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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PROSTITUTION IN INDIA: A RESEARCH PAPER

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Abstract

Prostitution is one of the world's oldest professions, existing since the medieval period, with unofficial estimates suggesting there are between 3–10 million prostitutes in India, making it one of the largest commercial sex industries globally. While prostitution is not explicitly illegal in India, certain related actions—such as running a brothel, soliciting in public, pimping, and sex trafficking—are criminalized under the Immoral Traffic (Prevention) Act of 1956 (ITPA) and the Indian Penal Code (IPC). Historically, various forms of sex work have existed, from the ritualized prostitution of the Devadasi system to the cultured Tawaifs of the Mughal era, and the regulated brothels established during the British Raj. Today, prostitution manifests in various forms including brothels, streetwalkers, call girls, and services via escort agencies and online platforms. The sector is primarily an urban phenomenon, with major red-light districts like Sonagachi in Kolkata and Kamathipura in Mumbai. Factors like poverty, migration, globalization, and the desire for easy money contribute to its growth. The legal framework, though aiming to combat trafficking, has been criticized for stigmatizing sex workers and failing to clearly distinguish between forced and voluntary sex work. Landmark Supreme Court judgments, such as the one in May 2022, have recognized sex work as a "profession" and ruled that adult, consenting sex workers are entitled to dignity and equal protection under Article 21 of the Constitution. The court has directed police to refrain from interfering with adult, consenting sex workers and mandated that the government consult with sex workers before drafting any policy. Reform efforts are focused on decriminalization or legalization to enhance the safety, health, and dignity of sex workers.

Keywords

Prostitution, India, Immoral Traffic (Prevention) Act, 1956 (ITPA), Sex Workers, Legalization, Decriminalization, Devadasi, Tawaifs, Supreme Court of India, Article 21.

INTRODUCTION

The word prostitution means when a person allows others to use their body for monetary exchange. Prostitution is one of the oldest professions in the world; it has existed since the mediaeval period. In the Rig Veda, it is clear that there was a tradition to give the presents of slave girls to rishis by kings. Ritualised prostitution was developed around the 6th century, when the practise of dedicating girls to Hindu gods became prevalent. They were considered god's female servants and were called 'Devadasi', in which 'Dev' means God and 'Dasi' means female servant.

According to ancient Indian practise, young girls who haven't attained puberty are given the duty of marrying God. The marriage occurs before attaining the age of puberty and requires the girl to become a prostitute for upper caste community members; they are forbidden to enter into a real marriage.

Asia's largest red-light district, Mumbai's controversial Kamathipura,¹ which started out as a huge brothel for British occupiers before switching to a local clientele after Indian independence, has since been established in India. There are numerous prostitution rings operating illegally in Indian cities, including Mumbai, Delhi, Kolkata, Bangalore, and Chennai. According to UNAIDS estimates from 2016, there were 657,829 prostitutes in the nation. According to some unofficial estimates, there are around 3–10 million prostitutes in India. One of the greatest commercial sex industries in the world is thought to exist in India. It has become a major international centre for sex tourism, drawing visitors from developed nations.

Prostitution is not explicitly illegal in India, despite being deemed unethical by the court. However, certain actions that facilitate prostitution are considered unlawful, and the Immoral Traffic (Prevention) Act of 1956 (ITPA) makes certain actions—such as running a brothel, living off the money earned through prostitution, soliciting or luring someone into prostitution, and trafficking in children and women for the purpose of prostitution—explicitly unlawful.

HISTORY

A tawaif was a courtesan who catered to the nobility of India, particularly during the Mughal era. The tawaifs excelled in and contributed to music, dance (mujra), theatre, and the Urdu literary tradition, and were considered an authority on etiquette. Tawaifs were largely a North Indian institution central to Mughal court culture from the 16th century onwards and became

¹ www.wikipedia.com

even more prominent with the weakening of Mughal rule in the mid-18th century. They contributed significantly to the continuation of traditional dance and music forms and then the emergence of modern Indian cinema.

Goa was a colony in Portuguese India set up in the early 16th century, and this Portuguese stronghold contained a community of Portuguese slaves. During the late 16th and 17th centuries the Portuguese trade in Japanese slaves resulted in traders from the Portuguese Empire and their captive lascar crew members from South Asia bringing Japanese slaves to Goa. These were usually young Japanese women and girls brought or captured from Japan as sexual slaves.²

The culture of the performing art of nautch, an alluring style of popular dance, rose to prominence during the later period of Mughal Empire and the rule of the British East India Company. During the period of Company rule (and after the Indian Rebellion of 1857, the direct administration of the British Crown), British colonial officials established and maintained brothels across the Indian subcontinent. The prostitutes who worked in such brothels were recruited from rural Indian families and paid directly by the British authorities. The red-light districts of cities such as Mumbai developed at this time. The governments of many Indian princely states had regulated prostitution in India prior to the 1860s. The British Raj enacted the Cantonment Act of 1864 to regulate prostitution in colonial India as a matter of accepting a necessary evil. The Cantonment Acts regulated and structured prostitution in the British military bases which provided for about twelve to fifteen Indian women kept in brothels called chaklas for each British regiment stationed in India. They were licensed by military officials and were allowed to consort with soldiers only. In the late 19th and early 20th centuries, women and girls from Eastern Europe and Japan were trafficked into British India, where they worked as prostitutes, servicing British colonists and soldiers, since sexual relations between white men and native women was increasingly opposed by colonial authorities.

