

Budhadev Karmaskar v. State of West Bengal: Recognizing Sex Work as a Profession

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Abstract

Workplaces and working conditions for sex workers vary widely. Sex workers might work in the sex industry full-time or part-time, and they can be employed or self-employed. Sex work can be formal since some sex workers are associated with a business in an employer-employee capacity. However, in countries where criminalizing sex work results in its exclusion from national employment laws, sex workers are left with no choice but to put up with frequently abusive working circumstances. However, a large portion of the sex industry operates informally, with sex workers working alone, in groups, or together with other sex workers. There are numerous working arrangements and business models in the unorganized sector as well. These sex workers, like many others employed in the informal sector, sometimes lack access to social safeguards and endure more unstable working conditions. The fight for decriminalization is strongly related to the fight for the recognition of sex work as a job. The notion that sex workers should be granted the civil, labor, and social protections that are a right for all workers, regardless of vocation, is at the heart of the call for decriminalization. Research on the real circumstances and conditions present in these markets, however, is still scarce. The significance of creating accurate comparisons between various sorts of sex work, participating in qualitative and quantitative methods to assess work quality, and ultimately going outside the sector.

Keywords: Prostitution, sex work, quality of work, criminalizing sex, decriminalization

INTRODUCTION

Additionally, the Supreme Court declared that voluntary sex labor is not a crime and acknowledged it as a legitimate profession. Because sex labor is common in a country with 138 million people, this ruling cannot be regarded as historical. It is up to the readers to decide whether or not the most recent Supreme Court decision caused a paradigm change in Indian society [1]. The world is dramatically changing, so we must enter a space where sex work is acknowledged as a profession and given a moral status. Adult men, women, or LGBTQ individuals who work in sex have a right to be paid for their profession and to be protected from harassment and violence [2]. Sex labor has traditionally been seen as a regular trade in the body that is done for the sexual satisfaction of many people, especially men [3]. The Ministry of Labour and Employment claims that many women who provide this kind of service feel free to use their bodies freely to earn money while serving and accompanying customers because

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they reject the sociocultural determinism of female sexuality and do not limit sexual activity to the marital home [4]. Social structures based on patriarchy and conservative religious doctrines were established when marriage was enacted with strict laws to establish control over women's bodies and sexuality, in order to earn money for support [5]. Therefore, one must defy logic, fundamentalist and stigmatizing viewpoints, as well as the prejudice and devaluation perpetuated against the profession, when considering the sexual service provided by

women [6]. These elements contribute to the multiple societal injustices experienced by sex workers, which are reinforced by the patriarchal structures found in nations where this type of labor is illegal and which work together to make the occupation invisible to the state [7]. Human rights abuses are widespread in India, but they are especially rampant among those who engage in prostitution and sex work. In India, discrimination against sex workers is a problem on par with that experienced by other marginalized groups based on class, caste, ethnicity, or religion [8]. The media promotes the idea that prostitutes are either abused and exploited victims or overtly sexual outcasts who threaten the foundation of Indian family life [9]. Women, who work in sex cannot, in actuality, be categorized. Even while there are still victims of sex labor trafficking today, the majority of women who engage in it do so voluntarily [10]. They have determined that using sex to generate income is a successful strategy for themselves and their families [11]. People who engage in sex work are classified by and treated as members of an immoral profession in India, where sex work laws and policies are created from a moralistic perspective [12]. People may organize to address many of the problems associated with the commercial sex trade by understanding prostitution as a business [13]. People may organize to address many of the problems associated with the commercial sex trade by understanding prostitution as a business. However, these abuses are not inherent to sex work and instead come from sex workers being drama and culture in Indian society [14]. There is no denying that sex work frequently leads to poor health, financial exploitation, and physical and sexual assault. There is no denying that sex work frequently leads to poor health, financial exploitation, and physical and sexual assault [15].

LITERATURE REVIEW

According to recent study, sex work in India is more varied than these common depictions of the profession, despite the fact that sex labor is frequently associated with images of coercion, poverty, destitution, and lack of autonomy. But depictions of Third World women, especially sex workers, as being permanently marginalized erroneously connect freedom of choice with riches and poverty with coercion. The stereotypes that uniformly portray women from the Global South as the enduring victims of gender-based oppression are linked with these visuals [16]. As a result, there is no longer a place to acknowledge and respect the voluntary decisions made by women to engage in sex work, even when these decisions are driven by a lack of other options for employment [17]. Even volunteer sex labor is not portrayed in these anti-trafficking narratives as a potentially lucrative, enjoyable, or empowering vocation. Images of compulsion, poverty, misery, and lack of agency are frequently associated with sex work; however, recent research suggests that sex work in India is more varied than these common representations [18]. United nations protocol to prevent, trafficking in persons, especially women and children the international trafficking protocol, the global anti-trafficking discourse work with sex trafficking and effectively for all sex workers, not even volunteer sex work is portrayed as a job with the potential to be rewarding, joyful, or empowering [19].

