

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown. A black leather watch with a silver dial is also visible on the desk. A large, semi-transparent white rectangular area is centered over the image, containing the journal's title and ISSN.

INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

## ABOUT WHITE BLACK LEGAL

*White Black Legal – The Law Journal* is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

## AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

# **BREAKING THE SILENCE: RIGHTS OF THOSE BEHIND RED LIGHTS**

AUTHORED BY - MUSKAN CHOUDHARY

B.A. LL.B (Hons.), 2021–2026

Atal Bihari Vajpayee School of Legal Studies  
Chhatrapati Shahuji Maharaj University, Kanpur

Under the Supervision of

Dr. Divyansh Shukla

Assistant Professor, School of Legal Studies

## **ABSTRACT**

Sex work is one of the most contested and socially stigmatised professions in India and across the globe, yet it remains one of the most enduring. The silence surrounding it is not a product of its illegality alone, but of its entanglement with notions of immorality, female body autonomy, and social dignity. This paper examines the rights of brothel workers and sex workers in India through a socio-legal lens, tracing their historical roots from the ancient Devadasi system to the contemporary legal framework governed by the Immoral Traffic (Prevention) Act, 1956 (ITPA).

Drawing upon judicial precedents, constitutional provisions, international human rights standards, and empirical data, the paper constructs a comprehensive analysis of the structural marginalization faced by sex workers—economic, educational, psychological, and institutional. It critically evaluates the paradox in Indian law where consensual sex work is not per se criminalized, yet associated activities are penalized, creating conditions of vulnerability rather than protection.

The paper further examines the Supreme Court's landmark directions of May 2022 and key case laws including *Budhadev Karmaskar v. State of West Bengal* and *Gaurav Jain v. Union of India*, assessing their transformative potential. Through comparative analysis of international regulatory models—criminalization, the Nordic model, legalization, and full decriminalization—this paper argues for a rights-based, evidence-driven reform of India's legal

approach to sex work. The central contention is that only by decriminalizing consensual adult sex work, robustly distinguishing it from trafficking, and integrating sex workers into labour and social protection frameworks, can India fulfil its constitutional and international obligations to dignity, equality, and life.

**Keywords:** *Sex work, brothel workers, ITPA, trafficking, decriminalization, Article 21, constitutional rights, social exclusion, feminist theory, judicial directions.*

## **I. Introduction**

Prostitution is widely acknowledged as among the oldest professions in recorded human history, yet it continues to be met with silence, stigma, and systemic neglect. In India, the legal position presents a striking paradox: consensual sex work by an adult is not explicitly criminalized, yet the activities necessary to sustain such work—including maintaining a brothel, soliciting in public places, and living off the earnings of a sex worker—are penalized under the Immoral Traffic (Prevention) Act, 1956. This contradiction does not merely reflect legislative ambivalence; it actively exposes sex workers to extortion, arbitrary detention, and violence, often at the hands of the very state agencies charged with their protection.

The terminology that surrounds this profession further complicates any legal or social engagement with it. The terms 'sex worker' and 'brothel worker' are frequently conflated, though they are not interchangeable. Every brothel worker is a sex worker, but not every sex worker operates within a brothel. Female sex workers in India are broadly categorized into street-based workers, home-based workers, and brothel-based workers—each group occupying distinct levels of vulnerability and visibility. The regulatory framework, however, treats them with an undifferentiated, often punitive brush.

The present paper seeks to engage seriously with the question: what rights do those behind the red lights possess, and how effectively does the Indian legal system protect or undermine those rights? The paper proceeds through an analysis of the historical evolution of prostitution in India, relevant sociological theories, the Indian constitutional and statutory framework, landmark case law, the directions of the Supreme Court in 2022, and international comparative models. It concludes with a critique of existing law and concrete policy recommendations grounded in dignity, autonomy, and equality.

