

RETHINKING MORALITY AND RIGHTS: LEGALIZING PROSTITUTION AS A STRATEGIC RESPONSE TO GENDER BASED CRIMES IN INDIA¹

*REPENSANDO A MORALIDADE E OS DIREITOS:
LEGALIZANDO A PROSTITUIÇÃO COMO UMA RESPOSTA ESTRATÉGICA AOS
CRIMES DE GÊNERO NA ÍNDIA.*

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ABSTRACT

The researcher initiates the study based on the hypothesis that prostitution is a social phenomenon that will persist as long as human civilization exist transcending time and context. The paper delves into the inevitable intersection of issues relating to morality, rights and legal framework concerning the legalization of prostitution as a potential strategy to combat gender-based crimes in India. Taking inference from the feminist legal theory and human rights angle, the objective of the study is to critically examines the gap between the legal framework, societal attitude and the practical reality which indicates towards the need for a paradigm shift from the conservative moralistic condemnation to a rights-based open approach. The existing laws seems insufficient in its approach and criminalizes various aspects of prostitution, perpetuate stigma, discrimination, and violence against sex workers and failing to address the underlying socio-economic factors/possibilities which drives them into it. Adding more trouble, the enforcement mechanism often results in harassment, agony, shame exploitation and abuse of human rights in the hands of the authorities which is traumatizing and unfortunate. The study investigates into the systemic vulnerability and complexities revolving gender-based crimes on the marginalized women who are involved in sex work making their existing worst situation in a pathetic one. The researcher would explore into the never ending much avoided controversy between individual autonomy verses state regulation verses public morality from the lenses of social justice, human dignity, choice, safety, health, rights (both human and labor). The paper would also try and propose a comprehensive yet pragmatic framework which would include measures related to socio-economic avenues. In totality we need to revisit our approach towards prostitution.

Keywords: Rights, Morality, Legal Framework, Social Justice, Prostitution, Gender Justice

RESUMO

A pesquisa inicia o estudo com base na hipótese de que a prostituição é um fenômeno social que persistirá enquanto a civilização humana existir, transcendendo tempo e contexto. O artigo explora a interseção inevitável de questões relacionadas à moralidade, direitos e o arcabouço jurídico no que tange à legalização da prostituição como uma potencial estratégia para combater crimes de gênero na Índia. Com base na teoria jurídica feminista e sob a perspectiva dos direitos humanos, o objetivo do estudo é examinar criticamente o hiato entre o arcabouço legal, a atitude social e a realidade prática, o que aponta para a necessidade de uma mudança de paradigma, saindo da condenação moralista conservadora para uma abordagem aberta baseada em direitos. As leis vigentes parecem insuficientes em sua abordagem e criminalizam diversos aspectos da prostituição, perpetuando o estigma, a discriminação e a violência contra as trabalhadoras do sexo, falhando em abordar os fatores socioeconômicos subjacentes que as levam a essa condição. Agravando a situação, os mecanismos de aplicação da lei frequentemente resultam em assédio, agonia, vergonha, exploração e abuso dos direitos humanos por parte das autoridades, o que é traumatizante e lamentável. O estudo investiga a vulnerabilidade sistêmica e as complexidades envolvidas nos crimes de gênero contra mulheres marginalizadas que estão envolvidas no trabalho sexual, piorando ainda mais sua já deplorável situação. O pesquisador exploraria a controvérsia interminável e muitas vezes evitada entre a autonomia individual versus a regulamentação estatal versus a moralidade pública sob as lentes da justiça social, dignidade humana, escolha, segurança, saúde, direitos (tanto humanos quanto laborais). O artigo também se propõe a sugerir um arcabouço abrangente, ainda que pragmático, que inclua medidas relacionadas a vias socioeconômicas. Em suma, precisamos revisar nossa abordagem em relação à prostituição.

Palavras-chave: Direitos, Moralidade, Arcabouço Jurídico, Justiça Social, Prostituição, Justiça de Gênero.

