
LEGALISING PROSTITUTION- FROM INDIA TO THE WORLD, BOTH SIDES OF A COIN, CONTINUOUS DEBATE AND NO CONCLUSION

Sibani Pattnaik, BA LLB (H), RSLA, The Assam Royal Global University, Guwahati

ABSTRACT

Globally, the issue of legalising prostitution continues to provoke intense debate across public health, ethics, human rights, and legal domains. This study examines the complex nature of prostitution laws through international case studies from New Zealand, Germany, and Pakistan, as well as a comparison with India's intricate legal framework. While some countries uphold strict prohibitions due to concerns about trafficking and morality, others adopt decriminalisation or full legalisation to grant sex workers basic rights and protections.

Supporters of legalisation argue that it fosters safer working conditions, improves healthcare access, reduces police harassment, and allows sex workers legal recourse. New Zealand's decriminalisation model offers sex workers equal labour rights, promoting autonomy and reducing violence and stigma. Critics, however, caution that legalisation may expand the commercial sex market, normalize exploitation, and increase trafficking, particularly in patriarchal societies where women are more vulnerable. In India, prostitution is not illegal, but associated acts like brothel management and public solicitation are criminalised under the Immoral Traffic (Prevention) Act, 1956, creating a legal paradox. This ambiguity contributes to unsafe conditions and police abuse. Interviews with legal experts and corporate professionals present mixed views—some advocate for recognition and protection of sex workers, while others express concern about persistent societal stigma and potential for increased abuse.

The analysis concludes that mere legalisation without broader social reform may yield limited benefits in India. Deep-rooted patriarchal norms, lack of sex education, and moral policing of female sexuality continue to marginalise sex workers. Unless these structural issues are addressed, legal recognition alone cannot ensure dignity, equality, or safety. Ultimately, any policy on prostitution in India must be anchored in human rights, public health, and inclusive development, supported by continuous monitoring and responsive governance to avoid unintended harms.

Keywords: Prostitution, Legalization, Decriminalization, Indian perspective, World view

1. INTRODUCTION

The question of whether to legalize prostitution straddles deeply rooted social, ethical, legal, and economic dimensions. Prostitution has existed for centuries and is often termed the "oldest profession," yet it remains one of the most contentious and divisive issues in contemporary society.¹ Countries across the world have adopted varied approaches to managing prostitution—some choosing to criminalize it fully, others adopting a partially criminalized or regulated framework, and some opting for decriminalization or full legalization. Each of these approaches reflects differing societal values and priorities, leading to a diverse array of legal and social outcomes for sex workers, clients, and communities.

The debate surrounding the legalization of prostitution is deeply multifaceted, encompassing concerns about human rights, societal morality, and public health. Advocates for legalization argue that it acknowledges prostitution as a legitimate form of work, thereby offering sex workers access to labor rights, health protections, and safer working conditions. By transitioning from a punitive approach to a regulatory framework, governments can set enforceable standards for working conditions, health requirements, and safety measures. This, proponents believe, not only reduces the stigma associated with sex work but also empowers workers to report abuses and seek legal recourse without fear of reprisal. Additionally, regulated environments may improve public health outcomes by promoting regular health check-ups and reducing the spread of sexually transmitted infections (STIs). Legalization can also provide economic benefits by creating a taxable industry, thereby contributing to national revenue and allowing authorities to monitor the industry more effectively.

Critics, however, caution that legalization may inadvertently perpetuate systemic exploitation and trafficking if poorly implemented or enforced. They argue that while regulation might benefit some workers, it could marginalize those unable or unwilling to comply with strict guidelines, pushing them further into unsafe, underground

¹ Prostitution: The world's oldest profession, Bartleby, <https://www.bartleby.com/essay/Prostitution-The-World-s-Oldest-Profession-F37RUUQ3PTDX> (last visited May 11, 2025).

markets. Societal attitudes towards sex work remain contentious, with concerns about normalization overshadowing discussions of worker welfare. Opponents of legalization also fear that legalizing prostitution might contribute to increased human trafficking, as organized crime networks could exploit legal loopholes to traffic individuals under the guise of voluntary sex work. Some scholars and policymakers argue that rather than improving conditions for sex workers, legalization in certain regions has led to an increase in demand, thus exacerbating exploitation². Additionally, the ethical and moral dimensions of prostitution remain a significant barrier to broad acceptance, with many cultures and religious groups opposing legalization because it devalues human dignity and promotes moral decay.

An alternative approach to legalization is decriminalization, which removes punitive measures against sex workers without establishing a comprehensive regulatory framework.³ This model aims to reduce police harassment, improve access to health and social services, and decrease the vulnerability of sex workers to violence and exploitation. Decriminalization allows sex work to exist without the constraints of overregulation, granting individuals the autonomy to engage in the profession without government interference while still benefiting from general labor laws. Proponents argue that,⁴ This model empowers sex workers to operate independently without being subjected to restrictive legal requirements that may push them into exploitative conditions. Countries such as New Zealand have successfully implemented decriminalization, demonstrating improved health and safety outcomes for sex workers without a corresponding increase in trafficking or exploitation.