## **II. Historical Evolution of Prostitution in India**

### **A. The Ancient Era**

Prostitution in ancient India was not merely tolerated—it was institutionally recognised and, in certain contexts, celebrated. Courtesans known as Ganikas occupied an acknowledged position in society, performing as musicians, dancers, and conversationalists who entertained aristocrats. Kautilya's Arthashastra references prostitution as a regulated profession subject to state taxation, reflecting a pragmatic recognition of sex labour as an economic institution.<sup>1</sup>

Closely intertwined with this history is the Devadasi system—a religious practice whereby women were dedicated to Hindu temples to serve deities through music and dance. Over time, however, this system was perverted into sexual exploitation, with women subjected to relations with priests, patrons, and elites under the guise of religious duty.<sup>2</sup> Despite evidence of exploitation, colonial and post-colonial regulatory responses focused on controlling these women rather than protecting them.

### **B. The Medieval and Colonial Periods**

During the Mughal period, courtesans known as Tawaifs occupied culturally significant roles in royal courts, serving as custodians of music, poetry, and etiquette. They were not reducible to mere sex workers—they were artists and cultural figures.<sup>3</sup> Yet beneath this prestigious stratum existed a far larger class of ordinary sex workers living in conditions of poverty and marginalization, establishing early hierarchies within the profession itself.

The British colonial period marked a decisive rupture. The colonial government, anxious to protect its soldiers from sexually transmitted infections, introduced the Contagious Diseases Act in the nineteenth century, mandating compulsory medical examination of sex workers near military cantonments. This legislation exemplified the colonial state's double standard: it institutionally relied upon sex work to serve the needs of the military, while simultaneously branding it as immoral under Victorian moral codes and subjecting sex workers to degrading surveillance.

---

<sup>1</sup>Ganikas were courtesans in ancient India who held a recognised position in society, as referenced in Kautilya's Arthashastra. See: <https://www.legalserviceindia.com/legal/article-12200-evolution-of-prostitution.html>

<sup>2</sup>The Devadasi system was a practice of dedicating women to temples for religious service, which gradually transformed into exploitation. See: <https://ijcrt.org/papers/IJCRT1136127.pdf>

<sup>3</sup>Tawaifs were courtesans of the Mughal era, skilled in music, dance, and arts, forming part of the cultural fabric of royal courts. International Journal of Creative Research Thoughts (IJCRT).

### **C. Post-Colonial Developments**

At independence, India's approach to prostitution was shaped significantly by international obligations, particularly the 1949 UN Convention for the Suppression of the Traffic in Persons. The Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) was enacted accordingly—criminalizing not prostitution itself, but a range of associated activities including brothel-keeping, procuring, and solicitation. In 1986, SITA was amended and renamed the Immoral Traffic (Prevention) Act, 1956 (ITPA), which expanded state powers, criminalized clients in certain circumstances, and introduced 'rehabilitation' mechanisms. Yet, as documented by legal scholars and civil society organizations, the Act's effect was often the opposite of protective—it drove sex workers underground, increased their exposure to police harassment, and conflated consensual sex work with trafficking.

## **III. Theoretical Frameworks**

### **A. Structural Functionalism**

Emile Durkheim and Talcott Parsons's structural functionalist tradition views society's institutions as interconnected contributions to social stability. Applied to sex work, functionalists such as Kingsley Davis (1937) argued that prostitution fulfils social needs by providing sexual outlets, thereby theoretically reducing pressures on conventional familial and marital arrangements. Durkheim's concept of anomie further illuminates how social disarray—poverty, family dissolution—can push individuals toward sex work as a survival strategy.<sup>4</sup>

### **B. Conflict and Marxist Feminist Perspectives**

Karl Marx's conflict theory, extended by feminist scholars, locates prostitution within systems of capitalist and patriarchal exploitation. In a society structured by gender inequality, women—particularly those from economically disadvantaged backgrounds—may find sex work to be the only viable livelihood. The spike in prostitution during wartime, when women lost male breadwinners and lacked access to formal employment, corroborates this structural analysis. Marxist feminists, influenced by Catharine MacKinnon and others, go further, arguing that sex work is a form of alienated labour wherein women's sexuality is commodified and controlled by capitalist-patriarchal structures.<sup>5</sup> The result, in Marxist feminist terms, is not merely

---

<sup>4</sup>Structural functionalism as applied to sex work has been discussed by Emile Durkheim and Talcott Parsons. See International Journal of Humanities Social Science and Management (IJHSSM).

