
THE STUGGLE OF PROSTITUTION OF INDIA: HUMAN TRAFFICKING, HISTORICAL ORIGINS, GOVERNMENTAL REGULATION, AND ISSUES RELATED TO HUMAN RIGHTS

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ABSTRACT

In India, prostitution has been a complicated and contentious topic that has been influenced by changing human rights discourses, political regulations, and historical traditions. Prostitution has been entwined in discussions about morality, legality, and power from the devadasi system and courtesans of ancient India to the colonial control of brothels and the post-independence legal framework. Instead of protecting sex workers' rights, the state's regulatory strategy, which is typically motivated by worries about morality and public order, has often side lined them. This essay explores the history of prostitution in India, critically examines the politics of regulation, and assesses the problem from a human rights perspective, emphasizing livelihood, autonomy, and dignity. It examines the shortcomings in India's legal system using comparative models of governance and international human rights instruments.

Keywords: Prostitution; Human Trafficking; Human Rights; Political Regulation; India; Sex Work

1. Introduction

Prostitution has long been one of the most contested subjects in Indian society, occupying a paradoxical position between visibility and marginalization. While sex work has existed across cultures and civilizations, its historical trajectory in India reflects unique intersections of tradition, morality, law, and politics. From the celebrated courtesans of ancient India and the institutionalized devadasi system to the stigmatized brothels of the colonial period, prostitution has shifted in meaning and status in response to changing socio-political contexts. Despite its persistence, the discourse surrounding prostitution continues to be dominated by moral judgments and paternalistic state interventions rather than recognition of the rights and dignity of sex workers. Political regulation of prostitution in India has historically been framed as a matter of public morality, law, and order, often ignoring the lived realities of those involved. The colonial state's use of the Contagious Diseases. Legislation and the acts following independence, specifically the Suppression of Immoral Traffic in Women and Girls Act (1956) and its successor, the Prevention of Immoral Traffic Act (1986) reflect a continuity in prioritizing control over protection. The struggle is exacerbated by a massive human trafficking pipeline, These frameworks criminalize the conditions around sex work rather than acknowledging it as a form of livelihood, thereby exposing sex workers to systemic harassment, stigma, and exploitation

.Against this backdrop, a human rights perspective provides an alternative lens, focusing on the rights to dignity, bodily autonomy, livelihood, and freedom from violence. The growing recognition of sex workers' rights at both national and international levels underscores the need for a paradigm shift from morality-driven regulation to rights-based policy. This paper seeks to trace the historical roots of prostitution in India, analyze the politics of its regulation, and critically evaluate the human rights concerns that continue to shape the debate.

2. Historical Roots of Prostitution in India

The history of prostitution in India demonstrates that sex work has not always been associated with stigma or marginality. Instead, its meaning and social standing have been deeply shaped by cultural practices, political structures, and religious institutions throughout different periods of Indian history.

2.1 Ancient Period (c.1500 Bc – 1200AD)

The socio-historical landscape of early India reveals a complex integration of sex work within the public and political spheres, beginning as early as the Vedic period. The *Rig Veda* provides the earliest linguistic evidence of this social stratum through the mention of the **Sadharani**, or "common woman," suggesting that the profession was a recognized, if nuanced, element of early Indo-Aryan society. This presence expanded significantly during the Epic period; in the *Ramayana* and *Mahabharata*, courtesans were not merely tolerated but were regarded as indispensable components of the royal court. Their participation in state functions and celebrations underscores a high degree of social visibility, where their presence was often associated with auspiciousness and the prestige of the sovereign. intellectual refinement. Kautilya's *Arthashastra* (c. 3rd century BC) marks a pivotal shift toward **state-controlled urbanism**, providing a legal framework that treated the trade as a regulated industry subject to taxation and government oversight. This period also saw the cultural apotheosis of the **Ganika**, as detailed in Vatsyayana's *Kama Sutra*. By the Mauryan and Gupta eras, this social presence underwent a process of rigorous institutionalization and. Unlike the common prostitute, the *Ganika* represented an elite class defined by her mastery of the sixty-four arts (*kalas*). This dual identity as both a taxable state asset and a highly educated intellectual allowed these women to navigate a unique social space, where their artistic prowess and proximity to power afforded them a level of agency and public admiration largely unavailable to the average woman of the period.