However, critics of decriminalization argue that without regulation, sex work remains an unstructured industry where abuses can occur unchecked. In the absence of formal oversight, it may be difficult to ensure consistent health and safety standards, leaving

² Joshua A. Fox, International law after dark: How legalized sex work can comport with international and Human Rights Law International Law After Dark: How Legalized Sex Work Can Comport with International and Human Rights Law | Chicago Journal of International Law, <https://cjl.uchicago.edu/print-archive/international-law-after-dark-how-legalized-sex-work-can-comport-international-and> (last visited May 11, 2025).

³ Metatron Bey, Sex work: Should prostitution be decriminalized? National Notice Record (2025), <https://nationalnoticerecord.com/sex-work-should-prostitution-be-decriminalized/> (last visited May 11, 2025).

⁴ Kate Taylor, *Will Decriminalization of Sex Work Become the Next Anti-Regulation Battle?* | Entrepreneur, Entrepreneur (Oct. 8, 2015), <https://www.entrepreneur.com/leadership/will-decriminalization-of-sex-work-become-the-next/251335>.

workers at risk⁵. Moreover, the decriminalization model does not address the demand side of prostitution, leading some to argue that it fails to deter exploitative practices and organized crime involvement. The effectiveness of decriminalization is also highly dependent on broader social support structures, such as access to healthcare, housing, and employment alternatives for those seeking to exit sex work.

By examining case studies from countries where prostitution is legal and comparing them to other nations that have opted for decriminalization rather than stringent regulation, this study aims to highlight the real-world impact of legislative choices. Countries like the Netherlands, Germany, and Australia provide insights into the benefits and drawbacks of legalization, while the example of New Zealand offers a perspective on decriminalization as a viable alternative. Empirical evidence from these regions can help policymakers assess which model best aligns with their societal values and public health objectives.⁶.

The discussion on prostitution laws also intersects with feminist discourse, with varying perspectives on how sex work should be framed within the broader context of gender equality and women's rights. Some feminists advocate for the recognition of sex work as legitimate labor, emphasizing the need for labor protections and autonomy for workers. Others argue that prostitution is inherently exploitative, reinforcing patriarchal structures and the commodification of women's bodies. This ideological divide further complicates policy discussions, as both perspectives present valid concerns regarding empowerment, agency, and systemic inequalities.

Ultimately, the question of legalizing prostitution cannot be answered through a one-size-fits-all approach. The effectiveness of any model—be it criminalization, legalization, or decriminalization—depends on its implementation, enforcement, and the presence of robust social support mechanisms. A well-designed regulatory framework must prioritize the rights and well-being of sex workers while addressing broader societal and ethical concerns. Additionally, ongoing research and policy

⁵ Stacey McKenna et al., What it would mean to decriminalize sex work R Street Institute (2022), <https://www.rstreet.org/commentary/what-it-would-mean-to-decriminalize-sex-work/> (last visited May 11, 2025).

⁶ Ine Vanwesenbeeck, Sex work criminalization is barking up the wrong tree Archives of sexual behavior (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5529480/> (last visited May 11, 2025).

evaluation are crucial to understanding the evolving dynamics of the sex industry and ensuring that legal frameworks adapt to emerging challenges.

The legalization of prostitution presents a complex policy dilemma that requires careful consideration of human rights, public health, economic impacts, and ethical implications. While legalization can offer protections and economic benefits, it also carries risks that must be mitigated through strict regulatory oversight. Decriminalization provides an alternative that removes criminal penalties while preserving worker autonomy, yet it lacks the structured protections offered by regulation. Policymakers must weigh these factors carefully, drawing from international case studies and empirical data to craft solutions that best serve the interests of sex workers and society as a whole. Future research should focus on comparative analyses of different legal frameworks and their long-term effects, ensuring that policies evolve in response to empirical findings rather than ideological positions. By adopting an evidence-based approach, societies can work towards a legal model that balances worker protections with broader social concerns, ultimately leading to more just and effective governance of the sex industry.

2. WHAT IS PROSTITUTION?

Prostitution is typically defined as the act of engaging in sexual activity in exchange for payment.⁷ It involves a transaction where one individual offers sexual services, and another provides compensation, which may be in the form of money, goods, or other benefits.

The United Nations does not have a single, universally adopted definition of prostitution, but it has approached the topic primarily through human rights and anti-trafficking frameworks. The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution and Others (1949) refers to prostitution as an exploitative practice where one party profits from the sexual labour

⁷ Kevin, What does prostitution mean? The Word Counter (2022), <https://thewordcounter.com/meaning-of-prostitution/> (last visited May 12, 2025).

of another, and it calls for the punishment of those who exploit or traffic individuals for prostitution.⁸

The United Nations generally defines “Prostitution” within the context of exploitation and human trafficking. It classifies forced prostitution as a violation of human rights, especially when coercion, force, or deceit are involved, as stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), often called the Palermo Protocol⁹. This Protocol aims to combat trafficking and recognizes that sex work can become exploitative under certain conditions, particularly when individuals are trafficked or coerced into it.