<sup>5</sup>Dobash, R.E., & Dobash, R. (1979). Violence against wives: A case against the patriarchy. New York: Free Press.

economic exploitation but the alienation of women from their own bodies.

### **C. Symbolic Interactionism and Stigma Theory**

Erving Goffman's stigma theory provides a powerful framework for understanding the social experience of sex workers. Stigma—a negative label that damages identity and social standing—attaches to sex workers and shapes every dimension of their interaction with society: employment, housing, healthcare, and legal protection.<sup>6</sup> The concept of 'courtesy stigma' extends this to those associated with sex workers, compounding their social isolation.

### **D. Intersectionality**

Kimberlé Crenshaw's intersectionality theory, applied to sex work, reveals that vulnerabilities are never singular. A Dalit woman engaged in sex work due to caste-based exclusion from formal employment faces discrimination simultaneously on grounds of gender, caste, and profession. Intersectionality demands that law and policy account for this multiplicity of oppression rather than treating sex workers as a homogeneous category.<sup>7</sup>

### **E. Social Exclusion Theory**

Drawing on Max Weber's concept of social closure, social exclusion theory examines how sex workers are systematically denied access to mainstream institutions—healthcare, banking, education, and justice—due to stigma, criminalization, and poverty.<sup>8</sup> This exclusion is self-reinforcing: denial of education entrenches poverty; denial of healthcare increases health risks; denial of legal protection perpetuates violence. The cycle is intergenerational, affecting the children of sex workers as much as the workers themselves.

## **IV. The Legal Framework in India**

### **A. The Immoral Traffic (Prevention) Act, 1956**

The ITPA is the primary legislative instrument governing sex work in India. It does not criminalize prostitution per se, but criminalizes a range of associated activities: maintaining or managing a brothel (Section 3), living off the earnings of a prostitute (Section 4), procuring or

---

<sup>6</sup>Baker, L. M., Dalla, R. L., & Williamson, C. (2010). Exiting prostitution: An integrated model. *Violence against Women*.

<sup>7</sup>Loue, S. (2001). *Intimate partner violence: Societal, medical, legal and individual responses*. New York: Springer.

<sup>8</sup>Miriam, K. (2005). Stopping the traffic in women: Power, agency and abolition in feminist debates over sex trafficking. *Journal of Social Philosophy*, 36(1), 1–17.

inducing a person for prostitution (Section 5), detaining a person in a brothel (Section 6), and soliciting in public places (Section 7). The combined effect of these provisions is that sex workers, while not themselves formally criminalized for the act of selling sex, are effectively denied the ability to work safely, collectively, or visibly. The criminalization of brothel-keeping, for instance, means that two sex workers sharing a dwelling can be prosecuted for maintaining a brothel—a provision that disproportionately penalizes those who seek safety through collective working arrangements.

### **B. Constitutional Guarantees**

India's Constitution provides a robust, if unevenly applied, framework of rights that extends to sex workers. Article 21's guarantee of life and personal liberty has been expansively interpreted to include the right to live with dignity, privacy, and bodily autonomy. Article 14 mandates equality before law, prohibiting discrimination on the basis of occupation. Article 19(1)(g) protects the right to practise any profession, which the courts have interpreted to encompass consensual adult sex work. Article 23 prohibits trafficking and forced labour, drawing a critical constitutional distinction between coercion and consent.<sup>9</sup>

Articles 15, 39(e), and 39(f) further reinforce the State's duty to protect vulnerable groups from exploitation, though these Directive Principles are non-justiciable. Together, these provisions establish that sex workers are constitutional subjects entitled to dignity, equality, and legal protection—a principle that Indian courts have increasingly articulated in their jurisprudence.

