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# INTERNATIONAL MODELS OF SEX WORK DECRIMINALISATION: LESSONS FOR INDIA

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## ABSTRACT

The regulation of sex work remains a deeply contested area of legal policy globally, with profound implications for the human rights, safety, and well being of sex workers. This paper undertakes a comprehensive comparative analysis of three distinct international models governing sex work—full decriminalization as exemplified by New Zealand, legalization as adopted in Germany and the Netherlands, and the Nordic model of criminalizing clients pioneered in Sweden. Drawing on legislative frameworks, empirical research, and documented outcomes spanning two decades, the paper evaluates each model against rights based criteria including protection from violence, access to justice, health outcomes, freedom from discrimination, economic rights, and respect for agency. The analysis reveals that the decriminalization approach demonstrably outperforms alternatives in reducing violence, enabling access to legal remedies, and respecting sex workers' self determination. The Nordic model, despite its humanitarian rhetoric, raises serious concerns about increased violence exposure and reduced access to justice, while European legalization has faced criticism for failing to sever the connection between sex work and trafficking. For India, where the Immoral Traffic (Prevention) Act, 1956 creates a paradoxical legal environment that criminalizes the conditions of sex work without directly prohibiting the act itself, these international experiences offer crucial lessons for law reform. The paper argues that decriminalization, thoughtfully adapted to India's constitutional framework, federal structure, and diverse social context, provides the most viable pathway toward a rights based approach that protects sex workers from exploitation while respecting their dignity and agency.

**Keywords:** sex work, decriminalization, legalization, Nordic model, India, human rights, comparative law, Prostitution Reform Act 2003, Immoral Traffic Prevention Act

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## Introduction

The regulation of sex work constitutes one of the most persistently contentious areas of legal policy across the globe. Nations have adopted fundamentally different approaches that reflect not merely pragmatic considerations of public order and health, but deeper philosophical divisions about the nature of sex work itself—whether it is a form of legitimate labor, an inherent violence against women, or a moral evil that the state must suppress. These divergent philosophical commitments have produced three primary models of legal governance: criminalization, legalization, and decriminalization, with the Nordic model representing a hybrid approach that has gained significant international attention in recent decades.<sup>2</sup>

For India, the stakes of this global debate could not be higher. The Immoral Traffic (Prevention) Act, 1956 (ITPA) creates a paradoxical legal environment where sex work is theoretically permissible but practically impossible. The Act does not explicitly criminalize the act of selling sexual services, but it criminalizes virtually all of its conditions—soliciting clients in public, living on the earnings of sex work, owning or managing a brothel, and engaging in sex work in proximity to public places. This legislative architecture, which scholars have characterized as "gradual criminalisation," produces a legal gray zone in which sex workers are rendered vulnerable to police harassment, exploitation by intermediaries, and violence from clients, all without meaningful access to legal protection or remedies.<sup>3</sup>

The consequences of this approach are devastating and well documented. Sex workers in India face systematic violence, both from clients and from the very authorities meant to protect them. They are denied access to healthcare, housing, and banking services. Their children face discrimination in education and social ostracization. When they are victims of crime—whether rape, theft, or assault—they cannot approach the police without fear of arrest or harassment themselves. The law that purports to protect them from trafficking and exploitation has instead become an instrument of their marginalization.<sup>4</sup>

This paper undertakes a comparative analysis of three alternative legal frameworks governing sex work: the full decriminalization model as exemplified by New Zealand's Prostitution

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<sup>2</sup> Tandon, B., & Nayak, P. (2025). Reconsidering criminalisation of prostitution: a comparative critical study of the models in vogue in India, Sweden and the Netherlands. *International Journal of Public Law and Policy*, 11(2), 210-231.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

Reform Act 2003, the legalization or regulation model adopted in Germany and the Netherlands in the early 2000s, and the Nordic model pioneered in Sweden in 1999 that criminalizes the purchase of sexual services while purportedly decriminalizing their sale. Through rigorous examination of legislative frameworks, empirical evidence from two decades of experience, and documented outcomes across multiple jurisdictions, the paper evaluates how each model impacts the rights, safety, and well being of sex workers. The central question guiding this inquiry is not merely which model works best in its home context, but what lessons these international experiences hold for India as it contemplates fundamental reform of its own legal regime.<sup>5</sup>

## **1. Conceptual Framework: Understanding the Primary Legal Models**

Before comparing different legal approaches to sex work, it's important to clearly understand what each model actually means. These terms often get mixed up in public conversations and policy debates, but they come from very different ideas about how to govern sex work.

