasionally be missing. Instead, allow individuals who genuinely chose this profession to exercise their rights and establish legal mechanisms to identify actual coercion.

Labour Law and the Exclusion of Sex Workers from Property Protections

One of the most tangible consequences of the ITPA's structure is that sex workers are excluded from labour law protections.¹⁸⁷ Section 4 of the ITPA criminalises employment relationships, which are the basis for the application of minimum wage laws, workers' compensation, employees' insurance, and the Code on Social Security, 2020. So, sex workers "own" their labour on paper, but the legal system stops them from enforcing any of the rights that matter.

Moral Dilemma

India's sex workers often face harassment and abuse from police, as civil society reports have shown again and again. But the law that criminalises brothels and solicitation also blocks people from safely reporting this abuse, and a sex worker who calls out police violence risks criminal charges herself. This is not an accident, it's built into a system that denies sex workers access to property law's most basic mechanism, which is the ability to call upon the State to protect one's rights against infringement.

SUGGESTIONS AND RECOMMENDATIONS

Legislative Reform: Restoring the Incidents of Bodily Ownership

¹⁸⁴G.A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge University Press, 1995) 67. The self-ownership thesis holds that each person is the full owner of their person and powers. Cohen discusses the tension between this thesis and material equality at 91-115.

¹⁸⁵Martha C. Nussbaum, 'Whether from Reason or Prejudice: Taking Money for Bodily Services' (1998) 27(4) *Journal of Legal Studies* 693, 698-702. Nussbaum argues that the stigma attaching to sex work, rather than any intrinsic feature of the labour itself, drives its legal treatment.

¹⁸⁶Debra Satz, 'Markets in Women's Sexual Labor' (1995) 106(1) *Ethics* 63, 70-78. Satz argues that sex markets are 'noxious' not because of anything inherent in the exchange of sexual services, but because of the specific conditions of gender inequality in which they occur.

¹⁸⁷Code on Social Security, 2020, No. 36, Acts of Parliament (India); Occupational Safety, Health and Working Conditions Code, 2020, No. 37, Acts of Parliament (India). Neither Code expressly includes or excludes sex workers, but the definition of 'worker' in both instruments would require an employment relationship, which is itself criminalised under ITPA, s. 4.

The most critical step is amending Section 4 of the ITPA to tell the difference between actual exploitation and legitimate help (like an accountant, security, or driver).¹⁸⁸ Right now, anyone who assists a sex worker is a criminal. An amendment modelled on New Zealand's Prostitution Reform Act says helpers offering genuine services aren't exploiting anyone. Giving sex workers the right to hire help puts them on the same footing as every other Indian worker.

Section 7's ban on sex work within 200 meters of public places should go, too. Replace it with a zoning system, worked out with sex worker organisations, that designates legal spaces. This is common in business already. Don't outright prohibit the activity; instead, zone it. It's more sensible and safer.

Strengthening Anti-Trafficking Provisions: Protecting Involuntary Alienation

Any move to reform sex work law has to go hand in hand with strict anti-trafficking rules. Property law draws a clear line between deals made by choice and those forced out of you. Theft and fraud always void "consent."¹⁸⁹ The Bharatiya Nyaya Sanhita, 2023, already has severe punishments for trafficking. Resources to train specialised units and provide victims with secure channels to report without fear of prosecution under the ITPA are lacking.

Constitutional Litigation: The Proportionality Challenge

The Supreme Court should hear the constitutional challenge to the ITPA's most restrictive clauses in the absence of legislative reform. In order to contest sections 4, 7, and 8 of the ITPA under Articles 19(1)(g) and 21, Canada used the proportionality framework from *Puttaswamy*, the *Budhadev* case, and the *Bedford* decision. Courts require civil society data on the realities of sex work in order to

balance the purported advantages with the actual disadvantages.

Evidence-Based Reform: A Prerequisite for Any Legislative Action

Any legislative change must be supported by data regarding the real circumstances surrounding the practice of sex work in India. An unbiased, rights-based study of sex workers should be commissioned by the government and carried out in collaboration with reputable organizations led by sex workers. It is the State's responsibility to provide evidence to support limitations on fundamental rights in constitutional disputes. The most stringent sections of the ITPA are constitutionally vulnerable because they lack a solid empirical foundation.