### **C. Landmark Judicial Decisions**

In *Gaurav Jain v. Union of India*, the Supreme Court moved beyond punitive approaches to acknowledge the structural conditions that compel individuals into sex work.<sup>10</sup> The Court directed the State to formulate schemes for the rehabilitation of sex workers and the non-discriminatory education of their children, establishing that the State's obligation is welfare-oriented, not merely law-enforcement oriented.

*Budhadev Karmaskar v. State of West Bengal* represents perhaps the most significant judicial articulation of sex workers' constitutional rights in India.<sup>11</sup> Arising from the brutal murder of a sex worker, the case prompted the Supreme Court to affirm explicitly that sex workers are entitled to dignity and protection under Article 21, and to draw a crucial distinction between

---

<sup>9</sup>The Constitution of India, 1950, Article 14: Right to Equality.

<sup>10</sup>*Gaurav Jain v. Union of India*, Supreme Court of India. Available at: <https://indiankanoon.org/doc/40881001/>

<sup>11</sup>*Budhadev Karmaskar v. State of West Bengal*, Supreme Court of India. Available at: <https://lawbhoomi.com/budhadev-karmaskar-vs-state-of-west-bengal/>

trafficking and consensual sex work. The Court directed that consenting adult sex workers must not be harassed or penalized by police, and appointed a panel to recommend comprehensive reforms.

In *State of Maharashtra v. Madhukar Narayan Mardikar*, the Court rejected the deeply-rooted evidentiary prejudice that a sex worker's testimony is inherently unreliable.<sup>12</sup> The Court held that even a woman described as a 'prostitute' is entitled to privacy, dignity, and equal treatment before the law—principles that apply regardless of the moral judgments her profession may attract.

*Sahni v. Commissioner of Police and P.N. Krishnalal v. Government of Kerala* further contributed to this rights-based jurisprudence, with the former condemning arbitrary 'rescue' operations that violate fundamental rights<sup>13</sup>, and the latter clarifying that ITPA provisions must be interpreted narrowly, targeting exploitation rather than consensual adult sex work.<sup>14</sup>

#### **D. Supreme Court Directions, May 2022**

In May 2022, the Supreme Court issued a landmark set of directions addressing the legal status and rights of sex workers in India.<sup>15</sup> These included: formal recognition of consensual adult sex work as a legitimate profession entitled to constitutional protection; prohibition of criminal action against consenting adult sex workers; protection from police harassment and violence; mandatory sensitization and training of law enforcement; preservation of dignity and privacy in media reporting; protection of children of sex workers from stigma and forced separation; and guarantees of equal access to legal and social protection.

These directions represent a significant advance in India's jurisprudential trajectory. However, their efficacy remains contingent upon statutory implementation and institutional commitment—both of which remain inadequate. The directions have not been codified into binding legislation, resulting in inconsistent compliance.

### **V. Social Exclusion and Its Consequences**

The marginalization of sex workers is not merely a legal phenomenon—it is a deeply structural social reality. Social exclusion operates across multiple domains, each compounding the other,

---

<sup>12</sup>*State of Maharashtra v. Madhukar Narayan Mardikar* (1991) 1 SCC 57. Available at: <https://lawfullegal.in/state-of-maharashtra-and-another-vs-madhukar-narayan-mardikar-1990/>

<sup>13</sup>*Sahni v. Commissioner of Police*. Available at: <https://lawfoyer.in/amit-sahni-v-commissioner-of-police/>

<sup>14</sup>*P.N. Krishnalal v. Government of Kerala*. Available at: <https://www.casemine.com/judgement/in/5609aca5e4b014971140f682>

<sup>15</sup>Supreme Court of India, *Directions on Sex Workers* (May 2022). Available at: <https://ledx.law/wp-content/uploads/2022/06/Recognition-of-Sex-Workers-by-SC-1-1.pdf>

creating conditions of entrenched disadvantage that are extraordinarily difficult to escape.