Take criminalization, for example. This is the traditional approach used in most countries around the world, including India. It involves laws that ban certain parts of sex work—or all of it—and punish those involved.

But criminalization looks different from place to place. Some countries go after sex workers themselves, making it a crime to sell sex. Others, like India, take what you might call an indirect or gradual approach. The law's goal is still to shut down the profession, but it does so by banning things around it—not by directly making the act of selling sex illegal.

This approach criminalizes activities necessarily associated with sex work—soliciting, operating a brothel, living on earnings—while leaving the core act technically legal. The practical effect, however, is to render sex work impossible to conduct legally and to place sex workers in a position of permanent vulnerability to law enforcement.<sup>6</sup>

The consequences of criminalization are well documented and consistently harmful across contexts. Sex workers operate in the shadows, unable to report violence or exploitation to authorities for fear of arrest. They are forced to work in isolated locations, accept dangerous

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

clients without adequate screening, and submit to exploitative conditions imposed by intermediaries who control access to the illegal market. Police corruption flourishes in this environment, with sex workers compelled to pay bribes or provide sexual services to avoid arrest. Public health initiatives are undermined as sex workers avoid clinics and outreach services that might expose them to identification and prosecution. Criminalisation thus creates precisely the conditions of vulnerability and exploitation that it purports to address.<sup>7</sup>

Legalisation, by contrast, refers to a regulatory approach where sex work is legally permitted but subject to specific government controls and regulations that do not apply to other businesses or occupations. Legalisation typically involves restrictive government regulation including mandatory registration with authorities, compulsory sexual health checks, zoning restrictions that confine sex work to specific areas, and licensing requirements for establishments. Germany and the Netherlands represent the most prominent European examples of this approach, having legalised sex work in the early 2000s with the stated objectives of improving working conditions, reducing crime associated with the underground industry, and normalizing sex work by ensuring access to social insurance systems.<sup>8</sup>

Decriminalization involves repealing laws that criminalize sex work without introducing restrictive regulations specific to the sex industry. Under this model, sex work is governed by the same laws that apply to other businesses and occupations, rather than being subject to special punitive or regulatory frameworks. Crucially, decriminalization does not mean absence of regulation—rather, regulations are comparable to those applying to other businesses, with the focus on providing sex workers with rights rather than regulating them as a special category. New Zealand's Prostitution Reform Act 2003 stands as the first and most comprehensive example of full decriminalization.<sup>9</sup>

The Nordic Model, also known as the sex buyer law or abolitionist model, represents a hybrid approach that has gained significant international traction since Sweden first adopted it in 1999. This model criminalizes the purchase of sexual services while purportedly decriminalizing their sale. Adopted subsequently by Norway, Iceland, France, and several other jurisdictions, this approach frames sex work as a form of violence against women and seeks to abolish the

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<sup>7</sup> Crow, M., Brauholtz Speight, J., Turner, E., Scire, G., Dickinson, C., & Hartley, A. (2019). Re: Sex workers' health: international evidence on the law's impact. *The BMJ*, Rapid Response, 21 May 2019.

<sup>8</sup> Tandon & Nayak, *supra* note 1.

<sup>9</sup> Crow et al., *supra* note 6.

industry by targeting demand. Proponents argue this approach protects sex workers from criminalization while sending a clear societal message that buying sex is unacceptable. Sex workers are positioned as victims requiring support and exit services rather than as criminals deserving punishment.<sup>10</sup>

## **B. The New Zealand Model: Full Decriminalization in Practice**

### **• *Legislative Framework and Core Principles***

New Zealand's Prostitution Reform Act 2003 (PRA) represents a watershed moment in the global governance of sex work. Passed by a remarkably narrow margin of 60 votes to 59 in Parliament after one of the most contentious legislative debates in the country's history, the PRA decriminalized all aspects of consensual adult sex work while maintaining robust protections against coercion and exploitation through ordinary criminal law. The Act's fundamental principle is that sex workers are entitled to the same rights and protections as workers in other sectors, and that sex work itself should be recognized as a legitimate form of labor rather than a deviant activity requiring special state control.

