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## NAVIGATING THE LABYRINTH: INDIAN LAWS ON PROSTITUTION<sup>1</sup>

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### Abstract

This research paper takes a deep, thorough look at India's complicated legal framework around sex work, examining it through the lens of evolving international law and human rights standards. The central argument is that India's main law on the subject—the Immoral Traffic (Prevention) Act of 1956—is outdated and does more harm than good. Born out of a mid-20th century abolitionist mindset, the ITPA has created a system where sex work is effectively criminalized, making workers more vulnerable, more stigmatized, and more exposed to exploitation—all while failing to actually stop trafficking or provide real rehabilitation. The paper starts by tracing the history of Indian law in this area, from the colonial Contagious Diseases Acts to the post-independence SITA and its eventual evolution into the ITPA. It then goes section by section through the ITPA, unpacking its internal contradictions and the unintended consequences of its provisions. From there, it looks at how the Bharatiya Nyaya Sanhita, constitutional case law, and local municipal laws add even more layers of control and harassment. The analysis then shifts to the international scene, tracking the shift from the abolitionist 1949 UN Trafficking Convention to the Palermo Protocol—a turning point that made a crucial distinction between trafficking and voluntary sex work. The paper also explores the clear guidance from human rights and public health bodies like the CEDAW Committee and UNAIDS, both of which have explicitly called for decriminalization. By pulling together domestic and international law, the paper shows just how deeply the ITPA model has failed. It concludes that the only real way forward is a rights-based approach: decriminalizing adult, consensual sex work, pairing that with strong anti-trafficking enforcement, and putting in place genuine social inclusion policies. Only then can India protect the dignity, health, and safety of sex workers.

**Keywords:** Prostitution, Sex Work, Immoral Traffic (Prevention) Act, ITPA, Bharatiya Nyaya Sanhita, Trafficking, Decriminalization, Legalization, Human Rights, CEDAW, Palermo Protocol, Public Health, Constitutional Law

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## INTRODUCTION

Prostitution, or sex work, represents one of the most enduring and complex socio-legal dilemmas in India. It is an industry that engages a vast, though uncounted, number of individuals, yet its practitioners are forced to operate in the shadows of the law and society, perpetually exposed to violence, systemic exploitation, and profound discrimination. The Indian legal approach is not one of straightforward prohibition or regulated legalization, but rather a unique and profoundly problematic model of selective criminalization. This model is primarily orchestrated through the Immoral Traffic (Prevention) Act (ITPA), 1956, a legislation conceived with the intent of combating trafficking and the exploitation of prostitution but which has, paradoxically, become a primary instrument for harassing, marginalizing, and endangering the very individuals it claims to protect.

The core problem is a fundamental dissonance between the law's stated intent and its practical application. The ITPA, inspired by international abolitionist movements of the mid-20th century, criminalizes almost every ancillary activity that enables the sex trade—solicitation, brothel-keeping, living on earnings—without technically outlawing the private act of selling sex between consenting adults. This creates a legal vacuum and a state of profound precarity. Sex workers, denied the legal means to operate safely and professionally, are pushed into clandestine, isolated, and dangerously unregulated environments. Their vulnerability is compounded by the rampant misuse of the law by law enforcement agencies, for whom the ITPA's ambiguous provisions serve as tools for extortion and sexual coercion, and by the deep-seated social stigma that the law itself reinforces.

This paper argues that the ITPA-centric framework is an anachronistic, ineffective, and unjust regulatory model that actively violates the fundamental rights of sex workers, undermines public health objectives, and impedes the effective fight against trafficking. It contends that a fundamental re-evaluation of India's policy is long overdue, one that aligns it with contemporary international human rights standards that clearly distinguish between voluntary adult sex work and forced trafficking. The paper makes a definitive case for decriminalization as the most viable, evidence-based path to empower sex workers, enhance their safety, and uphold their constitutional rights.

The methodology employed is a critical-doctrinal analysis of primary legal sources, including a detailed examination of the ITPA, relevant sections of the Indian Penal Code (IPC), and landmark judicial pronouncements from the Supreme Court of India and various High Courts. This legal analysis is supplemented by a comprehensive review of key international conventions, treaties, protocols, and "soft law" instruments from United Nations bodies. The paper is structured into six main parts: a detailed historical and contemporary analysis of Indian law; an examination of the constitutional jurisprudence surrounding sex work; a thorough exploration of relevant international instruments; a critical analysis of

the current framework's multifaceted failures; a comparative discussion of alternative regulatory models; and a concluding proposal for a new, rights-based legal architecture for India.