"From time immemorial Indian poets have sung praises of the 'public woman', the professional entertainer. The epics give us a colourful description of her intimate connection with royal splendour. The Puranas highlight her auspicious presence as a symbol of good luck. Buddhist literature also testifies to the high esteem in which she was held in society. She appears through the ages in different incarnations from apsara in divine form to Ganika, devadasi, nartika [ordinary dancer], Kanchani, tawaif and the nautch girl."

—Pran Neville

² History Of Prostitution In India (1933)

Japanese prostitutes (the Karayuki-san) serviced British colonists in British India where they were viewed as clean.

Operations and modus operandi

Prostitution in India manifests in various forms. The most notable instances where sex workers offer their services may include situations where these services are accessible under different disguises:

Brothels: Culturally, the modern definition of a brothel refers to house of prostitution where multiple hookers sell their services under the management of a madam (or similar). Whorehouse, chicken ranch, bordello or hook shop a brothel is a knocking shop by any other name.

OR

Buildings in which prostitutes are available.

Streetwalkers/Street prostitution: Street prostitution is a form of prostitution in which a prostitute solicits customers from a public place, most commonly a street, while waiting at street corners or walking alongside a street, but also other public places such as parks, benches, etc. The street prostitute is often dressed in a provocative manner. The sex act may be performed in the customer's car, in a nearby secluded street location, or at the prostitute's residence or in a rented motel room.

OR

Prostitutes who stand or walk in the streets, roads, highways or public spaces to get customers.

Call girls: A call girl or female escort is a prostitute who (unlike a street walker) does not display her profession to the general public, nor does she usually work in an institution like a brothel, although she may be employed by an escort agency. The client must make an appointment, usually by calling a telephone number.

The typical age of call girls ranges between late teens and mid-twenties, and on average they have a higher level of education than street prostitutes.

Call girls have traditionally had a number of routes available to advertise their services, including classified advertisements in magazines and latterly via the Internet. The use of online classified advertisement websites such as Backpage for this purpose has increased during the 21st century. An intermediary advertiser, such as an escort agency, may be involved in promoting escorts, though they are not normally handled by pimps. Call girl prices are typically

³ Prostitution In India (1986)

significantly higher than those charged by brothel- and street prostitutes.

Call girls may work either in call, where the client comes to them, or outcall, where they go to the client.

OR

Prostitutes with whom an appointment can be made by telephone, usually to meet at the client's address.

Escort agencies: An escort agency is a company that provides escorts for clients, usually for sexual services. The agency typically arranges a meeting between one of its escorts and the client at the customer's house or hotel room (outcall), or at the escort's residence (in call). Some agencies also provide escorts for longer durations, who may stay with the client or travel along on a holiday or business trip. While the escort agency is paid a fee for this booking and dispatch service, the customer must negotiate any additional fees or arrangements directly with the escort for any other services that are not provided by the agency involved, such as providing sexual services (regardless of the legality of these services).

OR

An agency where people, especially young women, may be hired to accompany someone for entertainment, etc.

Private residences: The place, especially the house, in which a person lives or resides.

Massage & spa Parlors: A massage Parlor (American English), or massage parlour (Canadian/British English), or massage salon is a place where massage services are provided. Some massage Parlors are front organizations for prostitution, and the term "massage Parlor" has also become a euphemism for a brothel.

OR

A place where people go and pay for a massage.

Hotels: A commercial establishment offering lodging facilities.

Nightclubs and bars: A nightclub or dance club is a club that is open at night, usually for drinking, dancing and other entertainment. Nightclubs often have a bar and discotheque (usually simply known as disco) with a dance floor, laser lighting displays, and a stage for live music or a disc jockey (DJ) who mixes recorded music. Nightclubs tend to be smaller than live music venues like theatres and stadiums, with few or no seats for customers.

Nightclubs generally restrict access to people in terms of age, attire, personal belongings, and behaviours. Nightclubs typically have dress codes to prohibit people wearing informal, indecent, offensive, gym, or gang-related attire from entering. Unlike other entertainment venues, nightclubs are more likely to use bouncers to screen prospective patrons for entry.

The busiest nights for a nightclub are Friday and Saturday nights. Most nightclubs cater to a particular music genre or sound for branding effects. Some nightclubs may offer food and beverages (including alcoholic beverages).

OR

A place of entertainment open at night usually serving food and liquor and providing music and space for dancing and often having a floor show.

Virtual sex, Cybersex and Phone sex services on online and on digital platforms: Virtual sex is sexual activity where two or more people (or one person and a virtual character) gather together via some form of communications equipment to arouse each other, often by the means of transmitting sexually explicit messages. Virtual sex describes the phenomenon, no matter the communications equipment used.