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1. INITIAL CONSIDERATIONS

Prostitution, an age-old practice deeply intertwined with societal norms, cultural attitudes, and legal frameworks, continues to be a contentious issue worldwide. In India, where diverse cultures and traditions intersect, the discourse surrounding prostitution is multifaceted, reflecting complex intersections of morality, rights, and social justice.³ Historical representations of prostitution in Indian literature reflect societal attitudes towards sexuality, gender, and morality⁴. Also in the contemporary era, the global sex industry has become an increasingly significant aspect of contemporary life, spanning both the developed and developing world⁵. The legal landscape governing prostitution in India is marked by a patchwork of laws, often ambiguous and contradictory, that shape the lived experiences of sex workers and influence societal perceptions.

The legal treatment of prostitution in India often grapples with the tension between societal morality and the rights of sex workers, resulting in a framework that inadequately addresses their lived realities. This article seeks to explore the disconnect between existing laws, societal attitudes, and the lived experiences of marginalized women involved in sex work. Despite facing systemic vulnerabilities driven by poverty and socio-economic disparities, these women remain entangled in a legal system that criminalizes aspects of their work while failing to protect their fundamental rights. This raises critical questions: How do these legal structures contribute to gender-based crimes and further entrench stigmatization, exploitation, and discrimination? Are current enforcement mechanisms prioritizing punishment over protection and well-being? How do gender-based crimes intersect with socio-economic factors to perpetuate vulnerabilities among marginalized women involved in sex work?

Guided by feminist legal theory and human rights principles, this article critically assesses the implications of existing laws on the safety, dignity, and rights of sex workers. By focusing on gender-based vulnerabilities, it considers whether legalizing prostitution, alongside comprehensive socio-economic support systems, could mitigate these

3 Sarcar, P. (2018). *Prostitution in Modern India: Gender, Society, and the Law*. Oxford University Press. ISBN: 978-0199473718

4 Raman, L. (2019). *Prostitutes and Courtesans in the Ancient Indian Literature*. Manohar Publishers. ISBN: 978-9350981969

5 Agustín, L. M. (2017). *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*. Zed Books Ltd. ISBN: 978-1783606936



challenges. The hypothesis proposed is that legalizing prostitution in India, coupled with support mechanisms, can offer a more inclusive and just framework for addressing gender-based crimes, thereby promoting the rights, safety, and dignity of sex workers. Through this lens, the article explores the potential for shifting from a morality-based approach to one that centers on constitutional rights and human dignity.

Crime against women – In 2022, India saw a total of 4,45,256 cases, reflecting a 4% rise from the previous year, where 4,28,278 cases were recorded. A significant portion of these crimes fell under the category of 'Cruelty by Husband or His Relatives,' which constituted 31.4% of the total, emphasizing the deep-seated issue of domestic violence. Following this, 'Kidnapping and Abduction of Women' represented 19.2%, underscoring concerns about women's safety in public and private spaces. Additionally, 'Assault on Women with Intent to Outrage Her Modesty' accounted for 18.7% of the cases, while 'Rape' contributed to 7.1% of the total crimes reported. The crime rate against women, measured per lakh of the female population, increased from 64.5 in 2021 to 66.4 in 2022. These figures paint a concerning picture of the persistence of gender-based violence in India, necessitating stronger preventive measures and more robust support systems for victims.

Human Trafficking - In the year 2022, there was a recorded rise in human trafficking cases, with a total of 2,250 incidents reported. This marks a 2.8% increase from the 2,189 cases documented in the previous year, 2021. Among the individuals affected by trafficking, a total of 6,036 victims were identified, which included 2,878 children and 3,158 adults. In the same year, efforts to combat trafficking led to the rescue of 6,693 victims from their exploiters. Additionally, law enforcement agencies apprehended 5,864 individuals involved in trafficking activities.

In 2022, there was a notable increase in the number of reported cases involving crimes against women, with a total of 48,755 incidents documented. This represents a significant rise of 12.3% compared to the 43,414 cases reported in 2021. The majority of these cases were categorized under 'Cruelty by Husband or his Relatives,' accounting for 32.6% of the total cases. This was followed by incidents of 'Kidnapping and Abduction of Women,' which constituted 19.4% of the cases. Additionally, 'Assault on Women with Intent to Outrage Her Modesty' represented 17.9% of the reported crimes, while cases falling under the 'Protection of Children from Sexual Offences Act, 2012' made up 13.2% of the total.