### **A. Economic Marginalization**

Sex workers are systematically denied access to formal employment markets, both as a cause and consequence of their profession. Stigma and lack of formal education—itsself often a product of prior exclusion—render alternative employment nearly inaccessible. The absence of labour protections means no minimum wage, no occupational safety standards, and no social security. Dependence on brothel owners, pimps, and middlemen extracts a significant share of earnings, perpetuating economic precarity. The exclusion from formal banking and savings mechanisms further entrenches poverty and makes exit from sex work practically impossible for many.

### **B. Educational Deprivation and Intergenerational Cycles**

Most sex workers come from backgrounds of extreme educational disadvantage. Children of sex workers frequently encounter bullying, discrimination, and hostile school environments, leading to disproportionately high dropout rates.<sup>16</sup> This educational deprivation is not merely an individual misfortune—it is a structural mechanism through which marginalization is reproduced across generations. The Supreme Court's direction in *Gaurav Jain* that children of sex workers must not be stigmatized or denied educational access represents a judicial acknowledgment of this cycle, but implementation remains inconsistent.

### **C. Healthcare Exclusion**

Stigma erects formidable barriers to healthcare access. Fear of judgment, discriminatory attitudes from healthcare providers, and the absence of identity documents collectively deter sex workers from seeking medical help. The consequences are severe: elevated HIV/STI rates, untreated reproductive health conditions, and inaccessible mental healthcare despite very high levels of psychological distress. WHO modelling suggests that eliminating legal penalties and violence against sex workers could reduce new HIV infections among this population by 46% over a decade—a figure that illustrates how directly legal frameworks shape health outcomes.

### **D. Psychological Trauma and Identity**

The cumulative experience of stigma, violence, legal vulnerability, and social isolation

---

<sup>16</sup>Educational deprivation of sex workers' children documented in: <https://stewardshipreport.org/inside-indias-prostitution-villages-cruel-cycle-of-exploitation/>

produces profound psychological consequences: chronic shame, anxiety, depression, and trauma. The denial of recognition as legitimate workers—the reduction of sex workers' identities entirely to their profession and the presumption of victimhood attached to that profession—constitutes a form of epistemic violence. Policies premised on 'rescue and rehabilitation' without consent reinforce paternalistic attitudes and further strip sex workers of agency.

## **VI. Health, Trafficking, and the Conditions of Sex Work**

### **A. Health Outcomes**

The health burden borne by sex workers globally—and in India specifically—is disproportionate and well-documented. Female sex workers are approximately 30 times more likely to have HIV than other women in the general population. Indian studies have reported HIV prevalence exceeding 50% in certain brothel districts, with active syphilis prevalence averaging approximately 10.8%.<sup>17</sup> A Calcutta-based survey found that approximately 50% of sex workers entered the profession due to poverty and 84% were illiterate—structural conditions that compound health vulnerability.

Multiple barriers prevent effective healthcare access: police raids discourage clinic attendance and condom carrying; social stigma causes healthcare providers to deny services or treat sex workers with hostility; the lack of identity documents excludes many from formal health programmes. Effective interventions—condom distribution, STI and HIV screening, reproductive healthcare, and harm reduction services—require an enabling legal environment, which criminalization actively forecloses.

### **B. Sex Trafficking and Its Impact**

Trafficking fundamentally undermines the distinction between voluntary and involuntary sex work. Studies in southern India report that approximately 50.5% of young female sex workers entered the trade via trafficking.<sup>18</sup> Trafficked women are exposed to significantly higher rates of sexual and physical violence, HIV infection, and economic exploitation through debt bondage. In Mumbai, reports document sex workers surrendering 50% of their earnings to brothel owners—a form of economic coercion that prevents exit.

---

<sup>17</sup>BMC International Health and Human Rights (2006). Health outcomes and barriers to healthcare for sex workers in India.