Under the Act, individuals may legally engage in sex work if they are at least 18 years old. The Act establishes clear rights for all sex workers regardless of their immigration status or whether they are working in compliance with all regulatory requirements. These rights include the right to give or refuse consent to sexual activities; the right to insist on safer sex practices and to refuse any client who will not comply; the right to be paid as agreed for services rendered; the right to safety at work, including the ability to terminate a booking if conditions become unsafe; protection from bullying, harassment, and discrimination by employers or operators; and the right to cease sex work at any time without penalty.

The regulatory framework distinguishes between different types of sex work operations. Independent sex workers may operate without any license or special permission, whether working from their own homes or visiting clients in other locations, subject only to generally applicable local council bylaws and ordinary tenancy agreements. Small, owner operated brothels involving up to four sex workers working together may also operate without special licensing. Larger brothels that hire sex workers as employees require certification from relevant

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<sup>10</sup> Morning Star. (2026). Decriminalization of prostitution does not help women and girls. Morning Star , 14 February 2026.

authorities, and operators bear specific legal responsibilities including ensuring that no minors work on their premises and that safer sex practices are maintained.<sup>11</sup>

One of the most innovative provisions of the PRA concerns economic security and the right to exit the industry. The Act provides that sex workers leaving the industry may access unemployment benefits immediately without the standard stand down period that applies to other workers who voluntarily leave employment. This provision recognizes that sex workers may need to leave the industry urgently due to safety concerns, and that financial barriers should not trap individuals in work they wish to leave.

- ***Empirical Evidence of Outcomes***

Research conducted since the PRA's enactment provides compelling evidence of the model's effectiveness. The five year review mandated by the Act, conducted by the Prostitution Law Review Committee and published in 2008, found that decriminalization had largely achieved its goals of improving working conditions, reducing exploitation, and enabling access to justice. Subsequent academic research has reinforced these findings.

A significant majority of sex workers report improved working conditions and greater ability to refuse clients compared to the pre decriminalization era. When sex workers are not threatened with arrest, they can take time to screen clients, insist on condom use, and terminate bookings that become unsafe. Evidence from managed approach programs in other jurisdictions confirms that removing the fear of arrest enables sex workers to report crimes and cooperate with police. In Leeds, a managed approach that removed the threat of arrest for street based sex workers led to a dramatic increase in crime reporting, from 7 percent in 2013 to 52 percent in 2015, a level that was maintained in subsequent years.<sup>12</sup>

The legal framework has also enabled sex workers to exercise their rights in tangible ways. There have been several high profile cases where sex workers have successfully invoked legal protections, including successful sexual harassment claims against brothel owners and rape convictions against clients who covertly removed condoms during bookings—conduct now recognized in New Zealand law as "stealthling" and prosecuted as sexual violation.

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<sup>11</sup> Crow et al., supra note 6

<sup>12</sup> Ibid

Health outcomes have also improved significantly. When sex workers can access health services without fear of identification or arrest, they are more likely to seek regular testing, treatment, and preventive care. The Leeds experience demonstrates that removing the fear of arrest increased interactions between street based sex workers and support services by 110 percent, with 57 percent of women accessing sexual health services having never done so previously. Contraception use increased from 39 percent to 57 percent, and a full range of sexually transmitted infections were detected and treated.<sup>13</sup>

- ***Limitations and Ongoing Challenges***

Despite its successes, the New Zealand experience reveals important limitations. Most significantly, while the PRA decriminalized sex work, it did not include explicit legal protection from discrimination on the basis of sex work status. This omission has created gaps in protection that undermine the rights based approach in practice. Sex workers have little legal recourse if they are treated unfairly because of their occupation, particularly regarding denial of accommodation or premises to work from.