## A. THE LEGAL FRAMEWORK IN INDIA: A HISTORY OF AMBIGUITY AND CONTROL

### • **Historical Context and Legislative Evolution**

To fully comprehend the current legal impasse, one must examine its historical roots. The regulation of prostitution in India has been profoundly shaped by its colonial legacy, which superimposed Victorian morality onto complex indigenous social structures.

- i. Pre-Colonial and Early Colonial Context: Historical evidence, from texts like the Kama Sutra to accounts of courtesans (tawaifs) and the Devadasi system, indicates that forms of erotic performance and sexual service existed in structured, though often ritualized and patriarchal, contexts<sup>2</sup>. The British colonial administration, however, viewed these practices through a lens of moral contempt and pragmatic military concern. The primary legislative interventions were the Contagious Diseases Acts (CD Acts) of 1864 and 1868. These Acts were designed to control the spread of venereal diseases among British soldiers in cantonment areas<sup>3</sup>. They mandated the compulsory registration, periodic medical examination, and incarceration of sex workers found to be infected. This model was inherently discriminatory and gendered, exclusively policing, penalizing, and regulating the female body while ignoring the role of male clients. The CD Acts faced fierce opposition from a coalition of early Indian social reformers and British feminist abolitionists, who successfully argued for their repeal by the late 19th century, viewing them as a form of state-sanctioned vice.
- ii. The Post-Independence Shift to Abolitionism: After gaining independence in 1947, India sought to establish its identity as a modern, moral nation-state on the international stage. This led to the ratification of the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). This convention embodied a strict abolitionist philosophy, viewing prostitution itself as incompatible with the dignity and worth of the human person and calling for its suppression<sup>4</sup>. In direct response to this international obligation, the Indian Parliament enacted the Suppression of Immoral Traffic in Women and Girls Act (SITA), 1956.<sup>5</sup> SITA's philosophical foundation was abolitionist: it aimed not to criminalize the individual sex worker, but to gradually eliminate prostitution by crippling its organized infrastructure—specifically by punishing pimps, brothel keepers, traffickers, and those who lived on the earnings of prostitution.

<sup>2</sup> Anand, M. R. (1998). *The Kama Sutra of Vatsyayana*. Penguin Classics.

<sup>3</sup> Legg, S. (2009). *Governing Prostitution in Colonial India: From Cantonment Regulations to International Hygiene (1864-1939)*. *Environment and Planning D: Society and Space*, 27(3), 435-455.

<sup>4</sup> United Nations. (1949). *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*. Approved by General Assembly resolution 317(IV).

<sup>5</sup> Government of India. (1956). *The Suppression of Immoral Traffic in Women and Girls Act, 1956*. Act No. 104 of 1956.

iii. Strengthening the Law: The Immoral Traffic (Prevention) Act (ITPA), 1986: Over time, SITA was perceived as being insufficiently stringent. Following recommendations from a government committee and continued pressure to address the issue more aggressively, SITA was significantly amended and renamed in 1986 to become the Immoral Traffic (Prevention) Act (ITPA).<sup>6</sup> The amendments were intended to strengthen the law by increasing penalties for various offences, expanding the definition of a "brothel," and broadening police powers. However, these changes also introduced provisions that further encroached upon the autonomy and safety of sex workers, intensifying the criminalization of their working conditions and solidifying the contradictory and punitive nature of the legal framework that persists today.

#### • The Immoral Traffic (Prevention) Act (ITPA), 1956: A Critical Dissection

The ITPA remains the principal statute governing the sex trade in India. Its provisions, while aimed at "immoral traffic," create a precarious and often dangerous existence for sex workers by criminalizing their environment, their support systems, and their livelihood strategies. Following are the core offences and their socio-legal impact:

- i. Section 3: Punishment for keeping a brothel or allowing premises to be used as a brothel. This section targets the landlord, tenant, or manager of the premises. The Act's broad definition of a "brothel" effectively makes it illegal for sex workers to work together for mutual safety and support<sup>7</sup>. This prohibition forces them into isolation, significantly increasing their individual vulnerability to violent clients, robbery, and rape. The law, in the name of protecting them, actively prevents the most basic strategy for risk mitigation.
- ii. Section 4: Punishment for living on the earnings of prostitution. This section is aimed at criminalizing pimps and exploiters. However, it contains a critical and paradoxical exception: it does not apply to the sex worker's spouse or her dependent children. This creates an absurd legal situation where a sex worker can legally support her family with her earnings, but she cannot legally hire a security guard, a driver, a bookkeeper, or a receptionist. This provision prevents the professionalization and safety-enhancement of sex work, ensuring it remains an informal, risky, and unorganized sector<sup>8</sup>.
- iii. Section 5: Procuring, inducing, or taking a person for the sake of prostitution. This is a crucial anti-trafficking provision, punishing anyone who recruits, transports, or transfers a person into prostitution using force, coercion, fraud, or abuse of authority. This section rightly targets the core of exploitative trafficking and is a vital component of any legal framework seeking to combat forced labor and sexual slavery.

<sup>6</sup> Government of India. (1986). The Immoral Traffic (Prevention) Amendment Act, 1986. Act No. 44 of 1986.

<sup>7</sup> Kotiswaran, P. (2011). *Dangerous Sex, Invisible Labor: Sex Work and the Law in India*. Princeton University Press.

<sup>8</sup> Gangoli, G. (2007). *Indian Feminisms: Law, Patriarchies and Violence in India*. Ashgate Publishing.

- iv. Section 6: Detaining a person in premises where prostitution is carried on. This section addresses situations of forced confinement, a common feature in trafficking rings and highly exploitative brothels. It is another essential tool for combating situations of debt bondage and slavery-like practices.
- v. Section 7: Prostitution in or in the vicinity of public places. This is arguably the most frequently misused and abused provision of the ITPA. It makes soliciting or seducing for the purpose of prostitution in a public place a punishable offence. The terms "solicit" and "vicinity" are vaguely defined, granting police immense discretion to arrest sex workers in almost any public context, even in the absence of a tangible public nuisance<sup>9</sup>. This section is routinely used not to protect public order, but to harass, extort money, and perpetrate violence against sex workers.
- vi. Section 8: Seduction of a person in custody. This section punishes the sexual exploitation of individuals in institutions like juvenile homes, shelters, or hospitals, where they are in a position of vulnerability.

A key feature of the ITPA is its provision for the establishment of "protective homes" and "corrective institutions" for the "rehabilitation" of sex workers "rescued" in police raids. These raids are often conducted in a violent, traumatic, and publicly humiliating manner, violating the sex workers' right to privacy and dignity<sup>10</sup>. The protective homes, however, have been widely documented and criticized for their poor and often prison-like conditions, restrictive environments that limit personal freedom, and ineffective vocational training programs (e.g., sewing, candle-making) that fail to provide viable or sustainable economic alternatives<sup>11</sup>. This paternalistic "rescue" model, which operates on the assumption that sex workers need to be saved from themselves, strips women of their agency and often leads them back to sex work due to a stark lack of realistic choices. This perpetuates a vicious cycle of police intervention, institutionalization, and re-victimization, doing little to address the root causes of their engagement in the sex trade, such as poverty, lack of education, and economic marginalization.

- **The Role of the Bharatiya Nyaya Sanhita (BNS) and Other Domestic Laws**

The ITPA does not operate in a legal vacuum. It functions in tandem with the Bharatiya Nyaya Sanhita, 2023 and a host of other local laws, creating a multi-layered and overlapping web of legal control that can be deployed against sex workers.

- i. Sections 98 and 99: These sections specifically criminalize the selling and buying of minors (girls and boys under the age of 18) for the purpose of prostitution. These are critical child protection laws and carry severe punishments, reflecting a societal consensus on the need to protect children from sexual exploitation.

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<sup>9</sup> Human Rights Watch. (2012). *Breaking the Silence: Violence against Women and HIV in India*. Human Rights Watch.

<sup>10</sup> Dellar, M. (2013). *The Impact of Police Raids on Sex Workers in India*. SANGRAM Publications.

<sup>11</sup> Dutta, D., & Sircar, O. (2013). *India's New Trafficking Legislation: A Feminist Analysis of the Immoral Traffic (Prevention) Act*. *Economic and Political Weekly*, 48(34), 56-64.

