

Regularizing Sex Work – Assessing the Implications and Benefits of Regulation

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Abstract

This paper investigates the complex concerns surrounding sex work in India, particularly in light of recent judicial developments. The Supreme Court of India's acknowledgment of sex workers' rights is a positive step forward, but the continued existence of the Immoral Traffic (Prevention) Act of 1956, which criminalizes brothels and other organized forms of sex work, highlights fundamental legislative shortcomings. This dichotomy creates a paradox in which sex workers are allowed rights while still being constrained by outmoded regulations that prevent them from operating securely and legitimately.

Sex work in India has long been associated with moral, social, and legal stigmas that heighten sex workers' marginalization and vulnerability. The paper criticizes the Supreme Court's decision for neglecting to address these deep-rooted concerns comprehensively. Despite legal recognition, sex workers continue to experience systemic discrimination, violence, and deplorable living conditions, which are exacerbated by societal prejudices and a lack of adequate legal protection.

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Drawing on foreign experiences, the article calls for the legalization and regulation of brothels as a way to safeguard sex workers' rights and well-being. Countries that have implemented decriminalization or regulated frameworks have seen an increase in sex workers' safety, health, and economic stability. Such reforms in India could result in improved protection and working circumstances that comply with global human rights norms. The author contends that transformative change necessitates legislative reform and a shift in public attitudes. Legalizing and regulating sex work would not only protect workers from exploitation and abuse but would also provide them with the dignity and respect that comes with any other career. The article continues by arguing that recognizing sex work as a legitimate profession inside a regulated framework is critical to achieving true justice and equality for sex workers in India.

Statement of Problem

Sex work, having existed when civilization came into being, holds the very importance of it being a profession. Putting a ban or criminalizing sex work can never remove sex work from existing in the world. With that being said, the researchers believe that it is essential to completely transform sex work from being an immoral activity to a professional service-providing profession. It is important to legalize sex workplaces such as brothels. In doing so, better regulations can help eradicate violations and abuse faced by the workers, reduce corruption at the hands of police and middlemen, and help trafficked minors from being entrapped and forced into this profession

Aim of Study

The purpose of this article is to critically examine the Supreme Court of India's recent decision on sex workers' rights and to emphasize the limitations of the current legal framework, notably the Immoral Traffic (Prevention) Act of 1956. It aims to highlight the ongoing issues that sex workers experience despite legal recognition, including discrimination, violence, and poor living conditions. The essay proposes broad reforms, such as legalizing and regulating brothels, to promote sex workers' safety, health, and economic stability. Finally, it seeks to advocate for the acknowledgment of sex labour as a legitimate career within a regulated environment.

Review of Literature

A literature on sex work policies from 1990 to 2020, encompassing 351 studies across 65 countries, provides a detailed analysis of various regulatory approaches: criminalization, legalization, decriminalization, and the Swedish mode¹.

- Criminalization is heavily condemned for sustaining stigma, discrimination, and hazardous working circumstances for sex workers. It forbids the selling as well as the purchase of sex. Research indicates that the illegality of sex work pushes it underground, making people more vulnerable to violence and health hazards, such as STIs.
- Legalization incorporates sex work into the legal system but frequently imposes strict limits due to government control through licenses and health inspections. Those who are unable to follow these rules may be marginalized and forced into dangerous or unlawful situations. Nonetheless, some research indicates that legalization might enhance compliant sex workers' access to health care and legal safeguards.
- Decriminalization calls for the abolition of criminal sanctions related to sex employment. This strategy promotes safer working conditions and lowers the prevalence of HIV, in line with human rights and public health viewpoints. Decriminalization creates an atmosphere where sex workers' rights are better protected by improving their access to legal protection, health care, and economic prospects.

¹ Karlsson, H. Sex Work Policy Worldwide: A Scoping Review. *Sexuality & Culture* 26, 2288–2310 (2022).