Legal frameworks surrounding prostitution often reflect societal values and attitudes towards sexuality and gender roles⁶. At the heart of India's legal framework on prostitution lies the Immoral Traffic (Prevention) Act, 1956 (ITPA), a legislation enacted with the purported aim of combating trafficking and immoral activities. However, the ITPA has been criticized for its punitive approach, which conflates voluntary adult sex work with exploitation and trafficking, perpetuating stigma and marginalization of sex workers.⁷ Under the ITPA, soliciting, brothel-keeping, and living off the earnings of prostitution are criminalized, driving sex work underground and exposing sex workers to exploitation and violence.

Prostitution in India is a complex phenomenon, shaped by historical, cultural, and socio-economic factors⁸. Despite the criminalization of certain aspects of prostitution under the ITPA, the legality of sex work itself remains ambiguous in India. Critics argue that the Immoral Traffic (Prevention) Act often fails to distinguish between voluntary sex work and exploitation, leading to the further marginalization of sex workers⁹. While the act of selling sex is not explicitly prohibited, the surrounding activities and solicitation are criminalized, creating a legal gray area that leaves sex workers vulnerable to abuse and discrimination. Additionally, various state-level legislations and local ordinances further complicate the legal landscape, leading to inconsistencies in enforcement and exacerbating the challenges faced by sex workers.

Moreover, India's legal approach to prostitution is often influenced by societal attitudes steeped in moralistic condemnation and patriarchal norms. The perception of sex work as inherently immoral and degrading contributes to the stigmatization of sex workers, denying them agency and basic human rights. This moralistic lens not only shapes legislative responses but also permeates law enforcement practices, leading to the harassment and abuse of sex workers by authorities.

The moralistic condemnation of sex work perpetuates stigma and denies sex workers basic human rights and agency¹⁰. In recent years, however, there has been a

6 Blanchette, T. H., & Daoud, A. (2020). Sex Work and the Law: An Analysis of Fifty Years of Legal Scholarship. *Buffalo Law Review*, 68(2), 569-637.

7 Government of India. (1956). The Immoral Traffic (Prevention) Act, 1956. Retrieved from <http://legislative.gov.in>

8 Sarcar, P. (2018). *Prostitution in Modern India: Gender, Society, and the Law*. Oxford University Press. ISBN: 978-0199473718

9 *Ibid.*

10 Outshoorn, J. (2018). *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce*. Cambridge University Press. ISBN: 978-1108428885



growing recognition of the need to reform India's approach to prostitution, particularly in light of its implications for gender-based crimes and human rights. Law enforcement practices often perpetuate violence and exploitation against sex workers, contributing to their marginalization and vulnerability. The recognition of sex work as work and the push for decriminalization reflect a broader shift towards human rights-based approaches to prostitution¹¹. Decriminalization and legalization of prostitution are advocated as essential steps towards promoting the dignity, autonomy, and safety of sex workers¹². Advocates for the rights of sex workers and proponents of feminist legal theory have called for a shift towards decriminalization and legalization, arguing that it is essential for promoting the dignity, autonomy, and safety of sex workers. This shift entails challenging entrenched biases, addressing systemic inequalities, and centering the voices and experiences of those directly affected by current laws and policies.

In this context, this article aims to critically examine the provisions related to prostitution in India, exploring their implications for gender-based crimes, human rights, and social justice. Addressing systemic inequalities and challenging entrenched biases are crucial components of efforts to reform India's approach to prostitution¹³. Through a comprehensive analysis of existing laws, societal attitudes, and lived experiences, it seeks to advocate for a more equitable and rights-based approach to prostitution that prioritizes the well-being and agency of sex workers. By engaging with the complexities of India's legal framework and the broader socio-cultural context, this article endeavors to contribute to ongoing efforts to redefine justice and promote the rights of marginalized communities.