- ii. Section 143: Introduced in 2013 as part of a comprehensive anti-trafficking law under the old Indian Penal Code, also included in the BNS this section provides a modern and comprehensive definition of "trafficking" that closely mirrors the definition in the UN Palermo Protocol. It focuses on the recruitment, transportation, or harboring of persons for the purpose of exploitation by using force, coercion, fraud, or abuse of power<sup>12</sup>. This is a powerful tool against forced prostitution and represents a significant legislative advancement.
- iii. Sections 294 and 296: These sections relate to the sale of obscene books and obscene acts and songs in public, respectively. They are often used to target the advertisement of sexual services or to harass sex workers and their clients in public spaces, adding another layer of legal vulnerability.
- iv. Sections 74, 79, and others: These sections address assault or criminal force to outrage a woman's modesty, and word or gesture intended to insult her modesty. While these laws are meant to protect all women, in practice, complaints filed by sex workers under these sections are often not taken seriously by the police, who may dismiss them due to the victim's profession<sup>13</sup>.
- v. Local Laws and Police Powers: Various state Police Acts and municipal laws and bylaws contain provisions against "vagrancy," "loitering for the purpose of prostitution," and "causing public nuisance." These laws are applied disproportionately and discriminatorily against sex workers to remove them from public view, particularly from upmarket neighborhoods, tourist areas, or other locations deemed "sensitive."<sup>14</sup> This further limits their already constrained safe working spaces, increases their interactions with a hostile police force, and reinforces their social and spatial marginalization.

## **B. CONSTITUTIONAL JURISPRUDENCE: THE JUDICIARY AS A COUNTERWEIGHT**

The Indian judiciary, particularly the Supreme Court, has often played a progressive and countervailing role, attempting to infuse constitutional morality into the regressive framework of the ITPA. The courts have been repeatedly called upon to interpret the rights of sex workers through the lens of the Constitution of India.

- i. Article 21: The Expansive Right to Life and Personal Liberty: The Supreme Court has consistently given an expansive interpretation to Article 21, holding that it encompasses not merely the right to animal existence, but the right to live with dignity. This principle has been directly applied to sex workers. In the landmark case of *Budhadev Karmaskar v. State of West Bengal* (2011), the Court was hearing an appeal of a man convicted of murdering a sex worker. Instead of limiting itself to the facts of the case, the Court took a proactive stance, explicitly recognizing that sex workers are human beings entitled to dignity and

<sup>12</sup> Government of India. Included in 2013 by The Criminal Law (Amendment) Act, 2013. Act No. 13 of 2013 now under the *Bharatiya Nyaya Sanhita*, 2023

<sup>13</sup> Amnesty International. (2016). *Amnesty International Policy on State Obligations to Respect, Protect, and Fulfil the Human Rights of Sex Workers*. POL 30/4062/2016.

<sup>14</sup> Shah, S. (2006). *Prostitution and the Law: A Study of the Immoral Traffic (Prevention) Act*. Gyan Publishing House.

equal protection under the law. The Court observed, "They are entitled to a life of dignity. Nobody, including the police, can abuse them, physically or verbally."<sup>15</sup> This case became a vehicle for the Court to issue broad directions to the government to formulate schemes for the rehabilitation of sex workers.

ii. Article 23: Prohibition of Traffic in Human Beings and Forced Labour: This fundamental right provides a strong constitutional foundation for anti-trafficking efforts. It has been used to underscore the state's positive obligation to combat forced prostitution and sexual slavery, which are clear violations of this guarantee.

iii. Article 19(1)(g): The Limited Right to Practice Any Profession: Sex workers and their advocates have occasionally invoked the right to practice any profession, trade, or business. However, the courts have been largely reluctant to uphold this right in the context of sex work. They have typically upheld the restrictions imposed by the ITPA by invoking "public morality," "public order," and "public health" as reasonable restrictions under Article 19(6) of the Constitution. This judicial hesitation reflects the enduring power of majoritarian moral views over the assertion of individual autonomy in this sphere.

Landmark Judicial Interventions and Directives: The Supreme Court's most significant and practical interventions have come through its ongoing monitoring of the conditions of sex workers.

In *Gaurav Jain v. Union of India* (1997), the Court discussed the rehabilitation of sex workers and their children, emphasizing the need for a humane approach<sup>16</sup>.