A second significant limitation concerns migrant sex workers. The PRA explicitly excludes temporary visa holders from legal participation in the sex industry, creating a two tiered system where people who hold temporary visas face deportation if they are found to be working in the sex industry. This exclusion creates precisely the conditions of vulnerability that decriminalization seeks to eliminate. Migrant sex workers, unable to work legally, are forced into the shadows where they cannot report abuses or access health services without fear.<sup>14</sup>

- ***Implications for India***

The New Zealand model offers crucial lessons for India. It demonstrates that decriminalization is practically achievable, with measurable improvements in sex workers' safety, access to justice, and working conditions. It shows that decriminalization does not mean deregulation robust protections against coercion remain central. It highlights the importance of comprehensive anti discrimination protections and the dangers of excluding migrant workers. These lessons are directly applicable to India, with its diverse population and significant

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<sup>13</sup> Ibid

<sup>14</sup> Tandon & Nayak, supra note 1

internal and cross border migration.<sup>15</sup>

### C. The European Legalization Model: Germany and the Netherlands

- *Legislative Frameworks and Regulatory Approaches*

Germany and the Netherlands adopted legalization approaches in the early 2000s, motivated by similar objectives: improving working conditions in the sex industry, reducing crime associated with the underground market, and normalizing sex work by ensuring access to social insurance systems. Both countries sought to move sex work from the criminal shadows into a regulated legal framework where it could be monitored, taxed, and subjected to health and safety standards.

Germany's Prostitution Act took effect in 2002, followed by the more restrictive Prostitution Protection Act in 2017. The current German framework requires sex workers to register with authorities, undergo regular health consultations, and permits municipalities to designate specific zones where sex work may be conducted. The stated aim was to enable sex workers to conclude enforceable employment contracts with brothel operators and to access social security systems including health insurance and pensions.<sup>16</sup>

The Netherlands legalized brothels in 2000, lifting the general ban that had been in place since 1911. The Dutch approach emphasizes municipal regulation, with local authorities empowered to license and supervise sex businesses within their jurisdictions. This decentralized approach means that registration requirements, zoning restrictions, health regulations, and enforcement practices vary significantly between municipalities, creating a complex patchwork of regulatory requirements. Amsterdam's regulated red light district has become internationally famous, but the reality of regulation varies enormously across the country.

- *Outcomes and Critiques*

The legalization approach has generated substantial criticism based on empirical evidence of its outcomes. Critics argue that legalization has failed to sever the connection between sex work and trafficking. According to some estimates, significant percentages of women in prostitution

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<sup>15</sup> Ibid.

<sup>16</sup> Morning Star, *supra* note 9.

in Germany and the Netherlands are believed to be victims of human trafficking or coercion. In Germany, it has been reported that two decades after legalization, a substantial proportion of women in prostitution are still victims of human trafficking. In the Netherlands, authorities estimate that a significant percentage of prostitutes have either been coerced into prostitution by violence or lured into it by exploiters.<sup>17</sup>

A 2012 study published in World Development purportedly found that legalizing prostitution increased human trafficking inflows, particularly in high income countries where the legal industry created demand that illegal operators could exploit. This suggests that legalization alone, without robust enforcement mechanisms, may be insufficient to address systemic vulnerabilities.<sup>18</sup>

Critics from an abolitionist perspective raise more fundamental objections. A 2023 European Parliament resolution noted that those who regard sex work as professional employment represent a minority of people in prostitution, while the large majority do not consider it to be a normal job, would leave the sex industry if they could, and consider prostitution to be a form of violence. From this perspective, legalization is not merely ineffective but affirmatively harmful, as it legitimizes an institution that is inherently exploitative.<sup>19</sup>

The German experience also revealed troubling practices under legalization. Jobcentres initially required women to apply for "jobs" in brothels as the state regarded this as a normal type of work, though this was subsequently clarified by courts as an unlawful requirement. This illustrates how legalization can lead to the normalization of prostitution as just another occupation, obscuring the harms that critics argue are inherent to the practice.<sup>20</sup>

- ***Implications for India***

The German and Dutch experiences offer cautionary lessons for India. Legalization without robust labor protections and anti discrimination enforcement may simply formalize existing inequalities rather than remedying them. The persistence of exploitation within legalized frameworks demonstrates that formal legal status does not automatically translate into

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Galloway, S. (2025). 'They wouldn't want their own daughters to be prostituted, but it's good enough for other people's'. Morning Star , 26 June 2025.

meaningful rights or protection from abuse. India must learn from these experiences by ensuring that any reformed legal framework includes not only permission to engage in sex work but also affirmative protections and meaningful enforcement mechanisms.<sup>21</sup>