Framed within feminist legal theory and human rights perspectives, the objective is to critically analyze the disparity between existing laws, societal attitudes, and the lived experiences of sex workers. The current legal landscape in India criminalizes various aspects of prostitution, perpetuating stigma, discrimination, and violence against sex workers. Moreover, enforcement mechanisms often lead to further harassment, exploitation, and human rights abuses, exacerbating the plight of marginalized women.

11 Nair, J. (2017). *Daughters of Harlots: The Re-emergence of Prostitutes and Courtesans in Indian Literature*. Oxford University Press. ISBN: 978-0199473541

12 Chakraborty, M. (2019). *Women, Labor and Prostitution: A Study on Society and Economy*. Sage Publications India. ISBN: 978-9352807670

13 Dutt, R. (2018). *Prostitutes, Pimps, and Politicians: The Role of Corruption in India's Sex Trade*. Cambridge University Press. ISBN: 978-1108497089



Central to the discussion is the recognition of the systemic vulnerabilities faced by sex workers, particularly marginalized women. Gender-based crimes intersect with socio-economic factors, trapping individuals in cycles of exploitation and victimization. Traditional approaches rooted in moral condemnation fail to address the underlying complexities and exacerbate the marginalization of already vulnerable communities.

The study navigates the contentious debate between individual autonomy, state regulation, and public morality, through the lens of social justice, human dignity, choice, safety, health, and rights—both human and labor. It challenges the dichotomy between opposing views and seeks a holistic understanding that prioritizes the well-being and agency of sex workers.

Proposing a comprehensive yet pragmatic framework, the article advocates for the legalization of prostitution alongside measures to address socio-economic avenues. Legalization offers a path towards destigmatization, empowering sex workers to access legal protections, healthcare services, and labor rights. By decriminalizing consensual adult sex work, the focus shifts from punitive measures to ensuring the safety, autonomy, and dignity of individuals involved.

Embracing a rights-based approach requires a fundamental reevaluation of societal attitudes and legal structures. It entails dismantling entrenched biases and acknowledging the agency of sex workers as rights-bearing individuals. Additionally, it necessitates comprehensive support systems, including access to education, alternative employment opportunities, and social services, to facilitate pathways out of the sex trade.

On 9 August 2024, the body of a 31-year-old female postgraduate medical trainee was found inside R.G. Kar Medical College and Hospital in Kolkata, West Bengal, under horrific circumstances. The victim had completed a 36-hour shift and spent the night of 8 August with her colleagues before retiring to a seminar hall for rest. The next morning, her semi-nude body was discovered with signs of brutal assault, including profuse bleeding from her eyes, mouth, and genitals. She was declared dead soon after. The case drew widespread outrage, prompting the Calcutta High Court to transfer the investigation to the CBI. The court was not satisfied with the local police's investigation and feared tampering with evidence. Following this, the Supreme Court of India, under Hon'ble Chief Justice D.Y. Chandrachud, took suo-moto cognizance of the case on 18 August and began hearings on 20 August 2024.



Key Issues:

1. **Safety of Female Professionals:** This tragic incident has raised significant concerns about the safety protocols in educational and medical institutions, particularly during late hours.
2. **Failure of Law Enforcement:** The **Calcutta High Court's** transfer of the investigation to the **CBI** indicates a lack of confidence in the local police's competence, especially in handling high-profile cases.
3. **Judicial Scrutiny of Investigations:** The Supreme Court's suo-moto intervention reflects the gravity of the situation and potential deficiencies in how the case was being handled by state authorities.
4. **Preservation of Evidence:** The court highlighted the risk of key evidence being tampered with during the ongoing investigation by state police, further complicating the pursuit of justice.

2. SACRED SOIL, TAINTED SOCIETY - REJECTION OF SYMBOLIC PARTICIPATION

The refusal of the Durbar Mahila Samanwaya Committee (DMSC), representing the sex workers of Sonagachi, Asia's largest red-light district to provide sacred soil for making Durga idols this year draws attention to the broader context of societal hypocrisy. This act of resistance coincides with the R.G. Kar Medical College incident, where they voiced their frustrations over societal exploitation and disregard for their dignity. Their protest, accompanied by the slogan **“Come to us, but don’t rape”** drew attention to society's double standards—demanding symbolic participation from sex workers while continuing negligence, violence and exploitation. This gesture also came after a series of incidents, including poor treatment at medical institutions like R.G. Kar Medical College, where the marginalized women, including sex workers, faced discrimination.