2.2 The Devadasi Tradition

The devadasi system, in which women were dedicated to temples for religious service, represents another significant dimension of prostitution's history in India. Initially, devadasis were revered as spiritual and cultural custodians, performing music and dance as offerings to deities. Over time, however, the system came increasingly exploitative, with many devadasis forced into sexual relationships with patrons and elites under the guise of religious duty. By the late medieval and colonial periods, the system had become a site of both social prestige and systemic exploitation, raising critical questions about the intersection of religion, gender, and power.

2.3 Medieval Period

During the medieval era, prostitution took on new dimensions in the courts of rulers and nobles.

Historical accounts describe tawaifs (courtesans) in Mughal and regional courts who were highly educated, skilled in the arts, and influential in cultural and even political circles. Like their ancient counterparts, they were not merely sex workers but also custodians of refined traditions of music and poetry. At the same time, ordinary prostitutes often lived in marginal conditions, revealing a social hierarchy within sex work itself. The medieval period, therefore, illustrates a duality: the glorified courtesan at the top and the stigmatized sex worker at the margins.

In Medieval Period, The Bedia community's involvement in prostitution is a deeply rooted survival mechanism born from the collapse of traditional folk art and the loss of royal patronage. Originally respected as nomadic performers of the Rai dance, by hereditary sex work as the primary means of economic sustenance. Unlike many other forms of trafficking, this involvement is often intergenerational and family-oriented, where women are the central breadwinners and their entry into the trade is sometimes marked by traditional community rituals.

2.4 Colonial Period

The colonial state, concerned with the health of its soldiers, introduced the Contagious Diseases Acts in the nineteenth century, targeting prostitutes near military cantonments for mandatory medical examinations. While framed as a public health measure, these laws institutionalized the policing and stigmatization of prostitutes. Colonial authorities imposed Victorian moral codes, recasting prostitution as immoral and criminal rather than socially embedded. Simultaneously, brothels flourished in port cities and cantonments, serving both Indian elites and European soldiers. This period cemented the legal and social marginalization of prostitution, the effects of which reverberate into the post-independence era. Taken together, these historical layers reveal that prostitution in India has never been static; it has shifted from respected courtesanship and ritual practice to stigmatized labor under colonial morality. Each period illustrates how political authority, and social norms shaped the conditions of sex work, laying the foundation for the complex legal and human rights debates that continue.

3. . Political Regulation and Legal Frameworks

The political regulation of prostitution in India has historically been shaped more by

concerns of morality, law and order, and public health than by recognition of sex workers' rights. The trajectory of legal interventions reflects a continuity of control, beginning with colonial regulation and extending into post-independence legislation.

3.1 Colonial Regulation

British colonial governance introduced a new discourse on prostitution, marked by both utilitarian and moral concerns. The Contagious Diseases Acts sought to protect soldiers from venereal diseases by subjecting prostitutes in military cantonments to mandatory medical examinations. While presented as a health measure, these laws institutionalized surveillance, stigmatization, and coercion, treating prostitutes as a “necessary evil” for military efficiency. Simultaneously, Victorian moral codes cast prostitution as immoral, thereby intertwining medicalized control with moral policing. The colonial state's contradictory stance, tolerating prostitution for military needs while criminalizing it for civilian morality, laid the foundation for the legal ambiguities that persist in independent India.

3.2 Post-Independence Legal Frameworks

After independence, India's approach to prostitution was shaped by international commitments, particularly The 1949 UN Convention aimed at combating the Trafficking of Persons, which India endorsed. In reaction, the government implemented the Suppression of Immoral Trafficking in Women and Girls Act (SITA) from 1956. This legislation did not make prostitution itself illegal but focused on related activities like managing a brothel, recruitment, and public solicitation. SITA underwent amendments in 1986 and rebranded the Immoral Traffic (Prevention) Act. The ITPA expanded state powers by criminalizing clients in certain contexts, strengthening penalties for brothel-keeping, and introducing provisions for the “rehabilitation” of sex workers. Although framed as protective, these laws often reinforced marginalization. Sex workers faced constant harassment from law enforcement, as vague provisions blurred the line between voluntary sex work and trafficking. Public solicitation and brothel activities were penalized, leaving sex workers vulnerable while doing little to address exploitation or improve working conditions.