<sup>18</sup>Research Gate: Sex Work and Social Exclusion (2024). Available at: [https://www.researchgate.net/publication/387312651\\_SEX\\_WORK\\_AND\\_SOCIAL\\_EXCLUSION](https://www.researchgate.net/publication/387312651_SEX_WORK_AND_SOCIAL_EXCLUSION)

Crucially, the conflation of trafficking with consensual sex work in law and enforcement has perverse effects. 'Anti-trafficking' raids routinely detain consenting adults, violating their liberty and reinforcing the very vulnerability that anti-trafficking measures are designed to address. The Supreme Court's panel has explicitly cautioned police against this conflation, recognizing that effective anti-trafficking enforcement requires a clear distinction between coercion and consent.

### **C. International Trafficking Trends**

According to UNODC data, women and girls accounted for 61% of detected trafficking victims globally in 2022, with children constituting 38% of the total. South Asia—including India—is a significant source and transit region. Trafficking networks exploit poverty, conflict, displacement, and false promises of legitimate employment. Criminal syndicates increasingly use online platforms to recruit victims. The Palermo Protocol of 2000 established the international legal framework, obligating member states to prevent trafficking, protect victims, and prosecute offenders—obligations India has formally accepted but unevenly implemented.

### **D. Comparative Legal Models**

The conditions of sex workers are profoundly shaped by legal frameworks. Four dominant models exist globally. Full criminalization—prevalent in much of Africa and parts of Asia—drives sex work underground, increasing vulnerability to violence and disease. The Nordic model—adopted in Sweden, Norway, and Canada—criminalizes purchase but not sale, aiming to reduce demand; critics document that it displaces workers to more dangerous settings. Legalization and regulation—operative in the Netherlands, Germany, and parts of the United States—provides some formal protection but may exclude irregular workers. Full decriminalization—as implemented in New Zealand since 2003 and New South Wales—treats sex work as legitimate labour, removing criminal penalties and integrating workers into occupational health and safety frameworks.

Evidence consistently indicates that criminalization produces the worst health and safety outcomes, correlating with higher STI transmission and violence. Legalized systems in Nevada report very low rates of on-site violence and STI transmission. New Zealand's decriminalization reform is associated with reduced violence and improved HIV outcomes. WHO modelling supports the view that decriminalization could reduce new HIV infections among sex workers by nearly half over a decade.

## **VII. International Human Rights Standards**

The UN Palermo Protocol of 2000 provides the foundational international legal instrument addressing trafficking. Its '3P framework'—Prevention, Protection, and Prosecution—establishes that trafficking is the recruitment, transportation, or harboring of persons through coercion, deception, or abuse of vulnerability for the purpose of exploitation, and that consent is irrelevant where such means are employed.<sup>19</sup>

The Protocol mandates victim-centered responses: states must support the physical, psychological, and social recovery of victims through housing, medical care, counselling, legal aid, and employment opportunities. Critically, victims must not be prosecuted for unlawful acts committed as a consequence of being trafficked. This principle is regularly violated in India, where trafficked women are frequently detained during 'rescue' operations and placed in 'protective homes' without meaningful consent.

CEDAW obliges states to combat exploitation of women in prostitution and address its root causes in gender inequality. The CRC establishes special protections for minors, treating children as incapable of consenting to exploitation and requiring their rehabilitation and reintegration. The UN Human Rights Committee and Office of the High Commissioner for Human Rights emphasize that anti-trafficking measures must be rights-based, non-discriminatory, and sensitive to individual autonomy.

India's international obligations thus demand an approach to sex work that distinguishes sharply between trafficking and consent, protects victims without punishing them, and addresses the structural conditions—poverty, gender inequality, caste discrimination—that generate vulnerability to exploitation.