Digital remote stimulation involves the use of electronic sex toys to stimulate a person in the genital area from a distance

Camming is virtual sex that is over video chat from services that provide it.

Cybersex is virtual sex typed over the Internet, including IRC, e-mail, instant messaging, chat rooms, webcam, role-playing games, etc.

Phone sex is virtual sex spoken over the telephone.

Sexting is virtual sex sent via mobile phone network text messaging. The advent of cell phones with built-in digital cameras has undoubtedly added new dimensions to these activities.

Modern consumer virtual reality headsets allow users to engage in virtual sex through simulated environments, either with other humans or with virtual characters.

Online/phone-based sex-oriented conversations and exchanges through audio, images, video or texts.

Devadasi: In India, a devadasi is a female artist who is dedicated to the worship and service of a deity or a temple for the rest of her life. The dedication takes place in a ceremony that is somewhat similar to a marriage ceremony. In addition to taking care of the temple and performing rituals, these women also learn and practice classical Indian dances such as Bharatnatyam, Mohiniyattam, Kuchipudi, and Odissi. Their status as dancers, musicians, and consorts was an essential part of temple worship. Devadasis also engaged in providing sexual services to temple officials and devotees as part of their temple responsibilities, with the earnings from these services being handed over to the temple. The practice of temple prostitution became more prominent with the emergence of Puranic Hinduism

OR

Temple dancers devoted to the practice of spiritual dancing but are forced into sex work.

Red-light districts of India

India's largest and best-known red-light districts are:

Sonagachi, Kolkata: Asia's largest red-light district with around 10,000 to 16,000 female sex workers. According to a 2019 study by the Indian Journal of Public Health reported that West Bengal had the highest number of female sex workers (FSWs) in India, contributing nearly 25% of the country's total estimated 1.82 million FSWs. This suggests that around 455,000 FSWs were in West Bengal at that time.

Kamathipura, Mumbai: Second largest red-light district in India with approximately 5,000 sex workers.

Budhwar Peth, Pune: India's third largest red-light district with home to around 5,000 sex workers and 700 brothels.

Chaturbhuj Sthan, Muzaffarpur: A red-light district in Bihar with around 3,500 sex workers.

Shivdaspur, Uttar Pradesh: A town in Varanasi district with a red-light district housing approximately 2,000 sex workers.

G. B. Road, New Delhi: A red-light district in the Indian capital with many brothels and over 1,000 sex workers.

Ganga Jamuna, Nagpur: A red-light district with as many as 188 brothels and thousands of sex workers.

Reshampura, Gwalior: A red-light district in Madhya Pradesh.

Kabari Bazar, Meerut: A red-light district with hundreds of sex workers operating from around 75 brothels.

Meergunj, Prayagraj: A red-light district with a significant number of sex workers infamous for illicit trafficking and forced prostitution.

The operation of brothels is officially prohibited (*de jure*), yet in practice, these establishments are confined to specific areas within urban locales. Despite the lack of official sanction for brothels, minimal efforts are exerted to eradicate or impede its existence. The living conditions within these establishments are notably substandard, marked by dilapidated infrastructure, insufficient lighting, malodorous environments, uncleanliness, and an overall lack of sanitation. Notably, the prevalence of sexually transmitted diseases, including HIV/AIDS, is exceptionally high in these establishments and the services provided within these brothels are usually available at a notably cheap price. The environment in the brothels, particularly in the surrounding alleys, is deemed hazardous, especially during the night, with reports of various other forms of criminal activities.

HINDUSTAN TIMES ARTICLE

Survey / Prostitution on a high in India

There are some 3 million sex-workers in the country, an overwhelming majority in the 15–35-year group.

From poverty to erosion of values, several factors are pushing more and more women and young girls to take to prostitution all over India, says a new study.

Although it is difficult to count the total number of prostitutes, or sex workers, latest estimates show that there are some three million in the country, an overwhelming majority in the 15–35-year group.

KK Mukherjee and Sutapa Mukherjee say in the study undertaken by the Gram Niyojan Kendra, Ghaziabad, on behalf of the central government that there were several reasons why prostitution is growing.

Among these are growing migration and poverty, political instability, erosion of traditional values, desire to earn easy money, globalisation and declining job opportunities for uneducated and unskilled youths.

Added to these are urbanisation, new attitudes to sex, apprehension among youths about their sexual performance, rise in hospitality industries, promiscuity as well as myths about sex with virgin women.

But prostitution is still largely an urban phenomenon, the Mukherjees said in their study that involved interviewing nearly 10,000 people, mostly prostitutes, spread across 31 states and union territories.

Andhra Pradesh and West Bengal together accounted for about a fourth of the total respondents. The study said that girls and women from these two states were operating in more than 12 states and union territories.

Besides, Bangladeshi, Nepalese, Bhutanese and Myanmar women also formed a small part of the prostitution market in the country.