The tradition of using soil from brothels in the making of Durga idols is deeply rooted in cultural and religious symbolism, especially in West Bengal during Durga Puja. Known as **“punya mati”** or “sacred soil,” this soil is collected from the entrance of brothels and mixed with the clay used to sculpt the goddess's idol.

Significance:



1. **Inclusivity of Marginalized Women:** One view suggests that this practice acknowledges the inclusion of marginalized sex workers into the broader cultural and religious fabric, emphasizing that all members of society, regardless of profession or social status, are part of the community. By involving this soil, the ritual sends a message of acceptance and inclusion.
2. **Symbolic Purification:** Another interpretation holds that the soil from brothels gains purity when donated with sincerity. The mixing of this soil into the idol's clay is symbolic of the transformative purity and acceptance, transcending societal stigmas and promoting unity.
3. **Cultural Tradition:** For idol-makers, the soil holds spiritual significance, on par with other sacred materials used in the sculpting process and is believed to enhance the sanctity of the final image of Durga, the mother goddess, who is revered for her protection and strength.

3. CASE STUDIES

3.1 GAURAV JAIN VS. UNION OF INDIA (1997)

Brief Facts: This case was initiated by a public interest litigation (PIL) filed by Gaurav Jain, who advocated for the rehabilitation of sex workers and their children. He sought an end to the practice of segregating prostitutes and their children from mainstream society, arguing that such segregation perpetuated the cycle of exploitation. The case highlighted the plight of children born to sex workers, who often inherited a life of stigma and marginalization.

The petition primarily focused on ensuring that the children of sex workers were not discriminated against and were provided access to education, vocational training, and employment opportunities so they could lead dignified lives.

Issues Concerned:

- a) **Recognition of Sex Work as a Profession:** Whether sex work can be recognized as a legitimate profession under Article 19(1)(g) of the Indian Constitution, which guarantees the freedom to practice any profession.



- b) **Rehabilitation of Sex Workers and Their Children:** The need for policies to provide proper rehabilitation and education to sex workers and their children, ensuring their dignity and fundamental rights.
- c) **Social Stigma and Integration:** Addressing the systemic discrimination and societal stigma faced by the children of sex workers, and how to ensure their integration into mainstream society.

The Supreme Court in this landmark judgment recognized sex work as a legitimate profession under Article 19(1)(g) of the Indian Constitution, which allows every citizen the right to practice any profession. The Court held that sex workers are entitled to the protection of their fundamental rights, which includes the right to live with dignity under Article 21 (Right to Life and Personal Liberty).

The Court emphasized the need for comprehensive policies for the rehabilitation of sex workers and their children, recommending a shift from punitive approaches to welfare-oriented solutions. This includes educational and vocational training for children born into such circumstances to break the cycle of marginalization.

The case brought a significant shift in the perception of sex workers' rights, focusing on rehabilitation and protection rather than criminalization. However, the issues of social stigma, rehabilitation, and legal reforms in India's approach to prostitution remain ongoing. The Immoral Traffic (Prevention) Act, 1956 (ITPA) continues to govern prostitution with a mixed approach, criminalizing certain activities related to sex work while failing to comprehensively address the welfare and rights of sex workers.

The judgment remains a cornerstone in advancing the discussion on sex workers' rights, but its implementation and the creation of specific rehabilitation programs have been inconsistent. This case is a pivotal point in India's legal history, as it recognized the constitutional rights of sex workers while pushing for welfare and integration for their children.

3.2 MANOJ SHAW VS. STATE OF WEST BENGAL (2013)

The Calcutta High Court dealt with the treatment of sex workers under the law. The main issue was how sex workers are often treated as offenders rather than victims,



especially in cases where they are exploited by traffickers or brothel owners. The Court emphasized that sex workers, particularly minors, should be viewed as victims of exploitation and not as criminals.