Most notably, in a series of orders in 2022 in the case *In Re: Contagion of COVID Virus in Children Protection Homes*, the Supreme Court issued a set of groundbreaking interim orders that directly address the day-to-day harassment faced by sex workers. The Court directed that:

- a. Sex workers should not be harassed or arrested by the police during brothel raids.
- b. The possession of condoms should not be used as evidence to prosecute sex workers under the ITPA or any other law.
- c. Authorities should take steps to ensure that sex workers are issued official identity documents like Aadhaar cards, voter IDs, and ration cards without any discrimination.
- d. The media must not reveal or publish the identities of sex workers in their reports on trafficking or sexual assault cases<sup>17</sup>.

These directives are profoundly important as they directly tackle the tools of police harassment and seek to integrate sex workers into the formal fabric of citizenship. However, they exist as judicial commands superimposed on a faulty legislative structure. They create a constant and unresolved tension with the

<sup>15</sup> Supreme Court of India. (2011). *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010.

<sup>16</sup> Supreme Court of India. (1997). *Gaurav Jain v. Union of India*, AIR 1997 SC 3021.

<sup>17</sup> Supreme Court of India. (2022). *In Re: Contagion of COVID Virus in Children Protection Homes*, *Suo Motu Writ Petition (C) No. 4 of 2020 (Orders dated May 10, 2022)*.

black-letter law of the ITPA and are often ignored or weakly implemented by police and local administrations, highlighting the urgent need for legislative reform rather than relying solely on judicial remediation.

### C. THE INTERNATIONAL LEGAL FRAMEWORK: FROM ABOLITION TO HUMAN RIGHTS

India's legal posture on prostitution has been significantly shaped by the currents of international law, which has itself undergone a profound evolution from a purely abolitionist stance to a more nuanced, rights-based approach that prioritizes the agency and well-being of individuals.

- **The Abolitionist Foundation: The 1949 UN Trafficking Convention**

The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) was the dominant international instrument on this issue for decades. It embodies a strict, uncompromising abolitionist philosophy. The preamble to the convention states that prostitution and the accompanying evil of the traffic in persons are "incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community." It calls upon state parties to punish anyone who "exploits the prostitution of another person, even with the consent of that person." This formulation is crucial—it deliberately conflates voluntary sex work with forced trafficking, treating all prostitution as inherently exploitative and denying the possibility of agency or consent. The Indian SITA, and later the ITPA, were direct legislative manifestations of this international consensus.

- **The Paradigm Shift: The Palermo Protocol (2000)**

A significant and transformative turning point in international law was the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), commonly known as the Palermo Protocol (2000). The Palermo Protocol provided the first internationally agreed-upon definition of "trafficking in persons," which is now widely considered the global standard. This definition is based on a clear three-element framework:

An Act: What is done (e.g., recruitment, transportation, transfer, harboring, or receipt of persons).

A Means: How it is done (e.g., threat or use of force, coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability).

A Purpose: Why it is done (e.g., exploitation, which includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation).<sup>18</sup>

This tripartite definition is revolutionary because it clearly and legally distinguishes trafficking (a serious crime that requires an element of force, coercion, fraud, or deception) from voluntary sex work (which involves consenting adults). This nuanced approach refocused international efforts on combating coercion and exploitation rather than policing consensual activities between adults. It represented a move away from a morality-based approach to a victim-centered, human rights-based approach to trafficking. India's amendment of IPC Section 370 in 2013, which closely mirrors the Palermo Protocol's definition, demonstrates the protocol's profound and direct influence on Indian law, creating a curious dichotomy where the IPC reflects a modern understanding of trafficking while the ITPA remains mired in an older, conflationary ideology.

- **The Human Rights and Health Approach: CEDAW, UNAIDS, and WHO**

Other influential international bodies have further advanced a rights-based perspective, often directly challenging the foundational principles of laws like the ITPA.