"Consumerism combined with growth of transport facilities is contributing to the emergence of a new form of practice called 'commuting prostitute' wherein girls and women from neighbouring rural areas come to cities like Delhi, Kolkata and Mumbai for some specific hours on the pretext of working in offices/homes," says the study.

The prostitutes come mainly from vulnerable groups such as Dalits, tribes and backward castes. They also belong to all religions.

But call girls and women practising prostitution under various garbs are comparatively more

from general caste groups and have had better education.

Most prostitutes, the study says, are in the age group of 15 to 35 years "because of overwhelming emphasis on physical appearance and endurance capacity to entertain multiple clients".

Referring to new clients, the study says: "Prostitutes are offering concessions to student clients." It says many young men look for sex for pleasure and fun. Group sex is also emerging as a new phenomenon.

According to the study, while income is nominal for the majority of prostitutes, ranging from Rs 2,000 to Rs 24,000 a month (which is shared with others), some call girls earn Rs 40,000 to Rs 800,000 a month.

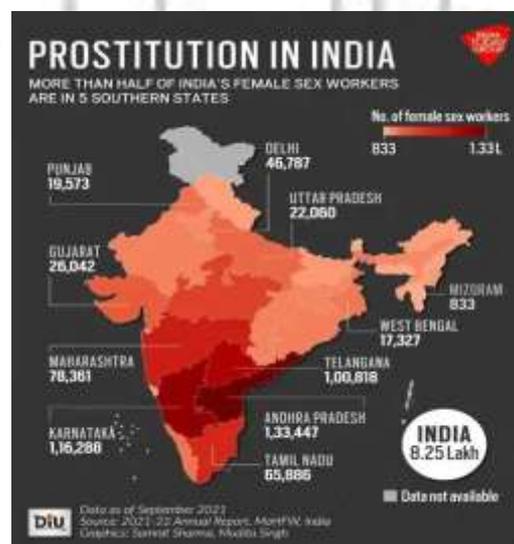
But girls and women in the trade are constantly lying even to their family members about what they do for a living.

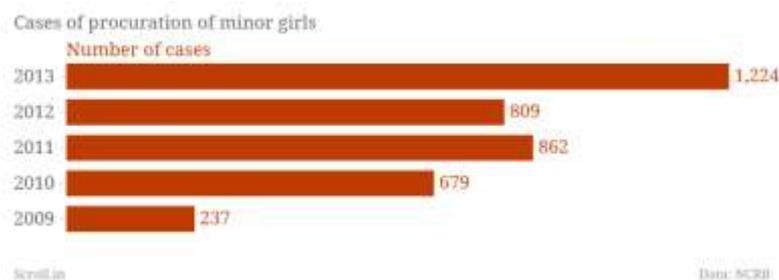
"In the process, they live in dilemma and duality. In some cases, this duality goes so deep that they are not able to make the difference between make belief and real life."

The study says complete eradication of prostitution is not possible. But its prevalence can be reduced if the government and others show the will.

The authors say: "Prostitution is an age-old social problem. Dealing with such a chronic problem is not an easy task. It will require sincere and sustained efforts of the government, voluntary organisations, people's group and all-round support of the socio-religious and political leaders and opinion makers based on properly planned national line of action."

STATISTICS OF PROSTITUTION IN INDIA





Laws Related to Prostitution

Prostitution is not explicitly illegal in India, despite being viewed as unethical by the court. However, certain actions that facilitate prostitution are considered illegal, and the Immoral Traffic (Prevention) Act of 1956 (ITPA) makes certain actions like running a brothel, living off of the money earned through prostitution, soliciting or luring a person into prostitution, and trafficking in children and women for the purpose of prostitution explicitly illegal.

The Immoral Traffic (Prevention) Act

According to the Immoral Traffic (Prevention) Act of 1956, prostitution is the sexual exploitation or abuse of people for commercial objectives. It's also not a crime under the IPC [2]. Despite the fact that sex work is legal, maintaining a brothel is not. It contradicts the entire premise of prostitution.

The Indian Penal Code (IPC), which predates the SITA, is sometimes used to punish sex workers with broad offences like "public indecency" or being a "public nuisance" without clarifying what these are. The original law was revised in 1986 as the Immoral Traffic (Prevention) Act, or ITPA.

In addition to the ITPA, the Indian Penal Code of 1860, the Indian Constitution of 1950, the Juvenile Justice (Care and Protection of Children) Act 2015, and several state laws have been

created to combat prostitution and trafficking.

Right To Profession

Article 19(1)(g) guarantees every person the basic right to engage in the trade, profession, or occupation of his choice while also imposing constraints on the choice of such trade, profession, or company. Nothing in this section grants the right to engage in any profession, trade, or business that is prohibited by law. Section 19(6) empowers Parliament to enact legislation banning certain types of companies, trades, or professions for the good of society.

On the subject of prostitution, there are primarily two types of debates. The first is whether prostitution is a business or a profession. Prostitution is a type of occupation. It cannot be done by everyone and must be done by men or women with specific skills. As a result, it might be called a career. When performed in a brothel, prostitution can also be considered a business. When prostitution is done by a ring or group of women, a substantial amount of money is received. Owning and managing a brothel is prohibited in India, but prostitution is legal.