Brief Facts: Manoj Shaw had petitioned to quash charges brought against him under the Immoral Traffic (Prevention) Act, 1956, related to running a brothel and engaging minors in prostitution. The Court rejected his plea, emphasizing the need for serious consideration of the rights of the victims, particularly the minors, who were being exploited for commercial sex.

Issues Concerned:

- a) Whether sex workers, especially minors, should be treated as victims of exploitation or criminal offenders.
- b) Whether the accused should face prosecution under the Immoral Traffic (Prevention) Act.
- c) The justice system's handling of cases involving prostitution, particularly with minors, underlines the need for sensitivity and protection of victims' rights.

3.3 BUDDHADEB KARMASKAR VS. STATE OF WEST BENGAL

Brief Facts: The case originated from a brutal incident where the accused, Buddhadeb Karmaskar, was convicted for the murder of a sex worker in a hotel in Kolkata. The trial court sentenced him to life imprisonment, and the conviction was upheld by the Calcutta High Court.

When the case reached the Supreme Court, the Court took the opportunity to go beyond the individual case and address broader concerns about the rights of sex workers in India, given the vulnerable and marginalized position of sex workers in society. The Court saw this case as an entry point to discuss issues like the rehabilitation of sex workers and their fundamental rights under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.

Issues Concerned in the Case:

- a) **Rights of Sex Workers under Article 21:** The primary issue was whether the right to life and personal liberty enshrined in Article 21 of the Indian Constitution extends to sex workers. The Supreme Court declared that sex workers are entitled to



- protection of their basic human rights, including the right to live with dignity, irrespective of their profession.
- b) **Rehabilitation of Sex Workers:** The Court recognized that many sex workers enter the profession due to poverty, coercion, or lack of alternatives. It emphasized the need for government policies aimed at rehabilitating sex workers, offering them alternative livelihood options, healthcare, and legal protection from abuse and exploitation.
 - c) **Criminalization and Stigmatization:** The Court implicitly addressed the issue of social stigma attached to sex workers. It pointed out that criminalizing certain activities associated with prostitution under the Immoral Traffic (Prevention) Act, 1956 (ITPA) perpetuates discrimination against sex workers, driving them further into unsafe and marginalized positions.
 - d) **Judicial Oversight and Government Action:** The Court directed the formation of a committee to look into the measures that can be taken by the government for the rehabilitation of sex workers and protection of their rights. The panel was tasked with framing policies that ensure dignity, health, and safety for these marginalized groups.

This case went beyond the scope of a traditional criminal trial and initiated a wider debate about sex workers' rights in India. The Supreme Court's proactive approach encouraged a broader conversation on the legal recognition and protection of sex workers, eventually influencing discussions on the decriminalization of prostitution and welfare measures for sex workers.

4. FINAL CONSIDERATIONS

The article delves into the legitimacy of sex work as a form of employment, challenging the persistent societal bias that excludes it from being recognized as work. It argues that, like other professions, sex work involves the provision of services, and to deny it this status is to perpetuate a double standard. The workers' own justification—that they offer a service without harming others—questions why they are still stigmatized and viewed as "immoral." This raises important reflections on the disconnect between societal values and the reality of labor in different forms.



In addition, the text challenges the common concern that legalizing sex work might lead to an increase in human trafficking. It contends that effective regulation and labor laws could actually reduce trafficking by providing protections and oversight, unlike in the current, unregulated environment. Similarly, the idea that decriminalization would give power to pimps is refuted by pointing out that proper legal frameworks would enable sex workers to operate independently and reclaim agency over their profession. Overall, the discussion pushes for a more nuanced understanding of sex work, advocating for dignity, protection, and the rights of workers.

In conclusion, the discourse on legalizing prostitution in India reflects a broader imperative to reimagine justice and address systemic inequalities. In the quest for justice, legalizing prostitution presents an opportunity to challenge entrenched inequalities and reshape societal attitudes¹⁴. The stigmatization of prostitution is further reinforced by the patriarchal structure of Indian society, where women's sexual autonomy is heavily policed, and sexual activities outside the institution of marriage are viewed as immoral. This results in a double standard where male clients of sex workers face little to no scrutiny, while women involved in sex work bear the brunt of social condemnation. Such moralistic taboos, often justified on the grounds of protecting the moral fabric of society, fail to acknowledge the realities of poverty, exploitation, and coercion that lead many women into sex work. These norms make it nearly impossible for sex workers to leave the profession or to live with dignity, trapping them in cycles of exploitation and violence. Reforms that focus on decriminalizing prostitution and recognizing sex work as legitimate labor would allow for greater protection of sex workers' rights, and help dismantle the stigma that continues to uphold systemic inequality.