- The Swedish model² criminalizes the purchase of sex but decriminalizes its sale. While some research indicates that it lowers the number of purchasers and the prevalence of sex work, others contend that it pushes the industry underground, raising the hazards for sex workers and restricting their access to support services.

Another study highlights the necessity of acknowledging sex work as legal labour and argues in favour of a legal framework that safeguards the rights of sex workers³. It is asserted that this strategy will lessen social exclusion by improving access to resources and increasing their participation and representation in society. The paper emphasizes how crucial it is to guarantee workplace health and safety as well as provide legal assistance for redress in cases of abuse and unjust treatment.

One of the articles also discusses the serious socioeconomic and health issues that India's sex workers experienced during the COVID-19 pandemic⁴. Their vulnerability was made worse by the current legal system, social stigma, and insufficient government assistance efforts. The body of research supports legalizing and regulating sex work, establishing social security and welfare programs, and acknowledging it as a respectable profession. Incorporating sex workers into the policy-making process guarantees that their needs are adequately met.

² *Id.* At 1.

³ Anita Tagore, *Sex Workers Need to be Seen as Labour, Not Victims*, THE WIRE.

⁴ Dr. Debashri Sarkar, *Sex-Workers' In India: Examining Their Situation In The Light Of Covid-19 Pandemic*, INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES.

Discussing the potential benefits of legalization and the mental health impacts on sex workers is essential. By filling these research gaps, policymakers can develop more effective and inclusive strategies to support sex workers and protect their rights.

Research Objectives

- To examine the status of sex workers in India and the laws related to it
- To analyse the impact of regularising sex work and legalizing brothels in India
- To identify the effect of sex work on society and people
- To analyse how legalization would help tackle social problems of corruption, trafficking , and violence

Research Questions

- Whether sex work is immoral and unethical?
- What do people think of this practice and how does that affect the idea of sex work?
- Is the current law and legislature sufficient to protect sex workers' rights?
- What is the current condition of Sex workers in India?
- What is the need to legalize Sex work places such as brothels? What will be the impact?
- Would legalization help in solving the problem of corruption and trafficking?
- What can be the impact of stating Sex work at par with other professions?

Background

Sex work is the practice of engaging in sexual activity to earn money either regularly or occasionally⁵. Sex work encompasses various forms of sexual transactions, both direct and indirect, between providers and clients. These transactions are ‘presumed to be’ based on mutual consent and free will, without any coercion or compulsion, and are ‘claimed to be’ agreed upon by the respective parties. The majority of sex workers opt for sex work as the most viable option for them. Many sex workers face economic hardship and social marginalization and have limited alternatives for livelihood, which is why they chose this profession.

Brief History of Sex Work in India

India has a rich and diverse heritage of cultures, religions, and traditions. The ancient scriptures provide valuable insights into the history and society of India. Sex work has been a part of Indian culture since the times of Mahabharata when women were treated as objects of pleasure and reward⁶. There is also a cult of *Yellamma*⁷, the goddess of sex work, who has her own rituals and ceremonies. Many women were dedicated to serving at her temple, either temporarily or permanently. This practice has continued for generations and has become a social norm. The concept of *Apsaras*, the heavenly courtesans, and the mention of dancing girls in the *Rigveda*, also indicate the presence of sex work in ancient India. Women were often given as gifts to priests as a form of *Dakshina*⁸. However, with the advent of British colonialism, India underwent a radical transformation in its social, cultural, gender, and legal aspects. The British government imposed laws that

⁵ Anne McClintock, *Sex Workers and Sex Work: Introduction*, SOCIAL TEXT 1 (1993).

⁶ Kayla Pritchard, “*The Oldest Profession*”: *Sex Work through the Lenses of History, Feminism, and Sociology*, THE NOVUM (2021).

⁷ The Women Worshippers of Goddess Yellamma – The stories the states tell, EBOOKS.INFLIBNET.AC.IN.