In recent years, some United Nations agencies¹⁰, like United Nations Women and Joint United Nations Program on HIV/AIDS (UNAIDS), have advocated for a human rights-based approach to prostitution, recognizing sex workers’ rights to safety, health, and non-discrimination regardless of legal status.

3. BOTH SIDES OF LEGALISING PROSTITUTION

Sex workers occupy the fringes of social and economic life in many nations. Increasingly, they are marginalized by governments that often deny them access to benefits or legal protection, viewing them as undeserving. In India alone, there are approximately 3 million commercial sex workers, with around 40% believed to be children, according to a study by the Ministry of Women and Child Development. No recent official statistics have been released since then, reflecting how acceptance and recognition of sex workers are far from reality in many developing countries.

In countries like India, the narrow scope of sex education in schools underscores a societal taboo around sex, making the idea of legalizing sex work nearly unimaginable. Although India’s history includes traditions of female empowerment and stories of

⁸ Heather J. Clawson et al., Human trafficking into and within the United States: A review of the literature ASPE (2009), <https://aspe.hhs.gov/reports/human-trafficking-within-united-states-review-literature-0> (last visited May 12, 2025).

⁹ Fundamentals of Criminal Law, Prostitution (2023), <https://docmcke.com/oer/criminal-law/section-3-2/prostitution/> (last visited May 12, 2025).

¹⁰ Admin, Knowing prostitution and solicitation: Barr, Jones & Associates, Barr, Jones & Associates LLP (2020), <https://barrjoneslegal.com/understanding-prostitution-solicitation/> (last visited May 12, 2025).

prostitutes who rose to become esteemed monks in ancient and medieval Buddhist literature, societal views of sex work continue to inspire disdain.

Advocates for the legislation of prostitution argue that it could lower crime rates, enhance public health, generate tax revenue, reduce poverty, and move sex work off the streets, providing consenting adults the freedom to make their own choices. They suggest that prostitution is a victimless crime, as seen in the ten counties in Nevada where it is legally regulated.

In contrast, opponents argue that legalizing prostitution may lead to a rise in sexually transmitted infections, including HIV/AIDS an increase in global human trafficking, and higher rates of violent crime, such as rape and homicide. They consider prostitution inherently immoral, exploitative, and supportive of organized crime, which they argue contributes to the systematic repression of women by men.

3.1. Positive impacts of legalizing prostitution

Amnesty International Policy on State Obligations to Respect, Protect, and Fulfil the Human Rights of Sex Workers (May 26, 2016)¹¹ argues that protecting the rights of sex workers requires not only decriminalizing the sale of sex but also removing legal penalties against purchasing sex from consenting adults and managing sex work. In many countries, various aspects of sex work are criminalized, making it difficult for sex workers to access police protection and support. Reporting crimes encountered on the job can lead to sex workers being criminalized and penalized for their work. Additionally,¹² the criminalized and stigmatized status of sex work often enables law enforcement officials to harass, extort, and commit physical and sexual violence against sex workers without accountability. When the threat of criminalization is removed, sex workers are more likely to cooperate with law enforcement in identifying perpetrators of violence and abuse, including those involved in human trafficking.

Gaye Dalton, in written evidence to the United Nations Home Affairs Committee's Prostitution Inquiry (February 26, 2016), states that criminalization does not help

¹¹ Our policy to protect sex workers' human rights: Frequently asked questions, Amnesty International UK, <https://www.amnesty.org.uk/policy-protect-human-rights-sex-workers-qa> (last visited May 13, 2025).

¹² Prostitution, Encyclopædia Britannica, <https://www.britannica.com/procon/prostitution-debate> (last visited May 13, 2025).

individuals leave prostitution, nor does legislation confine them to it. As a society, there is a choice: either to make it easier for individuals to exit prostitution or to impose additional hardships on those who feel trapped in it¹³. They have always believed that anyone involved in sex work has the right to request any necessary resources that would enable them to leave prostitution and transition to a situation where they can genuinely flourish and grow.

Decriminalizing sex work enhances legal protections for sex workers and strengthens their ability to access essential rights, including justice and healthcare. Recognizing sex workers and their profession under the law promotes their safety, dignity, and equality, marking a significant step toward reducing the stigma surrounding sex work. Sex work is the consensual exchange of sexual services between adults, distinct from human trafficking and the sexual exploitation of minors, both serious crimes and human rights abuses that demand thorough investigation and prosecution¹⁴.