- i. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): While the CEDAW convention itself does not explicitly address sex work, its committee has issued powerful and progressive guidance. CEDAW General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration is a pivotal document. It calls on states to address the root causes of trafficking, such as poverty, gender inequality, and discrimination. Most significantly, it explicitly recommends that states parties "consider decriminalizing sex work to reduce sex workers' vulnerability to violence and exploitation and to improve their access to health care and justice<sup>19</sup>." This represents a monumental shift from the 1949 Convention, directly linking the decriminalization of sex work to the protection and advancement of women's rights, and acknowledging that criminalization itself is a source of vulnerability.
- ii. UNAIDS and the Public Health Imperative: The Joint United Nations Programme on HIV/AIDS (UNAIDS) has been a leading global advocate for decriminalization as a critical and evidence-based public health strategy. Its guidance notes consistently argue that the criminalization of sex work drives the industry underground, creating significant barriers to HIV prevention, testing, and treatment<sup>20</sup>. When the possession of condoms is used as evidence of solicitation—a common practice by police in India under the ITPA—sex workers are discouraged from carrying them, leading to inconsistent condom use and exacerbating the

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<sup>18</sup> United Nations. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>19</sup> Committee on the Elimination of Discrimination against Women. (2020). General Recommendation No. 38 on Trafficking in Women and Girls in the Context of Global Migration. CEDAW/C/GC/38.

<sup>20</sup> UNAIDS. (2012). UNAIDS Guidance Note on HIV and Sex Work. UNAIDS.

risk of HIV and other sexually transmitted infections. Decriminalization is thus framed not just as a moral or legal imperative, but as an essential, pragmatic component of effective public health policy. The World Health Organization (WHO) has also endorsed this view, recommending the full decriminalization of sex work to reduce HIV transmission<sup>21</sup>.

iii. International Labour Organization (ILO): The ILO has recognized that sex workers are workers who often face extreme exploitation and are excluded from labor protections. While not endorsing the sex industry, the ILO's focus on "decent work," social protection, and freedom of association provides a logical framework for considering the labor rights of adults in sex work, particularly the right to safe working conditions and the right to organize.

#### **D. CRITICAL ANALYSIS: THE MULTIFACETED FAILINGS OF THE INDIAN MODEL**

A critical synthesis of domestic and international law reveals a stark misalignment. India's continued adherence to the ITPA model, despite progressive judicial rulings and evolving international standards, has resulted in a policy that is not only ineffective but actively harmful. The law has failed in its core objectives and has generated a host of negative unintended consequences.

##### **• The Documented Failures of the ITPA**

- i. Increased Vulnerability and Violence: By criminalizing brothel-keeping (S.3) and soliciting (S.7), the ITPA systematically dismantles the possibility of safe working conditions. Sex workers cannot work together in groups for security, cannot screen clients effectively from a fixed and known location, and are forced to operate in remote, isolated, and unsafe areas such as deserted buildings or dark streets. This directly and predictably increases their exposure to violence, including physical assault, rape, and murder. [8] Research by human rights organizations has consistently shown that violence is a pervasive feature of sex workers' lives, and the fear of arrest prevents them from seeking police protection.
- ii. Systemic Police Harassment and Institutional Corruption: The ambiguous and discretionary nature of ITPA provisions, particularly Section 7, arms the police with a potent tool for extortion, sexual exploitation, and arbitrary arrest. Sex workers report being routinely rounded up, having their earnings and condoms confiscated, and being released only after paying bribes<sup>22</sup>. This corrupt and abusive cycle destroys any semblance of trust between sex workers and law enforcement, ensuring that serious crimes against them—

<sup>21</sup> World Health Organization (WHO). (2012). Prevention and Treatment of HIV and Other Sexually Transmitted Infections among Sex Workers in Low- and Middle-Income Countries.

<sup>22</sup> The Centre for Advocacy on Stigma and Marginalisation (CASAM). (2019). Voices of Sex Workers: Documentation of Human Rights Violations in India.

including those committed by police officers themselves—go unreported and unpunished. The law, instead of being a shield, becomes a weapon in the hands of its enforcers.