CONCLUSION

This essay addressed a topic that Indian law typically avoids: is it possible for an individual to regard their body as property, use it for employment, and do so without interference from the government unless there is a valid reason? It's a contentious question. Prostitution arouses strong emotions, and India's laws about sex work hold a lot of colonial and patriarchal baggage in addition to the serious issue of human trafficking. These topics must be taken carefully in any sincere conversation.

However, embracing complexity does not equate to abandoning legal principles. When the rules of the law are applied correctly, they lead to outcomes that the existing framework cannot sustain. The fundamental right to use one's body for employment should belong to the person who owns it. The government can, of course, intervene to protect citizens from forced labour or exploitation or to maintain order, but it cannot simply refuse work because it deems it repugnant. This test has never been applied to

¹⁸⁸ ss. 3 and 4 ITPA. The amendment recommended is modelled on s. 5(2) of the New Zealand Prostitution Reform Act 2003, which expressly excludes persons providing genuine services to sex workers from the definition of exploitation.

¹⁸⁹ s. 143 (trafficking), Bharatiya Nyaya Sanhita, 2023, The penalties for trafficking under the BNS are already substantial.

the ITPA, and this research contends that it would fail.

There isn't a single "best" model for India if you look overseas. However, India's strategy isn't effective because it doesn't protect workers, stifle demand, or allow for real state regulation. Evidence from New Zealand in particular indicates that a consent-driven system with strong anti-trafficking laws and genuine labour safeguards is a feasible compromise.

The Supreme Court has already indicated a change with its 2022 Budhadev judgment. Sex workers are being acknowledged as individuals with rights, choices, and a need for protection from authorities, not simply the police, rather than as issues that need to be handled. Making these constitutional ideals a reality is the next stage. Coherent, rights-based legislation must be founded on the reality of sex work.

Regardless of a person's occupation or place of origin, equality before the law is guaranteed by the Indian Constitution. Those who work in the sex industry have not yet received that promise. The property framework simply asserts that those who engage in sex work are individuals; it does not require you to approve of or overlook the issues associated with this industry. They have rights, are respectable, and have the right to make decisions regarding their own bodies. At its best, property law acknowledges them.

REFERENCES

Constitutional provisions and Indian Legislation

1. Articles. 14, 15, 19(1)(g), 21, 23, 32, 51(c), 141, 142, 253, The Constitution of India, 1950,
2. The Immoral Traffic (Prevention) Act, 1956.
3. The Protection of Children from Sexual Offences Act.
4. The Transplantation of Human Organs and Tissues Act, 1994.
5. The Surrogacy (Regulation) Act, 2021.

6. The Occupational Safety, Health and Working Conditions Code, 2020.

7. Section 143, The Bharatiya Nyaya Sanhita, 2023.

Comparative Legislation

8. Sex Purchase Act (Sexköpslagen), (Sweden), in force from 1 January 1999.
9. Prostitution Reform Act 2003, No. 28 (New Zealand).
10. New Zealand Prostitution Law Review Committee, Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003 (Ministry of Justice, Wellington, 2008).

International Instruments

11. Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, (ratified by India 9 July 1993).
12. Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol),
13. International Labour Organization, Decent Work Agenda, 87th International Labour Conference, Geneva, 1999.

Case Laws

14. Budhadev Karmaskar v. State of West Bengal, (2011) 10 SCC 477; Order dated May 19, 2022, Writ Petition (Crl.) No. 135 of 2006 (Justices L. Nageswara Rao, B.R. Gavai, A.S. Bopanna).
15. K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1 (Supreme Court of India, Nine-Judge Bench).
16. Vishaka & Ors. v. State of Rajasthan & Ors., (1997) 6 SCC 241 (Supreme Court of India).
17. Gaurav Jain v. Union of India, (1997) 8 SCC 114 (Supreme Court of India).

18. Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (Supreme Court of India).

19. Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545 (Supreme Court of India).

20. Canada (AG) v. Bedford, [2013] 3 SCR 1101 (Supreme Court of Canada, McLachlin CJ).

Secondary sources

21. Cohen, G.A., Self-Ownership, Freedom, and Equality (Cambridge University Press, 1995).

22. Nussbaum, Martha C., 'Whether from Reason or Prejudice: Taking Money for Bodily Services' (1998) 27(4) Journal of Legal Studies 693.

23. Satz, Debra, 'Markets in Women's Sexual Labor' (1995) 106(1) Ethics 63.