#### **D. The Nordic Model: Criminalizing Demand**

- ***Philosophical Foundations and Legislative Design***

Sweden's 1999 law criminalizing the purchase of sexual services represented a novel approach grounded in radical feminist theory that frames prostitution as a form of male violence against women. Proponents see prostitution as inherently harmful to most women engaged in it, and argue that the appropriate legal response is to target demand by criminalizing buyers while providing support services to those seeking to exit the industry. The model is presented as part of a wider socially progressive movement to reduce violence against women and vulnerable individuals.<sup>22</sup>

Under this framework, sex workers are positioned as victims requiring support and exit services rather than as criminals. The stated intention is to reduce demand, thereby shrinking the sex industry and ultimately contributing to its abolition. Proponents argue that the model takes a public health viewpoint and puts in place legislation and social programmes to generate a shift in culture and protect the most vulnerable, even if this means some women are denied the opportunity to sell sex.<sup>23</sup>

- ***Empirical Evidence and Critical Findings***

Proponents of the Nordic model cite Swedish government evaluations claiming reduced street prostitution, public support for the law, and decreased demand as measured by the percentage of men reporting having purchased sex—from 13.6 percent to 7.8 percent. In Sweden, street prostitution was reportedly halved within a decade of implementing the law. Supporters also argue that the model aligns with international legal obligations under conventions such as the Istanbul Convention and the Convention on the Elimination of All Forms of Discrimination

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<sup>21</sup> Tandon & Nayak, *supra* note 1.

<sup>22</sup> Morning Star, *supra* note 9.

<sup>23</sup> Sitwell, R. (2025). Bringing class to the women's movement. Morning Star, 20 June 2025.

against Women.<sup>24</sup>

Research indicating that 50-90 percent of people involved in prostitution were abused as children and 75 percent have experienced homelessness suggests that the industry is driven by vulnerability rather than choice. From this perspective, the appropriate policy response is to address root causes and provide support services rather than to legitimize the industry through decriminalization.<sup>25</sup>

However, critics raise significant concerns about the model's impact on sex workers' safety and access to justice. Research from the United Kingdom, where a managed approach has been implemented in some areas, provides evidence that removing the fear of arrest enables sex workers to report crimes and access services. In Leeds, a managed approach that removed the threat of arrest for street based sex workers led to dramatic improvements in crime reporting and health outcomes. Crime reporting with full details to police increased from 7 percent in 2013 to 52 percent in 2015, and interactions between street based women and support services increased by 110 percent.<sup>26</sup>

A fundamental critique is that by driving transactions underground, the Nordic model may increase rather than decrease violence against sex workers. When clients fear arrest, transactions are rushed, client screening becomes difficult, and safer venues are avoided. The law may thus have the perverse effect of increasing individuals' exposure to violence by undermining safety practices. Additionally, despite the explicit aim of targeting only buyers, people who sell sex often remain the main target of policing in practice.<sup>27</sup>

- ***Implications for India***

The Nordic model's appeal to Indian policymakers concerned with trafficking is understandable. However, important questions arise about whether criminalizing clients would address the vulnerabilities that Indian sex workers currently face. In India's context, where police harassment and corruption are already significant problems, giving police additional powers could lead to increased exploitation rather than protection. The experiences of

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<sup>24</sup> Morning Star, *supra* note 9.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Crow et al., *supra* note 6.

jurisdictions with managed approaches suggest that removing the fear of arrest enables sex workers to access health services, report crimes, and work more safely.<sup>28</sup>

## **E. Comparative Synthesis: Evaluating Models Against Rights Based Criteria**

- ***Analytical Framework***

To assess these three models systematically and to draw meaningful lessons for India, it is useful to evaluate them against criteria derived from human rights principles and from the expressed needs and priorities of sex workers themselves. The key criteria include protection from violence and exploitation; access to justice and legal remedies; access to health services and harm reduction programs; freedom from discrimination and stigma; economic rights and labor protections; and respect for agency and self determination.