- iii. **Conflation of Voluntary Sex Work and Trafficking:** The legal and enforcement framework frequently fails to distinguish between an adult woman engaging in consensual sex work and a victim of trafficking. This leads to the forced "rescue" of willing sex workers, who are then detained in often substandard protective homes against their will. [10] This constitutes a grave violation of their right to liberty, freedom of movement, and self-determination under Article 21 of the Constitution. Such operations waste scarce anti-trafficking resources on targeting consenting adults while allowing genuine victims to remain undetected.
- iv. **Ineffective and Paternalistic Rehabilitation:** The state's rehabilitation programs, as mandated by the ITPA, are widely acknowledged as failures. They are often underfunded, poorly managed, and offer limited, unviable vocational training that does not lead to sustainable income<sup>23</sup>. These programs ignore the complex socioeconomic factors that lead individuals to sex work, such as poverty, single motherhood, caste discrimination, and lack of education. By offering simplistic solutions like sewing machines, they fail to provide a genuine or dignified exit pathway. The lack of a voluntary, empowering, and comprehensive rehabilitation strategy ensures that these efforts remain more of a symbolic gesture than a substantive policy.
- v. **Undermining Public Health Goals:** The ITPA is a significant structural barrier to public health. The practice of using condoms as evidence, combined with the fear of arrest, discourages consistent condom use. This not only endangers the health of sex workers but also that of their clients and the wider community, fueling the spread of HIV/AIDS and other STIs. [19] Public health initiatives aimed at this high-risk group are severely hampered by the criminalized environment, as outreach workers find it difficult to establish trust and provide services.

- **The Limits of Judicial Progressivism**

The Supreme Court's interventions, while laudable and necessary, are an insufficient remedy for a fundamentally flawed law. The 2022 directives, for instance, are interim orders in a continuing writ petition. Their implementation across India's vast and decentralized police and administrative machinery is patchy at best. A police constable on the street is more likely to be guided by the explicit penal provisions of the ITPA than by a Supreme Court order that he may not be aware of or may choose to ignore. The judiciary can interpret and guide, but it cannot legislate. The persistent gap between judicial pronouncements and ground-level reality underscores the absolute necessity of legislative reform to repeal or radically amend the ITPA.

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<sup>23</sup> Misra, G., & Chandiramani, R. (2005). *Sexuality, Gender and Rights: Exploring Theory and Practice in South and Southeast Asia*. Sage Publications.

## E. REGULATORY MODELS AND THE PATH FORWARD FOR INDIA

To move beyond the shortcomings of the ITPA framework, it is essential to analyze international regulatory strategies. The global discussion generally splits into two camps: legalization and decriminalization.

- **The Legalization and Regulation Framework**

Under this system, the government treats sex work as a specialized, state-monitored industry. Officials may issue specific licenses, restrict activities to designated "red-light" zones, and require mandatory medical screenings while collecting industry-specific taxes. This approach is currently utilized in parts of Germany, the Netherlands, and Nevada.

- Primary Benefits: Advocates argue that this transparency allows for better health oversight and safety standards. Additionally, it shifts profits away from criminal syndicates and toward public tax revenue.
- Criticisms and Drawbacks: One major criticism of this approach is that it creates a big, overreaching government bureaucracy that often ends up being repressive. Instead of solving problems, it tends to split sex work into two worlds: a legal one for people who can meet all the state's requirements—which often leaves out migrants, drug users, and anyone with a criminal record—and a much larger underground market for everyone else. In this setup, the state acts more like a gatekeeper than a supporter, deciding who gets to work, where, and how. That kind of control often has little to do with what sex workers actually want or need.<sup>24</sup>

- **The Decriminalization Framework**

This approach is backed by major global health organizations like the WHO and UNAIDS, as well as sex worker rights groups around the world. It calls for scrapping all criminal laws that specifically target sex work. That means making it legal for consenting adults to buy and sell sex, and also removing penalties for things like running a brothel (especially when sex workers run it themselves) or publicly soliciting clients.

The most cited and studied example is New Zealand's Prostitution Reform Act (2003)<sup>25</sup>. This law decriminalized sex work while implementing a framework to safeguard the welfare of sex workers, regulate small owner-operated brothels, and prohibit the use of underage persons and non-residents in prostitution. It also upheld general laws against coercion and exploitation.

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<sup>24</sup> Weitzer, R. (2012). *Legalizing Prostitution: From Illicit Vice to Lawful Business*. New York University Press.

<sup>25</sup> Government of New Zealand. (2003). *Prostitution Reform Act 2003*. Public Act 2003 No. 28.

- **Key Benefits of Decriminalization:**

- i. Enhanced Safety: Sex workers can work together in safe premises, hire security, negotiate terms with clients, and screen clients without fear of arrest. They can also refuse clients and specific sexual acts.
- ii. Improved Access to Justice: They can report violence, theft, and exploitation to the police without being criminalized themselves, leading to greater cooperation with law enforcement and better prosecution of crimes.
- iii. Better Health Outcomes: The removal of legal barriers facilitates consistent condom use and easy access to healthcare services, sexual health screening, and HIV prevention and treatment programs.