Laws that exactly separate sex work from crimes like human trafficking and child exploitation help protect sex workers as well as crime victims¹⁵. When sex workers aren't criminalized, they are more likely to feel secure sharing critical information with law enforcement regarding trafficking or exploitation, aiding in crime prevention and victim protection

3.2. Negative impacts of legalising prostitution

Melisa Farley, in "Very Inconvenient Truths: Sex Buyers, Sexual Coercion, and Prostitution- Harm and Denial, 2016" states, the presence of prostitution in society reflects a profound failure to protect women, particularly those who are marginalized and vulnerable due to their gender, ethnicity, poverty and experience of abuse and neglect¹⁶. Prostitution is a form of sexual harassment and exploitation, often

¹³ The criminalization of prostitution in the United States, LaurelhillCemetery.blog (2023), <https://laurelhillcemetery.blog/when-did-prostitution-become-illegal-in-the-united-states-and-why-515/> (last visited May 13, 2025).

¹⁴ Amnesty urges full decriminalization of prostitution to defend sex workers' rights, RT International (2016), <https://www.rt.com/news/344531-amnesty-prostitution-decriminalization-policy/> (last visited May 13, 2025).

¹⁵ The stigmatization behind sex work, Samuel Centre For Social Connectedness (2020), <https://www.socialconnectedness.org/the-stigmatization-behind-sex-work/> (last visited May 13, 2025).

¹⁶ Melissa Farley, Very inconvenient truths: Sex buyers, sexual coercion, and prostitution-harm-denial Logos Journal (2023), <https://logosjournal.com/article/very-inconvenient-truths-sex-buyers-sexual-coercion-and-prostitution-harm-denial/> (last visited May 13, 2025).

accompanied by physical and emotional abuse. Women involved in prostitution face a high likelihood of violence, including regular sexual assault, much like extreme forms of domestic abuse. Governmental complicity perpetuates prostitution. As the sex industry grows, women's participation in broader job markets diminishes, reducing the need for states to secure employment opportunities for them. In systems where prostitution is legalized or decriminalized, governments essentially collect "Blood taxes," profiting from the exploitation of these women. Industries including banks, airlines, internet providers, hotels, travel services, and media benefit financially from prostitution tourism, embedding exploitation into the economy and reaping substantial profits¹⁷.

Jimmy Carter, 39th President of the United States, in "To Curb Prostitution, punish those who buy Sex rather than those who sell it" (May 31, 2016) states that some argue that prostitution can be empowering and that legalizing and regulating all aspects of it would reduce the harm associated with the profession. However, others believe that endorsing such a policy would only institutionalize a destructive form of violence against women¹⁸. Normalizing the purchase of sex, they argue, devalues men by suggesting they have a right to access women's bodies for gratification. If paying for sex becomes normalized, it sends a message to young boys that women and girls are commodities to be bought and sold. Under full legislation, it is unlikely that the empowered sex worker will become the standard; rather, it would be millions of women and girls filling the demand for bodies in an unrestricted market. There are pressing concerns about where these young individuals would come from, as most victims of exploitation are girls, though some boys are also affected. Supporting decriminalization while opposing sex trafficking of women and children is seen as contradictory¹⁹, given that decriminalization could shield buyers who drive demand and the pimps who profit from the exploitation of vulnerable individuals.

¹⁷ Why prostitution shouldn't be legal, Demand Abolition (2018), <https://www.demandabolition.org/research/evidence-against-legalizing-prostitution/> (last visited May 13, 2025).

¹⁸ Jackie Htun, Why prostitution shouldn't be legal evidence for holding buyers accountable Academia.edu (2020), https://www.academia.edu/44659041/Why_Prostitution_Shouldnt_Be_Legal_Evidence_For_Holding_Buyers_Accountable (last visited May 13, 2025).

¹⁹ Daniel2 et al., Mormon church comes out in support of same-sex marriage law Mormon Dialogue & Discussion Board (2023), <https://www.mormondialogue.org/topic/74936-mormon-church-comes-out-in-support-of-same-sex-marriage-law/> (last visited May 13, 2025).

Most people in protection are female or transgender women. In contrast, the vast majority of sex buyers are male. Prostituted persons are mostly women and face an exceptional risk of murder and violence at the hands of male sex buyers, signifying that the practice is on the continuum of gender-based violence. This remains true even in areas where prostitution is legal or decriminalized. An investigation commissioned by the European Parliament found that in countries with legal prostitution, such as Austria, the effect of regulation can be a massive increase in migrant prostitution and indirect support to the spreading of the illegal market in the sex industry.

One study with data from 150 countries found that those with legalized prostitution experience a larger reported incidence of trafficking inflows²⁰. Another quantitative analysis similarly reported that sex trafficking is most prevalent in countries where prostitution is legalized. Regulated prostitution increases the size of the overall market for commercial sex, which benefits criminal enterprises that profit from sex trafficking. Evaluations have found that regulations of prostitution create a façade of legitimacy that hides sexual exploitation and that brothels can function as legalized outlets for victims of sex trafficking.