3.3 Judicial and Political Discourse

Judicial interventions up to 2017 reveal ambivalence. In cases like *Gaurav Jain v. Union*

of India (1997), the Supreme Court emphasized rehabilitation and protection of children of sex workers but stopped short of recognizing sex work as legitimate labor. Similarly, in *Budhadev Karmaskar*

v. *State of West Bengal* (2011), the Court acknowledged sex workers' right to dignity and ordered the formation of a panel to suggest rehabilitation measures. Yet, judicial discourse remained framed within protectionist and paternalistic language, rather than embracing full decriminalization or labor rights. Political debates in Parliament also mirrored this tension. While some policymakers advocated for stricter crackdowns in the name of morality and women's protection, others argued for reforms to reduce harassment exploitation. Civil society groups, particularly sex work advocates, pushed for decriminalization and acknowledgment of sex work as legitimate labor, but their voices struggled to gain legislative traction. By 2017, India's legal and political framework on prostitution remained caught between abolitionist rhetoric and partial tolerance. While prostitution itself was not illegal, the activities essential for its practice were criminalized, leaving sex workers in a legal grey zone. This contradiction reflected the dominance of morality-driven governance over human rights discussions, guaranteeing that prostitution in India remained governed through oversight instead of acknowledgment

4. Prostitution and Human Rights Concerns

Prostitution in India cannot be understood merely as a question of law or morality; it is fundamentally a matter of human rights. Sex workers often occupy a paradoxical position: tolerated as part of social reality yet denied recognition as legitimate workers and citizens with full rights. At the heart of this concern is the systemic "marginalization" of sex workers, who often face a cycle of poverty, social exclusion, and police harassment due to the criminalization of their work environment. While the Supreme Court has affirmed that sex workers possess an inherent right to dignity under Article 21 of the Constitution, they continue to encounter significant barriers to basic human rights, such as healthcare, legal protection from violence, and the right to live without the constant threat of arbitrary detention.

4.1 Right to Dignity and Livelihood

The Indian Constitution enshrines the right to life and personal liberty under Article 21,

which has been expansively interpreted to include the right to live with dignity. Yet, sex workers frequently experience denial of this right. Their occupation is socially stigmatized, often viewed as immoral rather than as a form of labor. This means that sex workers should have access to the same basic protections as any other worker, including medical care, physical safety, and the right to earn a living without being subjected to harassment or arbitrary detention. Criminalization of surrounding activities, such as brothel-keeping and solicitation.

4.2 Autonomy and Consent

Autonomy and consent The Court clarified that while the "brothel" as an institution and "trafficking" remain illegal, the individual act of sex work is not a crime. The central human rights concern is the failure to distinguish between consensual sex work and trafficking. Legal and policy frameworks often conflate the two, leading to interventions that criminalize voluntary sex workers in the name of protecting victims. This erases the agency of those who choose sex work, whether due to economic necessity or personal decision, and denies them the autonomy guaranteed under international human rights law.

4.3 Violence, Harassment, and Stigma

sex workers face a deep-seated trifecta of violence, harassment, and stigma, which often prevents them from accessing basic human rights. Violence and harassment frequently stem from law enforcement and societal actors who operate under the misconception that sex work itself is a criminal act, leading to arbitrary arrests, physical abuse, and extortion. Stigma further compounds this by isolating sex workers and their children, creating barriers to essential services like healthcare, housing, and education

4.4 Health and Safety

Health concerns constitute another critical dimension. Sex workers often operate without adequate access to healthcare services, making them vulnerable to sexually transmitted infections, including HIV/AIDS. While targeted health interventions have improved awareness, stigma and fear of disclosure continue to prevent many from seeking care. The lack of occupational safety standards further exposes them to physical and psychological harm. The human rights concerns surrounding prostitution in India demonstrate that the issue

extends beyond questions of legality or morality. Denial of dignity, livelihood, and autonomy, coupled with exposure to systemic violence and health risks, reflects the profound vulnerability of sex workers. Any policy framework that fails to address these concerns risks perpetuating exploitation rather than offering protection.