## **VIII. Critical Analysis and Policy Recommendations**

### **A. The Paradox at the Core of Indian Law**

India's legal framework on sex work is structurally paradoxical: consensual adult sex work is not per se illegal, but virtually every activity required to conduct it safely is criminalized. The predictable result is that sex workers operate in legal grey zones, exposed to police discretion,

---

<sup>19</sup>UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol, 2000). See: <https://www.amnesty.org/en/documents/ior40/8233/2024/en/>

extortion, and arbitrary detention. The progressive jurisprudence of the Supreme Court—articulating constitutional rights to dignity, equality, and livelihood—sits in unresolved tension with a statutory framework that was designed in an era when 'protection' was synonymous with control. This gap between constitutional morality and legislative reality has real consequences for real people.

## **B. Reform Proposals**

First, the ITPA must be comprehensively amended—or replaced—to explicitly distinguish trafficking and coerced prostitution (criminal, attracting stringent penalties) from consensual adult sex work (non-criminal, rights-protected).<sup>20</sup> Definitions of consent, coercion, and exploitation must be legislatively precise to prevent enforcement overreach.

Second, associated activities that enable safer consensual sex work—including shared working arrangements—must be decriminalized. The criminalization of two sex workers sharing a premises as 'brothel-keeping' is a textbook example of how law generates danger in the name of protection. Regulation, not criminalization, of working environments is the appropriate policy response.

Third, sex workers must be incorporated into labour and social protection frameworks. This means access to identity documents, banking, insurance, and occupational health and safety standards. It means grievance mechanisms that sex workers can actually use without fear of prosecution. Such recognition need not constitute full legalization in the sense of a state-licensed brothel system; it can take the form of rights protections and welfare provisions applicable to informal workers.

Fourth, the Supreme Court's 2022 directions must be codified into binding statutory rules, including prohibitions on harassment of consenting adults, privacy protections in media reporting, child protection standards, and mandatory police sensitization with accountability mechanisms.

Fifth, healthcare access must be guaranteed as a non-negotiable right. This requires non-discriminatory services, free legal aid, community-based outreach, and mental healthcare provision. Partnerships with organizations such as the Sonagachi Project—which has demonstrated that empowering sex worker collectives to negotiate with clients and police can dramatically improve health outcomes—should be systematically scaled.

Sixth, anti-trafficking enforcement must be strengthened simultaneously. Decriminalizing

---

<sup>20</sup>Policy recommendations drawn from: <https://thelawwaywithlawyers.com/unheard-voices-prostitution-and-marginalization-in-india/>

consensual sex work does not mean reducing the legal response to trafficking; it means refocusing that response on coercion, exploitation, and organized criminal networks, while removing the perverse incentive structure that currently causes 'anti-trafficking' raids to harm the very people they purport to protect. Cross-border coordination, victim-witness protection, and asset seizure from traffickers should be priorities.

Seventh, policy must be designed through genuine consultation with sex worker collectives. Those most directly affected by legal frameworks have the clearest understanding of their practical consequences. Excluding sex workers from policy debates produces laws that serve the interests of enforcement agencies, moral crusaders, and political expediency—not the interests of the marginalized individuals whose lives are at stake.

### **IX. Conclusion**

The rights of those behind red lights are not a peripheral legal question—they are a test of India's commitment to its constitutional promises of equality, dignity, and life. For too long, the law has treated sex workers as objects of regulation and moral concern rather than as rights-bearing subjects. The paradox of India's legal framework—tolerating consensual sex work in principle while criminalizing its practice in substance—has produced predictable and documented harms: violence, disease, poverty, and intergenerational marginalization.

India's Supreme Court has, through decades of evolving jurisprudence culminating in the landmark directions of May 2022, articulated a vision of sex workers as full constitutional subjects. What remains is the institutional will to translate that vision into law. A legal framework that clearly distinguishes trafficking from consent, decriminalizes consensual adult sex work, integrates sex workers into labour and social protection systems, guarantees healthcare and legal aid, and grounds enforcement in rights rather than morality—such a framework would not only serve the interests of sex workers. It would strengthen India's capacity to combat trafficking, protect public health, and honour its domestic and international human rights obligations.

The silence must be broken—not by the prurient curiosity that treats sex work as scandal, nor by the paternalism that treats sex workers as perpetual victims, but by the serious, evidence-based, rights-centred engagement that the subject demands and that the Constitution requires.