4. LEGALISING PROSTITUTION IN INDIA

India's approach to prostitution is complex and filled with ethical and legal challenges. The country's laws regarding prostitution vary across regions and are nuanced. While activities such as public solicitation, trafficking, and pimping are illegal, the act of prostitution itself is allowed. Despite this legal status, many in India view prostitution as unethical and incompatible with cultural values. In some communities, prostitution is seen as undermining the sanctity of marriage and family, while others perceive it as a degrading and exploitative profession targeting women. However, there is also a growing perspective that views prostitution as a legitimate occupation where women should have the autonomy to make choices about their bodies. Supporters of sex workers argue that legalizing prostitution would enhance protections for women, curb the spread of Sexually Transmitted Diseases (STDs), and offer sex workers greater safety and control over their work. The Right to choose one's profession is a

²⁰ As women worldwide still struggle to achieve basic rights, third committee emphasizes importance of access to citizenship, education, work, justice | meetings coverage and press releases, United Nations, <https://press.un.org/en/2023/gashc4375.doc.htm> (last visited May 13, 2025).

fundamental right granted to every citizen of India under Article 19(1)(g) of the Indian Constitution²¹. This Article states that every citizen is free to engage in any occupation, trade, or business across the country, as long as it does not harm the public or violate Indian laws. Article 19(6) also allows Parliament to place reasonable restrictions on this right in the general public's interest.

Prostitution is not an offense under the Indian Penal Code but sexual exploitation, seducing someone, running brothels, pimping, soliciting, etc. are penalized under Section 2(f) of the Immoral Traffic Prevention Act, 1956²². These acts of prostitution shall attract punishment under Sections 366A, 366B, and 370A of the Indian Penal Code, 1860. Under the Immoral Traffic (Prevention) Act of 1956, prostitution itself is not illegal; however, soliciting clients or enticing individuals into sexual activities is prohibited by law, and those engaged in such acts may face penalties. While the law does not criminalize prostitution outright, activities like operating brothels, living off the earnings of prostitution, pimping, soliciting, recruiting into prostitution, and engaging in prostitution in public spheres are punishable offenses²³.

This suggests that prostitution is not considered a crime if it is voluntarily chosen as a profession²⁴, particularly for those who have limited livelihood options or where prostitution is part of a cultural tradition or custom.

In the case of *Kajal Mukesh Singh & Ors. Vs. State of Maharashtra*²⁵, a criminal petition was filed challenging the orders of the Learned Metropolitan Magistrate, Special Court for the Immoral Traffic (Prevention) Act (ITPA) in Mumbai, as upheld by the Sessions Judge, Dindoshi. The Bombay High Court quashed both judgments, identifying significant procedural gaps in the handling of the case by the lower courts²⁶. The case

²¹ Sneha Mahawar, Article 19 of the Indian Constitution iPleaders (2024), <https://blog.iplayers.in/article-19-indian-constitution/> (last visited May 14, 2025).

²² Vanshika Kapoor, Is prostitution legal in India iPleaders (2024), <https://blog.iplayers.in/is-prostitution-legal-in-india/> (last visited May 14, 2025).

²³ Making Justice accessible and affordable for all, Lawyered (2023), <https://lawyered.in/legal-disrupt/articles/legality-and-morality-india-prostitution/> (last visited May 14, 2025).

²⁴ Jaya Pandey, Prostitution laws in India: Shedding light on the lost citizens Aarambh Judicials (2023), <https://aarambhjudicials.com/prostitution-laws-in-india/> (last visited May 14, 2025).

²⁵ AIR ONLINE 2020 BOM 2489

²⁶ Advocate Tanwar, Is prostitution legal in India? Kajal Mukesh Singh and Ors v State of Maharashtra 2021 - advocate tanwar Advocate Tanwar - Best Full Service Law Firm in Gurugram/NCR (2023), <https://advocatetanwar.com/is-prostitution-legal-in-india-kajal-mukesh-singh-and-ors-v-state-of-maharashtra-2021/> (last visited May 14, 2025).

involved three adult women, aged 23 to 25 years, detained during a police sting operation intended to apprehend Mr. Nijamuddin, an alleged organiser of prostitution services. The police, however, detained only the women during a raid at a guest house and failed to capture Nijamuddin. The women were held overnight and presented before the Magistrate the following day. No records of the officers involved in the raid or the punch witnesses were provided, and Nijamuddin, the prime suspect, was not apprehended. In the initial judgement, the Magistrate placed the women in protective custody at Navajeevan Mahila Vasatigruha without clarifying the duration or addressing where they had been held from September 28 to 20, 2019. When the women appealed, the Sessions Judge upheld the Magistrate's ruling without further inquiry. Dissatisfied with these outcomes, the women filed a petition with the Bombay High Court.

Justice P.K. Chavan of the Bombay High Court, after reviewing the records and arguments from both sides, overturned the previous orders. The Court directed that the petitioners be allowed to leave Navajeevan Mahila Vasatigruha if they chose to do so and instructed them to provide their residential details and contact information to the Investigating Officer. The magistrate was also directed to prevent undue influence during the women's testimony.