5. State, Morality, and Politics

The regulation of prostitution in India has been deeply shaped by the politics of morality. The state has historically positioned itself as the guardian of social values, framing prostitution as a social evil to be controlled rather than as labor to be regulated or rights to be protected. This moral framing has reinforced paternalistic policies and justified restrictive legislation.

5.1 The Politics of Morality

State interventions often reflect dominant cultural and religious attitudes that equate sex work with immorality. Prostitution is rarely addressed as an economic activity but instead as a moral problem undermining family and societal order. This perspective legitimizes laws that criminalize solicitation, brothel-keeping, and other aspects of sex work, while simultaneously ignoring the socio-economic realities that drive individuals into prostitution. The politics of morality thus displaces structural causes such as poverty, gender inequality, and caste hierarchies.

5.2 Feminist Debates

The feminist discourse on prostitution in India is divided between two main perspectives. The abolitionist approach views prostitution as inherently exploitative, equating it with violence against women and advocating for its eradication. On the other hand, the sex workers' rights approach emphasizes agency arguing that sex work should be recognized as legitimate labor deserving of legal protection. Both positions have influenced state policy, but the dominance of abolitionist arguments has reinforced moralistic regulation rather than labor rights.

5.3 Politics and Public Opinion

Political debates on prostitution often serve as a stage for moral posturing rather than substantive reform. Legislators tend to frame the issue in terms of morality, women's

protection, and social order, thereby avoiding difficult conversations about labor rights and economic justice. Public opinion, shaped by stigma and entrenched social norms, further supports a regulatory approach that prioritizes morality over human rights. The politics of morality has entrenched a cycle where prostitution is simultaneously tolerated and condemned, regulated but not recognized. This approach allows the state to assert moral authority while leaving sex workers in a legal and social grey zone, excluded from the protection of rights and vulnerable to exploitation.

6. International Perspectives and Human Rights Instruments

The governance of prostitution has been a debated topic worldwide, with countries implementing various methods influenced by cultural, political, and legal customs. International human rights instruments provide important benchmarks for assessing the extent to which national laws protect or undermine the rights of sex workers.

6.1 International Human Rights Framework

The international human rights framework for sex work in India is a complex landscape where global standards of dignity and labor rights often clash with local laws that treat the profession through a lens of "immoral trafficking." The Universal Declaration of Human Rights (UDHR, 1948) confirms the rights to dignity, existence, and personal safety, all of which are directly applicable to individuals in the sex work industry. The Global Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) further underscore the rights to employment, healthcare, and freedom from degrading treatment. The Convention on the Elimination of All Types of Discrimination Against Females (CEDAW, 1979) obliges states to protect women from exploitation, though interpretations have varied between abolitionist and rights-based readings. The Palermo Protocol (2000) distinguishes trafficking from voluntary sex work, but in practice many states, including India, often conflate the two.

6.2 Comparative Models of Regulation

Globally, there are three dominant models of prostitution policy exist:

- **Legalization:** Countries such as the Netherlands and Germany regulate prostitution as legitimate labor, requiring registration, taxation, and health

checks. This model provides formal recognition but has been criticized for creating hierarchies between legal and illegal workers.

- **Decriminalization:** New Zealand and parts of Australia have adopted decriminalization, removing punitive laws and treating sex work as an occupation governed by general labor rights. This model is widely supported by sex workers' rights groups as it minimizes stigma and enhances safety.
- **Abolitionist/Nordic Model:** Sweden and other Nordic countries criminalize the purchase of sex while decriminalizing the seller, aiming to reduce demand. While framed as protective, critics argue it pushes sex work underground and increases vulnerability. India's legal framework reflects elements of abolitionist thinking, prioritizing suppression of prostitution-related activities while tolerating the practice itself. A comparison with international models suggests that punitive approaches exacerbate vulnerability, while decriminalization offers greater potential for safeguarding rights and reducing stigma.