⁸ Shreya Ghosh, *Exploring Prostitution in Ancient India: A Subversion of Contraries*, DHAARA (2023).

favoured their interests over the rights of the native Indians. They were fascinated by the phenomenon of sex work in India, but also used it as a justification for their colonial agenda. The British Parliament described sex work as a *depraved barbarism*⁹ that needed to be eradicated. The British colonial government also promoted Victorian morality and the notion of the “respectable woman”, which led to the stigmatization and marginalization of women engaged in sex work. They also introduced the concept of the *Red Light Area*, where sex work was confined and regulated.

The United Nations’ Stance on Sex Work

The UN working group has urged for the enhancement of sex workers’ rights in the international human rights law, as a crucial measure to tackle the pervasive discrimination sex workers encounter worldwide¹⁰. It advocated for the complete decriminalization of adult voluntary sex work, as the most effective way to combat the systemic discrimination and violence sex workers often endure, as well as the lack of accountability for the violations of sex workers’ rights. The UN supports the decriminalization of sex work and sex workplaces while denouncing trafficking. Human Rights Watch (2019)¹¹, World Health Organization (2015, 2016)¹², and The Joint United Nations Programme on HIV/AIDS (UNAIDS, 2012)¹³ have called for policymakers to protect sex workers by incorporating them into the regular labor market and by decriminalizing the

⁹ Diane Aiken, *Victorian Prostitution* | *British Literature Wiki*, BRITISH LITERATURE WIKI.

¹⁰ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, OHCHR (2000).

¹¹ World Report 2019: Rights Trends in You Should Be Worrying about the Woman Shortage, HUMAN RIGHTS WATCH (2019).

¹² World Health Organization, *HIV/AIDS*, WORLD HEALTH ORGANIZATION (2021).

¹³ Mattias Sundholm, *UNAIDS: Joint United Nations Programme on HIV/AIDS*, OFFICE OF THE SECRETARY-GENERAL’S ENVOY ON YOUTH (2013).

arrangement, sale, and purchase of sexual services among consenting adults. Amnesty International concurs with the UN working group in their recommendation of decriminalizing consensual sex work and ensuring the cessation of human rights violations suffered by sex workers¹⁴.

Current Indian Position on Sex Work

India has an ambiguous and inconsistent stance on this issue. The Supreme Court of India, in the landmark case of *Budhadev Karmaskar v. State of West Bengal*¹⁵, 2011, delivered by Justices L. Nageswar Rao, B.R. Gavai, and A.S. Bopanna on 19th May 2022, affirmed that women have the right to live with dignity and acknowledged sex work as lawful. Therefore, India's position on sex workers' rights is not divergent from the UN's approach to the same. Nevertheless, the recent verdict did not recognize sex work as a profession. This is the prevailing view of society as well. The practice is frowned upon by society as immoral and unethical. Sex work is not illegal, but the manner in which sex workers perform their jobs is. Brothels and places of sex work are prohibited. In the case of *Kajal Mukesh Singh And Ors vs The State Of Maharashtra*¹⁶, the Bombay High Court clarified that the law does not penalize sex workers, but aims to protect them. What the law forbids is sexual exploitation for commercial purposes, such as pimping, soliciting, or enticing in public places. It is also unlawful to run a brothel or permit its premises to be used for prostitution¹⁷. However, this forces sex workers to work at hotels, which are later raided by the police under the pretext of 'illegal activity'. Therefore,

¹⁴ Amnesty International, *Amnesty International publishes policy and research on protection of sex workers' rights*, AMNESTY.ORG (2016).

¹⁵ *Budhadev Karmaskar v. State of W.B.*, 2022 SCC OnLine SC 743

¹⁶ *Kajal Mukesh Singh v. State of Maharashtra*, 2020 SCC OnLine Bom 954

¹⁷ 10. *Kajal Mukesh Singh v. State of Maharashtra*, 2020 SCC OnLine Bom 954

sex work is legal, but the way it is done is not. This exposes the vague and contradictory position of Law and Courts in India. This does not contribute to reducing trafficking and violence. The law acknowledges that people who sell their bodies for money are victims, not offenders. The Immoral Trafficking (Prevention) Act 1956¹⁸ does not criminalize the act of prostitution itself, but the support systems that enable and facilitate prostitution. They have outlawed brothels and other places of sex work, which are how these workers perform their job. This obstacle to sex work being regarded as a genuine service-providing profession is what shall be challenged henceforth.