- ***Comparative Assessment***

When evaluated against the criterion of protection from violence and exploitation, evidence from jurisdictions that have implemented approaches reducing criminalization suggests potential benefits. The Leeds managed approach documented significant improvements in safety and well being, with increased reporting of crimes to police and improved access to support services. This experience demonstrates that when sex workers are free from the threat of arrest, they are better able to negotiate with clients, access health services, and report crimes—all of which contribute to their safety.<sup>29</sup>

Regarding access to justice, the Leeds experience is instructive. Crime reporting with full details to police increased from 7 percent in 2013 to 52 percent in 2015 after the introduction of a managed approach that removed the threat of arrest. This dramatic improvement suggests that when sex workers trust that approaching police will not result in their own arrest, they are far more likely to report crimes and cooperate with law enforcement.<sup>30</sup>

Health outcomes also improve when sex workers can access services without fear. In Leeds, interactions between street based women and support services increased by 110 percent, with 57 percent of women accessing sexual health services having never done so previously.

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<sup>28</sup> Tandon & Nayak, *supra* note 1.

<sup>29</sup> Crow et al., *supra* note 6.

<sup>30</sup> *Ibid.*

Contraception use increased from 39 percent to 57 percent, and a full range of sexually transmitted infections were detected and treated.<sup>31</sup>

Discrimination and stigma present challenges across all models. Proponents of the Nordic model argue that it reduces stigma by sending a clear societal message that buying sex is unacceptable and that sex workers are victims deserving support. However, critics argue that framing sex workers as victims incapable of agency may itself be stigmatizing and may deny sex workers' capacity to make decisions about their own lives.<sup>32</sup>

Economic rights and labor protections reveal fundamental differences in how each model conceptualizes sex work. The decriminalization approach recognizes sex work as work, with associated rights including access to labor protections and social security. The Nordic model explicitly denies the legitimacy of sex work as labor, precluding economic rights frameworks and instead focusing on support for exiting the industry.<sup>33</sup>

Respect for agency and self determination constitutes perhaps the most fundamental philosophical difference. The decriminalization approach respects sex workers' capacity to make decisions about their own lives and work, recognizing them as rights bearing adults entitled to make choices about their occupations. The Nordic model, by contrast, explicitly rejects the premise that sex workers can exercise genuine agency, framing all sex work as violence and all sex workers as victims incapable of meaningful consent.<sup>34</sup>

- ***The Case for Decriminalization***

Based on this comparative analysis and drawing on empirical evidence from various jurisdictions, the decriminalization model emerges as the approach most consistent with human rights principles and most effective in achieving positive outcomes for sex workers. This conclusion is reinforced by comparative research specifically examining India, Sweden, and the Netherlands, which advocates for decriminalization as the most effective approach to protect public interest, uphold rights, and eliminate stigma within this complex social issue.<sup>35</sup>

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<sup>31</sup> Ibid.

<sup>32</sup> Morning Star, *supra* note 9.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Tandon & Nayak, *supra* note 1.

The superiority of decriminalization lies in its fundamental recognition that sex workers are rights bearing subjects entitled to the same legal protections as other citizens, rather than objects of either criminal sanction or paternalistic rescue. By bringing sex work within the framework of ordinary law—including labor law, anti discrimination law, and criminal law protections against violence and coercion—decriminalization enables sex workers to access rights and remedies that are systematically denied under other models.<sup>36</sup>

## **F. Lessons for India: Toward a Rights Based Framework**

- *Learning from International Experience*

The comparative analysis yields several specific lessons for India. First, the current criminalization model must be rejected. India's approach under the ITPA has manifestly failed to protect sex workers from physical, sexual, and psychological violence, leading to marginalisation and discrimination. International evidence demonstrates that criminalization exacerbates these harms rather than remedying them.<sup>37</sup>

Second, the Nordic model's framing as protecting vulnerable women while punishing exploiters has appeal, but evidence from jurisdictions with managed approaches suggests that removing the fear of arrest enables sex workers to access health services, report crimes, and work more safely. In India's context, where police harassment is already a significant problem, any framework that maintains criminalization or expands police powers requires careful consideration.<sup>38</sup>

Third, legalization without robust rights protections is insufficient. The German and Dutch experiences show that simply permitting sex work, without ensuring meaningful access to labor protections and without addressing discrimination, may merely formalize existing inequalities.

Fourth, decriminalization provides the most coherent framework for protecting rights, but it must be comprehensive. International experience demonstrates decriminalization's benefits while highlighting the importance of including anti discrimination protections and extending

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<sup>36</sup> Crow et al., supra note 6.

<sup>37</sup> Tandon & Nayak, supra note 1.