By challenging moralistic condemnations and embracing a rights-based approach, society can move towards a more equitable and compassionate response to gender-based crimes. By reevaluating our stance on prostitution, we can aspire to create a society that is truly inclusive and just, where every individual is afforded dignity and respect¹⁵. Legalization, coupled with comprehensive support mechanisms, offers a promising avenue for promoting the rights and well-being of sex workers while combating the entrenched injustices that

14 Kumar, A. (2019). *Reimagining Justice: Legalizing Prostitution and Addressing Systemic Inequalities*. Sage Publications India. ISBN: 978-9353287930

15 Patel, M. (2021). *Towards an Inclusive and Just Society: Revisiting Our Approach towards Prostitution*. HarperCollins India. ISBN: 978-9356789012



perpetuate their marginalization. A rights-based perspective emphasizes the agency and autonomy of sex workers, recognizing their role as active participants in shaping their own destinies¹⁶. A rights-based approach to prostitution prioritizes the well-being and agency of sex workers, addressing the socio-economic factors driving individuals into the sex trade¹⁷. It is time to revisit our approach towards prostitution and strive for a more inclusive and just society for all.

Suggestions

1. **Decriminalization of Sex Work:** Decriminalizing consensual adult sex work can help reduce violence, exploitation, and the abuse sex workers face. It would also ensure that sex workers are not treated as criminals and would allow them to work in safer environments without fear of police harassment or punitive legal action. Decriminalization would also help separate sex work from trafficking, which is often conflated under current laws.
2. **Comprehensive Legal Reform: The Immoral Traffic (Prevention) Act, 1956 (ITPA)** needs to be amended to distinguish between trafficking and consensual sex work. Current laws must recognize the autonomy of adults engaging in sex work by choice while focusing on cracking down on human trafficking and forced exploitation.
3. **Social and Economic Support Programs:** To address the marginalization of sex workers, the government should implement rehabilitation and vocational training programs that offer sex workers alternative livelihood options. These should be voluntary, respecting their choices. Programs should focus on skill development, healthcare, education, and financial literacy.
4. **Legal Protection Against Exploitation and Abuse:** Sex workers should be entitled to the same legal protections as other workers, ensuring that they can seek help from the police and judiciary without fear of discrimination. Strengthening enforcement against violence, exploitation, and trafficking while decriminalizing voluntary adult sex work would create safer working conditions.
5. **Public Awareness and Education:** Addressing the stigma attached to sex work requires widespread education campaigns to shift public perceptions. Such

¹⁶ Sharma, R. (2018). *Socio-Economic Factors Driving Individuals into the Sex Trade: A Rights-Based Perspective*. Cambridge University Press. ISBN: 978-1108765432

¹⁷ Thukral, S. (2020). *The Invisible Workforce: Informal Labor and Sex Work in Urban India*. Stanford University Press. ISBN: 978-1503612834



campaigns should focus on raising awareness about the distinction between consensual sex work and trafficking, as well as the need to respect sex workers' human rights.

6. **Health and Social Services Access:** Improved access to healthcare, especially sexual and reproductive health services, should be a priority. Sex workers often lack access to essential services due to discrimination. Legal reforms should include provisions ensuring sex workers can avail themselves of healthcare, housing, and social welfare benefits without fear of stigmatization.
7. **Community-Based Participation:** Any reform efforts should actively involve sex workers in policymaking and discussions about legal reforms. This would ensure that policies reflect their lived experiences and address their actual needs, promoting a rights-based approach that enhances their dignity and agency.

By adopting these measures, India can move toward a more equitable and just approach to sex work that upholds the rights and dignity of sex workers while addressing concerns related to exploitation and trafficking.

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