Analysis

Before addressing the issue of how and why sex work should be regularised, it is essential to examine and provide various arguments through literature reviews on other related aspects, such as the living and working conditions of sex workers, the challenges they encounter, and the policies and initiatives that would be suitable to resolve such issues and enhance the lives of sex workers. After conducting this analysis, it would be more feasible to answer the above question.

Living and Working Conditions of Sex Workers

Sex work in India is a challenging and demanding profession that requires a high level of physical resilience, stamina, and risk-taking. It is also influenced by various social and cultural norms. Sex workers face a lot of difficulties due to the social stigma that surrounds their profession. They are ostracized by society and disrespected by the public, especially in India, a country with diverse traditions and religious views, many of

¹⁸ Immoral Traffic (Prevention) Act, No. 104, Acts of Parliament, 1956 (India).

which condemn the practice of prostitution and regard it as immoral and unequal. An article that examines the living conditions of sex workers in one of the largest red light areas of Maharashtra - Kamathipur, reveals that the sex workers are mostly poor young girls from low-income families who are coerced into prostitution¹⁹. A survey of this red light area shows that the sex workers earn very little money, are frequently mistreated by the clients, have no adequate housing, and have to spend most of their meager income on rent. They also exhibit signs of malnutrition and deficiencies. Likewise, an analysis of living conditions in Kolkata's red light area- Sonagachi, indicates that the sex workers live in very poor conditions with no proper housing, very poor sanitation, and a lack of basic necessities²⁰. It is to be noted that sex workers in this red-light area were displaced but got back their rights in the case of *Durbar Mahila Samanwaya Committee v. State of W.B.*²¹ where the court held that sex workers have the right to carry on their profession without any interference from the police or municipal authorities. Thus, it can be seen how sex workers endure in harsh situations without any basic amenities, or access to basic resources, let alone luxuries.

Problems faced by Sex Workers

The plight of sex workers or prostitutes is appalling and demands urgent attention and intervention. Their occupation exposes them to various hardships and challenges that undermine their well-being and dignity. One of the foremost issues they confront is the social stigma and contempt that they face from the society.

¹⁹ Lindsay Gezinski & Sharvari Karandikar, Exploring Needs of Sex Workers From the Kamathipura Red-Light Area of Mumbai, India, 39 J. Soc. Serv. Res. 552 (2013)

²⁰ Sohini Das Gupta, In Kolkata's Red Light Area, Women Talk About Abuse Versus Agency, Sex Work as a Choice, The Wire (Jan. 25, 2024, 10:00 AM),

²¹ *Durbar Mahila Samanwaya Committee v. State of W.B.*, 2013 SCC OnLine Cal 17343

Furthermore, a large proportion of sex workers in India are impoverished and unable to afford their basic necessities and expenses²². They work relentlessly in a profession that is deemed ‘*immoral and unconventional*’, yet they fail to support their families and children adequately. They also endure frequent abuse and violence from their clients, who often bargain for their services or default on their payments. They have no recourse to justice or protection, as they fear losing their customers. They are also subjected to harassment and exploitation by the brothel owners, who control their lives and earnings. They are deprived of essential resources such as health care and education, which further marginalizes them. Their families and children also suffer from various adversities such as malnutrition, poor family environment, and lack of basic amenities. In fact, in the case of *Gaurav Jain v. Union of India*²³, it was held that the children of prostitutes have the right to equality of opportunity, dignity, care, protection, and rehabilitation to be part of the mainstream of social life without any pre-stigma attached on them but this is rarely happening and is very uncommon. The sex workers’ dignity is constantly violated and they are humiliated. They are vulnerable to various diseases such as STDs, HIV, skin infections, back and stomach pain. It is noteworthy that most of the sex workers undergo trauma, depression, poor mental health, loneliness, and poor reproductive health²⁴. Moreover, sex workers live in constant fear of being arrested and raided by the police officers, who often harass and extort them. Since brothels are illegal, they have no safe and secure place to practice their profession. This also jeopardizes their safety and security. Even though the sex workers are the victims, they

²² Shriya Patnaik, *The Invisible Voices of India’s Informal Sector Sex Workers*, SOUTH ASIA@LSE (2021).