<sup>38</sup> Crow et al., supra note 6.

protections to all workers regardless of status.<sup>39</sup>

- *Adapting Decriminalization to the Indian Context*

Any legal reform in India must be thoughtfully adapted to the specific social, economic, and cultural context. The constitutional framework provides strong foundations for a rights based approach. India's Constitution includes fundamental rights to equality before the law under Article 14, protection of life and personal liberty under Article 21, and freedom to practice any profession under Article 19(1)(g). The Supreme Court has progressively recognized the rights of marginalized communities, providing a foundation for legislative reform that respects the rights and dignity of all persons.<sup>40</sup>

The federal structure of Indian governance requires careful attention. Criminal law and police are concurrent subjects under the Indian Constitution, requiring coordination between central and state governments. Meaningful reform would require both central legislation establishing a rights based framework and state level implementation through police training, service provision, and enforcement mechanisms.

The diversity of the sex industry in India must be recognized and accommodated. India's sex sector encompasses brothel based workers in established red light areas like Kolkata's Sonagachi and Mumbai's Kamathipura, street based workers, home based workers, and increasingly online platforms. A decriminalized framework must accommodate this diversity rather than imposing uniform regulations.

The specific vulnerabilities of migrant and marginalized populations must be addressed. India's sex workers include significant numbers of internal migrants, cross border migrants, Dalit and Adivasi women, and transgender persons. Anti discrimination protections are essential to prevent decriminalization from benefiting only privileged workers while leaving marginalized groups unprotected.<sup>41</sup>

The existing strength of collective organizing among sex workers in India provides a foundation for meaningful reform. Organizations like the Durbar Mahila Samanwaya

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<sup>39</sup> Tandon & Nayak, supra note 1.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

Committee in West Bengal have demonstrated the power of collective action in improving conditions, providing services, and advocating for rights over decades of organizing.

- ***Elements of a Rights Based Framework for India***

A rights based framework for India should include several key elements, which are as follows:

- i. Repeal of the ITPA provisions that criminalize the conditions of sex work, including sections on soliciting, living on earnings, and brothel keeping for adult consensual sex work.
- ii. Explicit anti discrimination protections prohibiting discrimination in housing, employment, healthcare, education, and access to services based on sex work status.
- iii. Application of ordinary labor laws to sex work, ensuring access to minimum wage protections, safe working conditions, and social security benefits.<sup>42</sup>
- iv. Robust protections against coercion and exploitation, including strengthened laws against trafficking, forced labor, and violence, enforceable without fear of self incrimination.
- v. Inclusion of all sex workers regardless of migration status.
- vi. Support for exit services that are needs based rather than conditional on leaving sex work.
- vii. Meaningful consultation with sex worker communities in designing and implementing legal frameworks.<sup>43</sup>

## **Conclusion**

This comparative analysis has demonstrated that legal approaches to sex work have profound and measurable impacts on the rights, safety, and well being of sex workers. The evidence from two decades of experience across multiple jurisdictions suggests that decriminalization offers significant benefits in enabling sex workers to access health services, report crimes, and work more safely. When sex workers are free from the fear of arrest, they can negotiate with clients,

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<sup>42</sup> Crow et al., supra note 6.

<sup>43</sup> Tandon & Nayak, supra note 1.

access support services, and seek justice when victimized.

By contrast, both the Nordic model and European legalization approaches have generated significant debate about their effectiveness. The Nordic model, despite its considerable rhetorical appeal, raises important questions about its impact on sex workers' safety and access to justice. Legalization in Germany and the Netherlands has been criticized for failing to sever the connection between sex work and trafficking.

For India, these findings carry urgent implications. The current criminalization regime under the ITPA has manifestly failed, leaving sex workers vulnerable to violence, exploitation, and discrimination while denying them access to the most basic legal protections. The path forward lies in learning from international experience while thoughtfully adapting decriminalization to India's constitutional framework, federal structure, social context, and the hard won wisdom of India's own sex worker communities.<sup>44</sup>

The question is not whether India should reform its laws governing sex work. The evidence is clear that the current approach causes harm and must change. The question is whether India will have the political courage to undertake reform based on evidence rather than ideology, and in genuine partnership with the sex workers whose lives and rights hang in the balance. As comparative research concludes, decriminalization offers the most effective approach to protect public interest, uphold rights, and eliminate stigma within this complex social issue. The time for India to act on this evidence is now.<sup>45</sup>

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.