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INDIAN PENAL CODE, 1860

The Indian Penal Code (IPC), section 370 that addresses human trafficking and stipulates penalties for those who use trafficked individuals for prostitution or other forms of exploitation. The Indian Penal Code (IPC) contains a section 354A that addresses sexual harassment and stipulates penalties for making unwanted sexual advances or requests for sexual favours. The Indian Penal Code (IPC) has a section 366A that addresses the crime of trafficking an individual, particularly a woman or juvenile, with the intention of forcing them into prostitution or marriage. The Indian Penal Code (IPC) has a section 376 that addresses rape offenses, particularly those committed against those who are involved in prostitution. It stipulates harsh penalties for rape offenders.

JUVENILE JUSTICE ACT, 2015

An important piece of law in India, the Juvenile Justice (Care and Protection of Children) Act, 2015, strives to safeguard children's rights and interests, especially those who are susceptible to abuse, exploitation, and trafficking, particularly for prostitution. In relation to the sexual

exploitation and trafficking of minors, the Act specifies several offenses, including as the purchasing and selling of minors for the purpose of prostitution, the inciting or recruiting of minors into prostitution, and the use of minors for pornographic purposes. The Juvenile Justice Act places a strong emphasis on the social reintegration and rehabilitation of children who have experienced abuse, trafficking, or sexual exploitation. It requires the creation of specific facilities and institutions for the upbringing and treatment of these kids. The Act requires the creation of Special Juvenile Police Units to deal with situations involving kids who are in trouble with the law and kids who need to be looked after and protected. To protect and promote the welfare of children, especially those who are at risk of exploitation and trafficking, these units collaborate closely with other relevant parties.

POCSO ACT, 2012

An important piece of law in India, the Protection of Children from Sexual Offences (POCSO) Act, 2012, aims to shield minors from prostitution and other forms of sexual abuse and exploitation. The Protection of Children from Sexual Offenses (POCSO) Act, 2012 aims to safeguard children's safety, dignity, and well-being by establishing a legal framework to prevent sexual assaults against them. The Act aims to give children appropriate protection and support, acknowledging their vulnerability to sexual abuse and exploitation, including prostitution. Strict penalties are prescribed by the POCSO Act for those found guilty of sexual offenses against minors, including prostitution. Depending on the type and seriousness of the offense, offenders may be subject to fines, jail time, or both. The Act also stipulates that repeat violators will face harsher punishments. It mandates the implementation of awareness programs and educational initiatives aimed at sensitizing children, parents, and communities about the prevention of sexual abuse and exploitation.

WHAT IS NOT LEGAL UNDER PROSTITUTION?

Solicitation in public: It is frequently against the law to approach possible customers in public areas. Running brothels: In many jurisdictions, it is illegal to own or run a brothel, which is a place where several sex workers work. Pimping or procuring: It is generally regarded as unlawful to assist or arrange for the purpose of profit sexual transactions between clients and sex workers. Sex trafficking is a serious criminal violation that involves coercing, manipulating, or pushing someone into prostitution using threats or other means. Child sexual exploitation: Engaging in prostitution by someone under the legal consent age, which is

typically 18 years old, is severely forbidden and is regarded as child sexual exploitation. Living off earnings of prostitution: It is illegal to profit monetarily from someone else's prostitution operations, and this practice is known as "living off the earnings of prostitution" or "pimping" in legal terminology. Forcing someone into prostitution: It is unlawful and a grave violation of human rights to force someone, against their will, to become a prostitute. Public indecency: Engaging in sexual acts in public places is often illegal and can lead to charges of public indecency or obscenity.

CRITICAL ANALYSIS OF THE LAWS PERTAINING TO PROSTITUTION IN INDIA

The intricate legal structure pertaining to prostitution in India has been the focus of examination and discussion. ITPA, or the Immoral Traffic (Prevention) Act of 1956: The punitive nature of the ITPA has drawn criticism since it frequently causes sex workers to be stigmatized and marginalized. Adults who provide their consent may be prosecuted since it does not clearly distinguish between forced or coerced prostitution and voluntary sex work. Sex workers are more susceptible to abuse, violence, and health hazards as a result of the absence of regulations. Sexual workers have a difficult time standing up for their rights and getting better living conditions if they don't have access to social services, healthcare, and education, as well as legal protections. Human rights breaches are sustained by the prohibition of some parts of prostitution, such as the arbitrary detention, arrest, and harassment of sex workers by law enforcement. Additionally, by forcing the sector underground and making it harder for sex workers to get assistance or report abuse, it impedes attempts to prevent human trafficking. The existing legal system ignores more significant social and economic issues that increase the vulnerability of sex workers in favour of law enforcement and incarceration. Meaningful participation by sex workers in the formulation and execution of policies is lacking. While there are some beneficial aspects of Indian prostitution laws that are intended to stop exploitation and trafficking, there are also some flaws and ambiguities in the legislation. A more sophisticated and rights-based strategy is required, one that addresses the intricate socioeconomic dynamics that underpin prostitution while placing a higher priority on the health, safety, and dignity of sex workers.