- **Empowerment and Labor Rights:** sex workers are able to form unions, co-ops, or collectives—so they can advocate for themselves, set safety standards on the job, and actually access things like social security. It treats them as workers with agency, not as people who need to be managed or controlled. It's important to emphasize that decriminalization isn't the same as a free-for-all. All the usual laws against trafficking, rape, assault, fraud, child abuse, and public nuisance still apply—and in fact, they can be enforced more effectively when sex workers feel safe enough to cooperate with authorities.

- **A Rights-Based Framework for India**

If India wants to move forward, it needs to break decisively from the punitive approach of the ITPA and build a new legal framework grounded in rights. Tinkering with the law through minor amendments won't cut it—what's required is a complete overhaul, both in legislation and in policy.

## **F. RECOMMENDATIONS FOR LEGISLATIVE AND POLICY REFORM**

1. Enact Legislation to Decriminalize Consensual Adult Sex Work: Parliament needs to scrap the Immoral Traffic (Prevention) Act of 1956 and replace it with new legislation that makes it clear: selling or buying sex between consenting adults, soliciting, and sex workers running their own establishments are not crimes. This is the essential, non-negotiable first step.

2. Strengthen and Rigorously Enforce Anti-Trafficking Laws: At the same time, the state must get serious about enforcing trafficking laws (like Section 143 of the BNS and related provisions). Instead of wasting resources raiding sex workers who are choosing to work, those resources should go to specialized anti-trafficking units that focus on dismantling trafficking networks, rescuing actual victims, and offering them real support and rehabilitation.

3. Ensure Unhindered Access to Justice and Protection: This means mandatory, ongoing training for police, prosecutors, and judges—so they understand sex workers' rights, the difference between sex work and trafficking, and how to treat people without discrimination. Police stations should also have sensitive,

responsive cells where sex workers can report crimes like assault or extortion without fear of being arrested or shamed.

4. Guarantee Social and Economic Inclusion: Sex workers must be able to get government ID documents—Aadhaar, voter ID, ration card, PAN card—without facing discrimination. They should also be included in social security, health insurance, and poverty alleviation programs as a matter of course. The Supreme Court's 2022 directives on this need to be written into law so they can't be ignored.

5. Promote Comprehensive Health and Well-being: Work with sex worker communities and NGOs to offer health services that are confidential, non-judgmental, and high-quality. This should cover sexual and reproductive health, HIV and STI prevention and treatment, mental health support, and substance use programs—all designed with input from the communities themselves, not imposed on them.

6. Create genuine, voluntary exit options: sex workers who want to leave the profession, the state should provide dignified, voluntary rehabilitation programs that actually work. That means realistic pathways: quality education for adults and their children, job skills that match real market needs, access to loans and microfinance, and support for starting a small business. These programs need to be built with sex worker collectives, not for them—so they actually meet people's needs and aren't just another top-down initiative.

## CONCLUSION

India's current legal framework for sex work—centered on the Immoral Traffic (Prevention) Act—is a tangled mess built on outdated moral ideas. It's a system that has long outlived its purpose, and instead of delivering justice, it's become a source of injustice. As this paper has shown, the ITPA hasn't done what it set out to do. Instead, it has made sex workers more vulnerable, fueled corruption and violence, harmed public health, and completely failed to stop trafficking or offer real rehabilitation.

The Indian judiciary has tried to push things forward with progressive judgments, but even that can't fully undo the structural harm embedded in the law. Meanwhile, the rest of the world has moved on—international law has shifted from a simple abolitionist stance to a human rights approach that respects people's agency, distinguishes between choice and coercion, and clearly supports decriminalization to protect sex workers' health and rights.

India now has a clear choice. It can either stick with a broken, punitive system that goes against its own constitutional values and international commitments, or it can step up and embrace a future that actually respects the dignity, autonomy, and safety of all its citizens. Decriminalization—backed by global evidence and supported by public health experts and human rights organizations—isn't some radical or permissive

idea. It's a practical, evidence-based, and morally sound path forward. By scrapping the ITPA and putting a rights-based framework in its place, India can tear down this legal labyrinth and build a society where every person—including every sex worker—can live safely, with dignity, and with equal protection under the law.