²³ *Gaurav Jain v. Union of India*, (1997) 8 SCC 114

²⁴ Geetanjali Misra, Ajay Mahal & Rima Shah, *Protecting the Rights of Sex Workers: The Indian Experience*, 5 HEALTH AND HUMAN RIGHTS 88 (2000).

are criminalized rather than the men who procure their ‘sexual services’. Another major problem is that when a sex worker wants to exit prostitution, it is extremely difficult for them to find alternative livelihoods and earn respect in society.

Recommendations

The preceding paragraph highlights the urgent necessity of reforming the legal and social status of prostitution to ameliorate the lives of sex workers. It also points out the discrepancy between the Supreme Court’s verdict and the expected outcomes. The author suggests some feasible solutions that he or she considers appropriate for enhancing the living conditions of sex workers. The crux of the argument is that both social and legislative changes should be implemented simultaneously. This entails that the Indian authorities should undertake initiatives that aim to transform the attitudes of the people and foster societal change. This would enhance the way society views sex workers and grant them the dignity and acknowledgment that they seek and deserve. Regarding the legislative changes, the author advocates that the foremost step should be to legalize and regulate brothels by the government. This would improve the quality of the brothels, curb the harassment of sex workers by police officers, clients, and brothel owners, provide legal safeguards to sex workers, and normalize the concept of sex work. Moreover, this would also benefit the state as it could levy taxes on the brothel’s income (not the sex worker’s income). This would also diminish the amount of illicit money that flows into the business due to its illegality and thus curb corruption. The author essentially favors a system where prostitution/sex work is regarded as a legitimate profession like any other. Additionally, the author opines that extending and ensuring the protection of sex workers under the labor laws would help mitigate the crime and trafficking that they endure and also boost their financial and economic situation.

Hence it is established that the legalization and regularisation of brothels can lead to transforming the designation of sex work as an “illegal business activity” to a legally recognized service-providing profession where nobody shall be deemed in a negative way for being in this profession but rather shall be seen as a professional with skills like any other profession. They would be called service providers or entertainers like any other artists.

Conclusion

The comprehensive analysis of the literature on the regularization of sex work underscores a compelling case for considering the potential benefits of regularising sex work through the implementation of legalization of brothels and the recognition of sex work as a professionally designated job. The evidence points towards a substantial reduction in corruption and abuse faced by these sex workers in the hands of law enforcement and human trafficking. While acknowledging the complex nature of this issue, it is clear that a well-regulated and legalized system can contribute significantly to improving the safety and well-being of sex workers and the broader society.

The author believes that the legalization of sex workplaces can create a drastic change in society. Not turning a blind eye to the fact that mass protests may arise in condemnation of the law. However, progress always comes with change. Change is the beginning with which we can be more welcoming to the downtrodden within society and put an end to human rights violations. Legalizing brothels and places of sex work will not only transform the practice into a profession, but it will also change the negative notions of ‘red light’ areas to places where people go to satisfy their basic human needs. It will create better and safer living conditions.

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It is to be noted that in no way the author intends to promote sex work as a profession rather the main aim is to ensure that the rights and safety of those already in the business are assured and protected.

The author also believes that the legalization of sex work can one day become a legal contractual business where there will be an exchange of money for services and it shall have no difference from any other service-providing. The findings from this review highlight the need for continued research, open dialogue, and policy development to harness the positive impact that the legalization of sex work can have on these critical societal issues.