REFORMS NEEDED

The current legal system frequently does a poor job of differentiating between forced or compelled prostitution and voluntary sex work. To guarantee that the rights and dignity of sex workers are upheld, including their freedom to select their career without fear of discrimination or legal action, reforms are required. To combat the trafficking of people more effectively for the purpose of commercial sexual exploitation, prostitution laws must be reinforced. Improving law enforcement systems to find and apprehend traffickers while offering aid and support to victims of trafficking is one aspect of this. By guaranteeing access to healthcare services, including HIV/AIDS prevention and treatment, and by fostering safe working circumstances, reforms should place a high priority on the health and safety of sex workers. Prostitution in India is being called for to be legalized or decriminalized more and more. Decriminalization would mean keeping laws against exploitation, trafficking, and coercion in place while eliminating criminal sanctions for adult consenting sex employment. Legalization would entail regulating the sex industry, just like other professions, to protect the safety and rights of sex workers. If sex workers decide to leave the business, reforms should include steps to give them the financial and social support they need to do so. This could entail schooling, training for a trade, and alternate work options. To guarantee that the opinions and perspectives of sex workers are acknowledged and valued, policymaking should entail substantive involvement with these populations. Public education initiatives to combat stigma and prejudice against sex workers and advance awareness of the problems they encounter should be a part of reforms. India is required by several human rights treaties to uphold the rights of sex workers and prevent human trafficking. Reforms ought to be in line with these commitments and internationally recognized best practices.

INITIATIVES BY GOVERNMENT

The Indian government has launched several programs to better the lot of prostitutes and deal with the problems they encounter. The NACP, or National AIDS Control Programme: The Indian government introduced the NACP, a comprehensive initiative, to stop and manage the spread of HIV/AIDS. It consists of focused activities to support HIV prevention, testing, and treatment services for high-risk groups, such as sex workers.

Scheme Swadhar Greh:

The Swadhar Greh Scheme offers women in challenging situations, such as those who have

been the victims of trafficking, abuse, or exploitation, temporary housing as well as rehabilitation services. With the help of various programs like skill development, counselling, and support, it seeks to enable women to live honourable lives.

Ujjawala Scheme:

The Ministry of Women and Child Development's flagship program, the Ujjawala Scheme aims to rescue and rehabilitate victims of trafficking for the purpose of commercial sexual exploitation, as well as prevent trafficking. It allows rescued women and girls—including sex workers—to receive economic rehabilitation, counselling, vocational training, and shelters.

Sex Workers' Collectives:

To empower sex workers and advance their rights, the government encourages the creation of sex workers' collectives and groups. These collectives frequently support social support for sex workers, healthcare access, legal help, and policy improvements.

Legal Aid and Support Services: Sex workers can receive legal aid and support services from several governmental and non-governmental organizations. These services include help with legal documentation, complaint filing, and seeking restitution for human rights violations.

Programs for Skill Development and Livelihood: A few government programs are aimed at helping sex workers shift to other types of work by providing them with livelihood and skill development opportunities. To help sex workers become more economically independent, these organizations provide microfinance support, entrepreneurial development, and vocational training.

Programs for Sensitization and Awareness: To combat stigma and prejudice against sex workers and increase public knowledge of their rights and concerns, the government runs awareness and sensitization campaigns. These initiatives are aimed at several stakeholders, such as the public, law enforcement, and healthcare professionals.

CURRENT SCENARIO
India's proximity to Nepal, Bangladesh, and Pakistan—three nations with less developed economies than India—makes it a receiving, sending, and transit destination for sex labour. The Ministry of Women and Child Development's initial assessment on sex workers in India, carried out in 1997, claimed that there were 2 million of them; between 1997 and 2014, that number rose by 50%. A 2014 poll estimated that 1.2 million females were working in this field, with 35.47% of those girls beginning their careers before turning 18. India is home to an estimated 275,000 brothels, and 20,000 women and girls are victims of sex trafficking out of 657,829 sex workers, according to a 2016 UNAIDS survey. In India, there are about 2 million prostitutes in major cities like Delhi, Mumbai, Kolkata, and Bengaluru. Asia's largest red-light

district is located in Kamathipura in Mumbai and Sonagachi in Kolkata. According to a Joint Women's Programme survey, 38% of young girls reported that their family background was Devadasi, and 63.6% of them accepted the system out of custom. The Devadasi system has been connected to the trafficking of girls for the purpose of commercial exploitation. Together with other sex workers, they are transported to the red-light districts of Mumbai, Pune, Bangalore, and other major cities.

LANDMARK JUDGMENTS RELATED TO RIGHTS OF PROSTITUTES IN INDIA

Budhadev Karmaskar case The Supreme Court of India declared with certainty in the Budhadev Karmaskar case that sex workers are human beings with a right to life under Article 21 of the Indian constitution, and that no one has the right to harm or murder them. The verdict also attracted attention to the plight of sex workers, underlining that many women are forced to engage in prostitution due to their financial and economic burdens, rather than for pleasure.