This judgement reinforces the legal principles that consensual, voluntary engagement in sex work should not be treated as a criminal offence, especially when it serves as a woman's means of livelihood or follows customary practices. The case underscores the importance of distinguishing voluntary sex work from trafficking and coercion, ensuring that sex workers' rights and procedural protections are upheld in the legal process.

5. ANALYSIS OF THE SITUATION OF PROSTITUTION IN INDIA AND OTHER COUNTRIES

The situation of prostitution in India is comparable to that of countries in three categories:

- i. Countries where prostitution is both legalised and decriminalised
- ii. Countries where prostitution is legalised but not decriminalised

- iii. Countries where prostitution is neither legalised nor decriminalised

5.1. India vs New Zealand

New Zealand²⁷ falls into the first category, that is, it is both legalised and decriminalised prostitution. The condition of sex workers in India and New Zealand presents a stark contrast due to the differences in legal frameworks and societal attitudes. New Zealand is known for having a fully decriminalised system for prostitution, while India operates under partial criminalization, leading to various challenges for sex workers in terms of legal rights, safety, and working conditions.

Prostitution is not illegal in India, but related activities like running a brothel, pimping and public solicitation are criminalized under the Immoral Trafficking (Prevention) Act, 1956 (ITPA). This partial criminalization creates a grey area for sex workers, leaving them vulnerable to exploitation and harassment without legal protections.

But the Prostitution Reform Act, 2003 (PRA) in New Zealand fully decriminalizes prostitution. The law allows sex work to be recognised as legitimate work, granting sex workers the same legal rights as workers in other industries, including the right to refuse clients, access labour protections, and operate in safe, regulated environments.

Due to partial criminalisation²⁸, sex workers in India often work in unregulated, unsafe environments. Health risks include high exposure to sexually transmitted infections, and access to healthcare is limited. Many sex workers avoid medical help for fear of arrest or harassment.

Interviews with sex workers in Mumbai and Kolkata by organisations like *Apne Aap* have revealed that physical violence from clients, pimps and law enforcements is common. However, decriminalization in New Zealand has improved health and

²⁷ When prostitution (sex work) is legalized, what happens to crime rates?, A- Mark Foundation (2023), <https://amarkfoundation.org/reports/when-prostitution-sex-work-is-legalized-what-happens-to-crime-rates/> (last visited May 15, 2025).

²⁸ Helen Schwie, The benefits of legalizing prostitution BORGEN (2020), <https://www.borgenmagazine.com/benefits-of-legalizing-prostitution/> (last visited May 15, 2025).

safety conditions significantly. Studies show a significant reduction in violence against sex workers since decriminalization, as they are more empowered to report abuse.

In India, sex workers face significant social stigma, often viewed as immoral and criminal. In the case of *Gaurav Jain vs. Union of India (1997)*²⁹, the Supreme Court of India emphasized the need for the rehabilitation of sex workers and their children, but societal attitudes remain a significant barrier to change. In New Zealand, while social stigma still exists somewhere, the decriminalization has reduced the marginalisation of sex workers. The public views sex work as a legitimate job. The government has implemented education campaigns and worked with advocacy groups to improve the societal understanding of sex work, leading to a more respectful treatment of sex workers. At the same time, sex education is still an alien subject in India, making every individual open to sexual violence.

5.2. India vs Germany

Germany³⁰ falls into the second category, that is, countries which have legalised but not decriminalized prostitution. The conditions of sex workers in India and Germany offer an insightful comparison due to their distinct legal frameworks, socio-economic contexts, and attitudes towards sex work. While Germany legalizes and regulates prostitution, India partially criminalizes the practice.

In India, prostitution is not illegal, but many activities associated with it, such as running a brothel, soliciting in public, and living off the earnings of a prostitute, are criminalized under the ITPA, 1956. This creates an ambiguous legal environment, where sex workers are left without proper protection and are vulnerable to exploitation and harassment by law enforcements, pimps and clients. In Germany, prostitution is legalised but regulated under the Prostitution Act, 2002, and the Prostitute Protection Act, 2017. These laws give sex workers the right to enter into formal employment contracts, access to social security benefits, and work in

²⁹ AIR 1997 SUPREME COURT 3021

³⁰ Julie Bindel, Germany: Europe's bordello UnHerd (2022), <https://unherd.com/2022/11/germany-europes-bordello/> (last visited May 15, 2025).

regulated brothels. The German system is based on labour law principles, aiming to provide rights and protections to sex workers.

The stigma surrounding sex work is severe in India, where sex workers are often marginalised and treated as criminals³¹. This makes it difficult for them to access public services, housing, and education for their children. Despite legal rulings like *Basudev Karmaskar vs State of West Bengal (2011)*³², which provides for dignity, rehabilitation of sex workers and their children, societal attitudes remain unchanged. A 2018 interview by Human Rights Watch with sex workers in Delhi revealed rampant abuse, exploitation, and fear of law enforcement. In Germany, although there is still some societal stigma attached to sex work, the legalization of prostitution has led to broader public acceptance. The public perception is generally more positive than in countries with partial or full cooperation with advocacy groups.