International human rights instruments emphasize dignity, autonomy, and protection from exploitation, yet India's laws remain focused on control and morality. Learning from comparative models highlights the need for a shift toward a rights-based approach that reconciles legal frameworks with international human rights standards.

7. Contemporary Debates and Reform Proposals

The debates on prostitution in India have long reflected the tension between moral regulation and human rights recognition. While the legal framework has remained largely unchanged since the Immoral Traffic (Prevention) Act of 1986, social movements, parliamentary discussions, and academic scholarship have continued to challenge its adequacy.

7.1 Parliamentary and Policy Debates

In parliamentary discussions, legislators have often framed prostitution as a threat to morality and social order, advocating stricter measures to combat trafficking and brothel-related activities. Proposals for amendments to strengthen punitive provisions have been debated intermittently, reflecting a dominant abolitionist approach. At the same time, some

policymakers and committees have acknowledged the need to distinguish between voluntary sex work and trafficking, recognizing that punitive policies disproportionately harm women who choose sex work as a livelihood. However, such reformist voices have remained on the margins.

7.2 Civil Society and Sex Workers' Movements

Civil society organizations and sex workers' collectives have been central to the demand for reform. Networks such as The Durbar Mahila Samanwaya Committee (DMSC) in Kolkata and the National Network of Sex Workers (NNSW) have pushed for the decriminalization of the sex work industry, contending that the acknowledgment of sex work as valid employment is crucial for ensuring safety, health, and worthiness. These movements have challenged the paternalistic logic of rehabilitation schemes, which often push sex workers into precarious low-paying jobs without addressing structural inequalities of caste, class, and gender. Their activism has contributed to greater visibility of sex workers' rights in public discourse, even if legislative change has been slow.

7.3 Judicial Perspectives

Judicial interventions have also influenced the debate. While courts have occasionally affirmed the dignity of sex workers, they have primarily emphasized rehabilitation and protection, reinforcing a protective rather than rights-based framework. This has left unresolved the central question of whether sex work can be legally recognized as labor.

7.4 Reform Proposals

Scholars and activists have put forward proposals for decriminalization and labor rights protections, drawing inspiration from international models. Recommendations often emphasize occupational safety, access to healthcare, freedom from police harassment, and inclusion of sex workers in policymaking. The judiciary has directed that the police must not treat sex workers as criminals or use the possession of condoms as evidence of a crime. Furthermore, sex workers who are victims of sexual assault must be provided with the same medico-legal care as any other victim, without discrimination. These proposals highlight a growing recognition that legal and policy reform must shift from moral regulation toward human rights protection. The contemporary debates reveal a policy impasse: while the state

continues to frame prostitution through a moral and abolitionist lens, sex workers and their advocates press for rights-based reforms. This unresolved tension underscores the need for a fundamental rethinking of prostitution policy in India.

8. Conclusion

The history of prostitution in India reveals a complex trajectory, shaped by cultural traditions, colonial interventions, and post-independence legislation. From respected courtesans and ritual practices to stigmatized brothels and criminalized labor, prostitution has continually been reframed by shifting political and moral discourses. What remains constant, however, is the marginalization of sex workers, who have been regulated and controlled but rarely recognized as rights-bearing citizens. The legal framework, particularly the Immoral Traffic (Prevention) Act, reflects the dominance of abolitionist thinking that criminalizes surrounding activities while tolerating prostitution in principle. This contradictory stance has perpetuated a climate of harassment, stigma, and vulnerability. Judicial interventions, while affirming dignity in principle, have largely emphasized rehabilitation rather than recognition of sex work as legitimate labor.

Civil society and sex workers' collectives, by contrast, have consistently highlighted the need for decriminalization, protection of livelihood, and inclusion in policymaking. The analysis demonstrates that prostitution in India is not merely a question of law or morality but fundamentally a human rights issue. Denial of dignity, autonomy, and security perpetuates systemic exploitation. International human rights instruments and comparative models show that punitive frameworks exacerbate vulnerability, while rights-based approaches offer pathways to dignity and protection. For India, the way forward requires rethinking prostitution beyond morality-driven control. A transition towards a framework focused on rights, rooted in dignity and sustenance, and fairness, possesses the ability to harmonize legal principles with constitutional rights and global human rights norms

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