Gaurav Jain v Union of India

In this case, the Court issued broad guidelines for the rescue and reintegration of prostitutes and their children into society. It claimed that prostitution related women should not be considered perpetrators, but rather victims of their adverse socioeconomic circumstances. It placed a strong emphasis on empowering women economically through self-employment and vocational training. The court ordered that juvenile homes should be established for the youngsters in order to assure their rehabilitation and protection.

HOW PROSTITUTES ARE BEING MISTREATED AND THE NEED FOR CHANGES IN

THE EXISTING SYSTEM

Even after the existence of laws and judgments favouring the prostitutes, they are still being mistreated in myriad ways. The fear of mistreatment and humiliation forces such women to go to local, unqualified doctors, and in a way, they are being denied proper healthcare facilities and this poses a greater risk to their health and safety. Most women who are trafficked never had the privilege of education and even their children struggle to attend and stay in school, they are treated differently by teachers who resent having them in their classes, and their dropout rate remains high as they live in a very hostile environment. These women internalize their

marginalized position and they start to believe that they don't deserve better because they believe that they are inferior, they avoid hospitals and schools and this way of treatment starts to feel normal to them.

Women in sex work are entitled to their rights in the political, social, economic, and civil spheres of their lives. They too have the right to livelihood and freedom from gender stereotyped notions about a woman's chastity. All this will only be possible when discrimination is removed from all spheres of a sex worker's life. Stigma and shaming are real. Reducing stigma not only requires policy and legal change but also cultural change. As a community, society needs to work towards anti-discrimination pathways and funding for rights-based sex worker organizations. However, these steps alone are not enough, we need to work towards destigmatizing them and society needs to come together for this.

THE LEGALITY OF SEX WORK

The act of prostitution is not illegal in India. However, some of the activities like soliciting services of prostitution in public, carrying out prostitution in hotels, being the owner of a brothel, pimping, indulging in prostitution by arranging a sex worker, and arrangement of a sexual act with a customer are punishable under certain provisions.

Immoral Traffic (Prevention) Act 1956, also known as SITA, prohibits prostitutes from commencing their business in public. The objective of the Act was to maintain the decorum of society and rescue

girls and women from illegal trafficking. But it fails in recognizing the plight of male and transgender victims. It ignores the actual situation of sexual violence and the causes behind it. The blatant assumption of the fact that sex is immoral is responsible for the ill and unfair treatment of sex workers in this society. Sex work is seen as something that cannot be talked about in the drawing-room, rather should be done in secrecy. The Act guards this notion of society.

Moreover, there have been several instances where the police have arrested and exploited sex workers under this Act. The constitutional validity of this Act was challenged in the State of Uttar Pradesh v Kaushalya in 1964. The High Court of Allahabad held that the Act was constitutional and in line with the major objective for which it was framed.

In the subsequent years, the opinion of various high courts changed and the problems of SITA became more visible. In Arnesh Kumar v State of Bihar

, the Supreme Court held that "Offences punishable under Immoral Traffic (Prevention) Act,

1956 particularly offence under Section 59 of the Act, i.e. inducing persons to carry on prostitution under the veneer of ostensibly lawful business activities like health spa, etc. (as in the present case) require to be dealt with the utmost sensitivity and the gravity and social impact of such offences involving exploitation of women from economically weaker sections of society ought to be borne in mind whenever an investigation is undertaken in such cases. Resort to the less intrusive mode of investigation through a notice under Section 41A10 of the Code of Criminal Procedure in such cases by ignoring the gravity and far-reaching social consequences of such offences, the vulnerability of the victims of sexual exploitation to threats, intimidation, or inducement and the possibility of recurrence of such organized crimes amounts to complete negation of the restrictions contained in clauses (a) to (e) of section 41(1)(b)(ii)11 C.D.C. exercise of such discretion.”

In *Unknown vs State of West Bengal*¹², Calcutta High Court held that sex workers exploited for commercial sex could not be tried as an accused until and unless there was substantial evidence to show that she was a co-conspirator. The court gave several guidelines to the investigating officers as well.

In September 2020, the Bombay High Court in the case of *Kajal Mukesh Singh and Ors v State of Maharashtra*¹³ ordered that prostitution was not regarded as a criminal offence under the Immoral Traffic (Prevention) Act 1956. It said, “there is no provision under the law, which makes prostitution per se a criminal offence or punishes a person because he indulges in prostitution,” The court also noted, “what is punishable under the Act is sexual exploitation or abuse of a person for commercial purpose and to earn the bread thereby. And where a person is carrying on prostitution in a public place or when a person is found soliciting or seducing another person as defined under the Act.”

ANALYSIS OF THE RECENT JUDGMENT OF THE SUPREME COURT

On 26th May 2022, the Supreme Court In a significant order recognised sex work as a “profession” whose practitioners are entitled to dignity and equal protection under the law, SC has directed that police should neither interfere nor take criminal action against adults and consenting sex workers. The court observed that “it need not be gainsaid that notwithstanding the profession, every individual in this country has a right to a dignified life under article 21 of the constitution”.