Deutsche AIDS- Hilife has also helped to reduce stigma and improve public awareness. Interviews of sex workers by Amnesty International reveal that many feel empowered and safer under the current legal framework, though some still report issues with trafficking and exploitation in certain areas.

5.3. India vs Pakistan

Pakistan falls into the last and final category where neither prostitution is legalised nor decriminalised. The conditions of sex workers in India and Pakistan share several common issues, but also some differences due to the legal frameworks, societal attitudes, and law enforcement approaches in both countries.

In India, prostitution is not illegal, but many activities surrounding it such as soliciting, running a brothel, pimping and living off the earnings of a sex workers, are criminalised under the ITPA, 1956³³. However, in Pakistan, prostitution is illegal under both secular and Islamic laws, including the Pakistan Penal Code and Islamic

³¹ Should prostitution be completely decriminalized?, Wisevoter (2022), <https://wisevoter.com/issue/should-prostitution-be-legal/> (last visited May 15, 2025).

³² 2011 (11) SCC 538

³³ Rachit Garg, Sex workers rights in India iPleaders (2022), <https://blog.ipleaders.in/sex-workers-rights-in-india/> (last visited May 15, 2025).

provisions of the Hudood Ordinance. Engaging in prostitution or being involved in the sex trade can lead to severe punishments, including imprisonment and public shaming.

In a Human Rights Watch Report³⁴, Indian sex workers frequently reported harassment from the police, who often demand bribes or sexual favours in exchange for not arresting them. Women in brothels are also highly vulnerable to trafficking, with no legal protection against exploitation due to the illegal nature of running a brothel.

The Sonagachi red-light district in Kolkata is one of the largest in the world. In interviews conducted by NGOs like the Durbar Mahila Samanwaya Committee (DMSC), many workers revealed that they face extortion from local gangs and police, along with health vulnerabilities due to a lack of regular medical access. Despite working for decades, they often have no savings or safety, or social security. The National AIDS Control Organisation (NACO) works with sex workers in India to reduce HIV transmission. However, criminalization of aspects of prostitution hampers access to healthcare, as sex workers fear arrest when seeking medical help.

In a 2016 interview with Indian Sex Workers in Delhi, published in *The Wire*, many women said they lack access to contraception and are vulnerable to violence from both clients and pimps with no legal recourse.

In Pakistani³⁵ cities like Lahore and Karachi, sex workers face severe stigma and often work in dangerous, underground conditions due to the illegal status of prostitution. According to an Amnesty International Report, sex workers are at a high risk of physical violence from both clients and law enforcement. Corrupt police officers often extort money from sex workers in exchange for their freedom. In interviews conducted by Dr. Ayesha Siddique for her research on sex work in Pakistan, women revealed that they often enter into the trade due to extreme

³⁴ Melanie Nathan, CA legislation to protect sex workers from arrest when reporting violent crimes O-blog-dec-o-blog-da (2019), <https://oblogdee.blog/2019/02/11/ca-legislation-to-protect-sex-workers-from-arrest-when-reporting-violent-crimes/> (last visited May 15, 2025).

³⁵ Sheeba Farhan, (PDF) Prostitution – The Dark Side of the sun (2020), https://www.researchgate.net/publication/342554541_Prostitution_-_The_Dark_Side_Of_The_Sun (last visited May 15, 2025).

poverty, lack of education, or being trafficked. The majority work without any health protections and are at the mercy of pimps, with few options for escape due to fear of legal repercussions. In an interview with Pakistani Sex Workers in 2018, conducted by Human Rights Watch, women reported that they had no access to medical care due to the illegal status of their work. May suffer from sexually transmitted diseases, and the fear of arrest keeps them from seeking treatment. Reports also provide that pimps and brothel owners rarely provide protection, and violence is common.

In India, the case of *Nandini Sundar vs State of Chhattisgarh (2011)*³⁶, although not directly related to prostitution, this case reflects how marginalised women, including sex workers, are vulnerable to state violence. The judgement emphasized on state's responsibility to protect all women from exploitation.

In Pakistan, the case of *Riffat Shahbaz vs State (2010)*³⁷ involved the raid of a brothel in Islamabad, where women were arrested and imprisoned under the Hudood Ordinance. The Court's decision upheld their sentence, reflecting the strict stance on prostitution in Pakistan, even though many women were found to be trafficked or coerced into sex work. Interviews conducted by the Aurat Foundation in Pakistan reveal that many women who attempt to leave sex work struggle to find alternative employment due to their criminal records and lack of education.

6. INTERVIEWS

Through above all discussions, we understood what is prostitution, its world view, situation in India and comparison of Indian conditions with that of a country that has completely legalised and decriminalised prostitution, like New Zealand, a country that has legalised but did not decriminalise prostitution, like Germany and a country where prostitution is neither legalised nor decriminalised.