## **Bibliography**

### **Primary Sources**

#### **Statutes**

- Immoral Traffic (Prevention) Act, 1956 (India).  
The Constitution of India, 1950. Articles 14, 15, 19(1)(g), 21, 23.  
Protection of Children from Sexual Offences (POCSO) Act, 2012.  
Bharatiya Nyaya Sanhita, 2023 (successor to the Indian Penal Code, 1860).

#### **Case Laws**

- Gaurav Jain v. Union of India, (1997) 8 SCC 114.  
Budhadev Karmaskar v. State of West Bengal, (2011) 10 SCC 477.  
State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1 SCC 57.  
Sahni v. Commissioner of Police, Delhi.  
P.N. Krishnalal v. Government of Kerala, (1995) Supp (2) SCC 187.  
Supreme Court of India, Directions on Rights of Sex Workers (May 2022), in Budhadev Karmaskar v. State of West Bengal.

#### **International Instruments**

- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), 2000.  
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.  
Convention on the Rights of the Child (CRC), 1989.  
UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949.

### **Secondary Sources**

#### **Journal Articles**

- Baker, L.M., Dalla, R.L., & Williamson, C. (2010). Exiting Prostitution: An Integrated Model. Violence Against Women.
- Davis, K. (1937). The Sociology of Prostitution. American Sociological Review, 2(5), 744–755.
- Miriam, K. (2005). Stopping the Traffic in Women: Power, Agency and Abolition in Feminist Debates over Sex Trafficking. Journal of Social Philosophy, 36(1), 1–17.
- UNODC (2022). Global Report on Trafficking in Persons.
- WHO (2012). Prevention and Treatment of HIV and Other Sexually Transmitted Infections for

Sex Workers in Low- and Middle-Income Countries. World Health Organization.

BMC International Health and Human Rights (2006). Health Outcomes and Barriers for Sex Workers in India.

International Journal of Humanities Social Science and Management (IJHSSM) — Structural Functionalism and Sex Work.

International Journal of Creative Research Thoughts (IJCRT) — Historical Analysis of the Devadasi System.

### **Books**

Dobash, R.E., & Dobash, R. (1979). Violence Against Wives: A Case Against the Patriarchy. New York: Free Press.

Goffman, E. (1963). Stigma: Notes on the Management of Spoiled Identity. Englewood Cliffs: Prentice-Hall.

Loue, S. (2001). Intimate Partner Violence: Societal, Medical, Legal and Individual Responses. New York: Springer.

MacKinnon, C. (1989). Toward a Feminist Theory of the State. Cambridge: Harvard University Press.

Smith, M., & Mac, J. (2018). Revolting Prostitutes: The Fight for Sex Workers' Rights. London: Verso.

### **Online Sources**

Amnesty International. (2024). Sex Workers' Rights are Human Rights. <https://www.amnesty.org/en/documents/ior40/8233/2024/en/>

Legal Service India. Evolution of Prostitution in India. <https://www.legalserviceindia.com/legal/article-12200-evolution-of-prostitution.html>

LEDX Law. Recognition of Sex Workers by the Supreme Court of India (2022). <https://ledx.law/wp-content/uploads/2022/06/Recognition-of-Sex-Workers-by-SC-1-1.pdf>

ResearchGate. Sex Work and Social Exclusion. [https://www.researchgate.net/publication/387312651\\_SEX\\_WORK\\_AND\\_SOCIAL\\_EXCLUSION](https://www.researchgate.net/publication/387312651_SEX_WORK_AND_SOCIAL_EXCLUSION)

Stewardship Report. Inside India's Prostitution Villages. <https://stewardshipreport.org/inside-indias-prostitution-villages-cruel-cycle-of-exploitation/>

The Law Way with Lawyers. Unheard Voices: Prostitution and Marginalization in India. <https://thelawwaywithlawyers.com/unheard-voices-prostitution-and-marginalization-in-india/>