“Sex workers are entitled to equal protection of the law, criminal law must apply equally in all

cases, on the basis of 'age' and 'consent'. When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action." The 3-judge bench led by Justice L. Nageswara Rao directed an order which was passed after invoking special powers under Article 142 of the constitution. Article 142 provides discretionary power to the Supreme Court as it states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.

MAJOR POINTS OF THE JUDGMENT

On Brothels - The bench ordered that sex workers should not be arrested or penalised or harassed or victimised" whenever there is a raid on any brothel, "since voluntary sex work is not illegal and only running the brothel is unlawful". Now, these types of statements given by the Supreme Court of India leave out many grey areas that need to be addressed. It is still not clear whether prostitution is completely legal in India or not because according to the judiciary, prostitution is legal but brothels are illegal. If brothels would not be operating then where will these prostitutes work? As prostitutes are not allowed to solicit or promote themselves in any manner, the brothels help them with a regular source of income. But by making brothels illegal, the sex work would become unorganized. This question is left unanswered by the Supreme Court.

Sex workers and their children – the court held that a child of a sex worker should not be separated from the mother merely on the ground that she is in the sex trade. "Basic protection of human decency and dignity extends to sex workers and their children" Further if a minor is found living in a brothel or with sex workers, it should not be presumed that the child was trafficked. The child should not be separated from his mother. This would go a long way toward ensuring that the lives of sex workers' children are not wrecked by the authorities who are supposed to safeguard them. The Supreme Court, on the other hand, should issue more specific and stringent directions in order to better the lives of these youngsters. Given the fact that they might witness abuse on a regular basis due to the environment they come from, their mental health is of utmost concern. The trauma they might endure should be given more attention. Therefore, the court should order the legislature to provide adequate shelter houses for these children, much as it did in the case of Gaurav Jain v Union of India, where the Court set rules for rehabilitation centres.

Medico-Legal care - the court ordered the police to not discriminate against sex workers who

lodge a criminal complaint, especially if the offence committed against them is of a sexual nature. Sex workers who are victims of sexual assault should be provided with every facility including immediate medico-legal care. “It has been noticed that the attitude of the police to sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised,” the court said, calling for sensitisation.

On Media - The court said media should take “utmost care not to reveal the identities of sex workers, during arrest, raid and rescue operations, whether as victims or accused and not to publish or telecast any photos that would result in disclosure of such identities”. The media, in order to gain TRP, compromises the personal identity of the sex workers and the sex workers have to bear the brunt of the media’s actions. They are often persecuted and are looked down upon by the general public. The court has strictly ordered the media to take utmost care while dealing with the issues involving sex workers.

Direction to the government – The Supreme Court has directed that the government should consult with sex workers or their representatives before making any policy decisions, including planning, devising, and executing any policy or program for sex workers, or drafting any changes to sex work legislation.

Awareness drives - The Supreme Court has also directed that governments should run public awareness campaigns and educate sex workers about their rights, the legality of their profession, the police's responsibilities, and what is forbidden and authorised under the law.

WHAT WOULD HAPPEN IN INDIA IF THE CENTRE OBEYS ALL ORDERS OF THE COURT?

Equal legal protection shall be provided to sex workers.

If a sex worker reports a criminal/sexual or another form of crime, the police will take it seriously and will abide by the law.

If a brothel is raided, no sex workers shall be arrested, fined, harassed, or victimised.

Any sex worker who is sexually assaulted shall be provided with the same services as a sexual assault survivor, including immediate medical treatment.

All sex workers shall be treated with respect by police, who will not verbally or physically abuse them, subject them to violence, or compel them into any sexual conduct.

The Supreme Court's decision is a positive step forward. It ridicules sex-work stereotypes and restores sex workers' dignity. It shows how far we've come from the days when prostitution was outlawed by the colonial authority to now when the judiciary has granted it a legitimate

standing. It's fascinating to observe how the judiciary's perspective of sex work has improved in recent years.

CONCLUSION

In a society where market-driven, capitalistic systems of exploitation, misogyny, and oppression are common, there is a propensity to conceal the true nature of unfair systems that oppress vulnerable, marginalized people and favour a select few. The reality that prostitution will always exist in society makes it necessary to legalize it. Prostitution cannot be treated on an equal basis with other professions, even though sex workers should be treated with some dignity. Sex workers ought to be treated like human beings instead. The Supreme Court's recognition of prostitution as a profession facilitates the access of sex workers to fundamental rights. It would be absurd to ignore it, to deny the system's existence and its issues in a society where prostitution has long been a recognized profession and continues to grow as a business. Adequate norms and regulations pertaining to the legalization and decriminalization of sex work will enhance the working environment, health security, and safety of those engaged in the profession. It will also benefit society since it will get rid of many social evils like child prostitution and rape, among other things. Sex trade is a very real issue in our country, and all parties involved can be guaranteed benefits if it is recognized as a legitimate profession with rules and regulations.

WHITE BLACK
LEGAL