Before coming to any concluding remarks, the author conducted four interviews to understand different points of view towards legalising prostitution.

³⁶ 2011 (7) SCC 547

³⁷ PLD 2010 SC 416

6.1. Interview 1

Interviewee is a practicing lawyer in a District Court. While giving the point of view on legalising prostitution, he outlined a prostitution colony around the Army Base Camp in Siliguri, named Khalpara. During the 1990s, the West Bengal government decided to rehabilitate the women from this colony and empty the area. However, people in the Base Camp discussed with the West Bengal Government, which eventually led to the non-removal of such a colony. The main idea was that the Base Camp had bachelor boys and men who had left their families in their hometown and served in the area. So, this colony served as a place for served as a place for satisfaction of their sexual desires and physical needs. Removal of such a colony would have led to the people of these base camps moving to towns, having illicit relationships, and other unwelcome issues. Hence, from the point of view of the interviewee, prostitution should be legalised to be considered as a profession and also contribute to a decrease in sexual acts of violence against women.

6.2. Interview 2

Interviewee is the Vice-President of Bajaj Allianz (West). The views of the interviewee were both in support and against legalising prostitution. According to him, legalising prostitution will lead to recognition of prostitution as a profession and the sex workers will be legally recognised to have equal access to healthcare facilities and protection under Labour Codes, etc. At the same time, if seen from the context of India, legalising prostitution will open ways for more sexual violence against women. Even if it gets legally recognised as a profession, the socio-cultural perspective towards sex workers as not one of the parts of mainstream society and degraded treatment will hardly change. So, legalising prostitution will recognise prostitution and prostitutes, but in a country like India, it is quite unpredictable about the consequences of legalising prostitution will be.

6.3. Interview 3

The interviewee is an advocate in a District Court. The views of the interviewee outlined the negative impacts of legalising prostitution. According to her, India is a home to patriarchal thoughts and men do not want to leave a chance to dominate

women which is one of the reasons of rising rate of rapes in India. In such a situation, legalising prostitution will pave the way for more sexual abuses, making more women vulnerable to sexual violence. Moreover, a lack of education will make the situation worse. And even today, where people shy away from talking about HIV and AIDS, is it practically expected from someone to have a health check-up before having sexual intercourse, and even if the patient knows about having HIV or AIDS, is he going to disclose it to the sex worker?

6.4. Interview 4

The interviewee is a Judicial Officer in Family Court. In the view of the interviewee, sexual desires are very natural and fulfilling; such sexual desires are a reason for increased happiness. Countries that have legalised and decriminalised prostitution have a higher happiness index than other countries. In India, the character of a woman lies in her sexual life, and the character of a man lies in his social life. To eliminate this thought, the legalisation of prostitution is required. Coming to exploitation, we will require laws to regulate it, but it is quite different from legalising prostitution.

7. COMMENTS AND SUGGESTIONS

After going through all the interviews, the points put out by the interviewees are quite valid. Yes, legalising prostitution will bring recognition and dignity to prostitution as a job, protection to the sex workers, social security, health care facilities, legal protection, etc., but in India, women choose prostitution as a job because of poverty, discrimination based on gender and sex, social construct, etc. There are various other reasons as well. To date, the birth of a girl child is considered unlucky to the family. While growing up, when she was looked down on by her family or removed from her family, she chose prostitution for survival. Even there, when she faces abuse, she chooses to remain silent; she doesn't find anyone to trust or complain to.

In our country, the character of a woman is decided by her sexual life. Her virginity is a ground for marriage. She is considered to be pure if she is a virgin. Families do not accept a girl who is not a virgin. As a result, she is removed from her parental family, as well as leading her to choose prostitution as a livelihood.

In Indian culture, the presence of a father also decides the character of the child. A child without a father becomes unacceptable in society. When born to a prostitute, the child fails to be a part of the mainstream society because of non- acceptance, if the child is a girl, she joins her mother and eventually becomes a sex worker and if a boy, he gets engaged as a pimp to get girls into prostitution.

In India, history outlines instances where religious gurus used to get sexually involved with virgin girls, stating it as a service to God. In a country where the name of God was used to sexually exploit women, how can it be expected that legalizing prostitution will eliminate exploitation?

When a girl says “NO”, it is considered disrespectful. Sex education is a myth in the Indian Education System. Talking about HIV and AIDS, or even Menstruation periods, is still a secret. And the situation worsens with India’s policy of partially criminalising prostitution.

Therefore, legalising prostitution has yielded many positive results around the world, but from the point of view of the author, it is not going to make much difference in India. The only difference will be legal recognition of prostitution as a profession. Beyond that, even then, in case of any complaint of sexual abuse of sex workers, the report will be written down only after sexually exploiting the victim. And the practice of using the local words to address prostitutes as words to abuse women and define their character will continue.

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