HISTORY OF SEX WORK IN INDIA

The precise century that India's sex industry began is tough to pinpoint. According to speculations, people's attempts to exchange goods and services are when sex work first entered the planet. For sex, they exchanged cash and commodities [20]. The history of sex labor in India dates back to the Indus valley civilization's archaeological discoveries. Later, it was acknowledged during the Vedic, Gupta, and Sultanate eras. It gained popularity as a kind of religion throughout the Middle Ages, when the Devadasi system was followed.

Objectives of the Study

- To investigate India's legislative framework for prostitution.
- To examine legalizing prostitution in light of sustainable development objectives.
- To gather information and examine the standard of life for women working in this industry in India.
- To assess how legalization will affect sex workers.
- To suggest regulations and laws governing prostitution in India.

Research Questions

- How prevalent is prostitution in India?
- Should prostitution be made legal or not?
- What could happen if prostitution were legalized, and what would that mean for sex industry employees and society at large?
- Will the interests of prostitutes and sex workers be served by legalizing prostitution?
- What issues does India's legalization of prostitution bring up?

Research Methodology

A descriptive and prescriptive method is used in the current investigation. To investigate the subject and provide a clearer knowledge of the legalization of prostitution, doctrinal research approaches were applied. Data from both primary and secondary sources are used in this study.

Hypothesis

- The condition of prostitutes in India is poor.
- Legalizing prostitution will not benefit sex workers or society as a whole.
- Legalizing prostitution has a detrimental effect on India's dedication to the development.

The Problems of the Sex Workers

- Health care
- Financial security
- Social marginalization
- Safety
- Educational inequality
- Sex trafficking
- Legality of sex work
- Exclusion from religion and family

IMPLICATIONS OF THE SUPREME COURT JUDGEMENT

The Supreme Court recognized sex work as a profession in a recent ruling. It was discovered that those sex workers were protected by the law and had a right to self-worth under Article 21 of the Indian Constitution [21]. Additionally, it said that police departments must treat sex workers with respect. Additionally, since having voluntary sex is allowed but operating a brothel is illegal, they should not be arrested, penalized, harassed, or victimized during raids on any brothels [22]. The court's decision stressed the importance of providing sex workers and their children with the fundamental guarantees of human decency and dignity. The court also cautioned the media to exercise extreme caution when it came to withholding the names of sex workers during raid and rescue operations [23]. The current circumstances for sex workers and their families will substantially change as a result of this Supreme Court decision. It will at least produce a minor shift in how people think in Indian society [24]. A major ruling from a three-judge Supreme Court bench in 2022 established sex work as a legitimate profession and affirmed that sex workers are entitled to integrity and equal protection under the law [25]. The Supreme Court also determined that voluntary sex work is neither unlawful nor prohibited, and it set creditable rules for police to take decisive action whenever sex workers report an offence and to follow the law [26]. Additionally, it was said that sex workers should not be detained during brothel raids or separated from their kids only because their mother works in the industry [27]. In addition, the Supreme Court has delivered additional admirable rulings. The Supreme Court of India has refused to determine that prostitution can be accepted as a legitimate source of revenue, therefore providing legal support for women trafficking [28]. The Gujarat High Court further ruled that girls and women do not have the fundamental right to engage in prostitution [29]. Furthermore, 74 In the Olga Tellis case, the Apex Court of India ruled that no one has attempted to assert their constitutional right to the ability to earn a living by engaging in a dishonest trade or industry, such as living or betting on the development of

prostitution [30]. In a particular case, the Supreme Court mandated that all state and union territory government entities develop laws and swiftly implement them [31]. In the case of *Gourav Jain v. Union of India*, a criterion for the recognition of academic institutions for the children of prostitutes was established. It was stated that rather than the actual sexual activity, the concrete evidence of prostitution is the renting of a girl's or woman's body for lewd purposes [32].

LEGAL PROVISIONS

The Indian Constitution

- To legislation defending equality and freedom of association, the right to life, and individual liberty, the Constitution bans human trafficking and forced labor [33].
- The state shall direct its policies towards, among other things, ensuring that both women and men have an equal right to a reasonable means of continuation [34], that workers' strength and health are not exploited and that citizens are not forced to enter occupations [35]. Promoting respect for international standards and treaty responsibilities, the state's duty to raise living conditions, and citizens' renunciation of behaviors that are disrespectful to women's self-respect are all necessary for ensuring their protection from structural inequality and exploitation [36].
- Act of 1956 to Prevent Immoral Traffic: The most significant piece of legislation addressing sex work and related issues is this Act, which will be referred to as ITPA. The Act outlaws, among other things, operating brothels or pimping, classifying prostitution as a business that exploits the human body [37]. Anyone in control of a property who uses it or permits another person to use it as a brothel is subject to penalties under Section 3 of the ITPA [38]. When mitigating elements are present, a single act of prostitution is Articles 14 and 15 of Part III of the Constitution of India, 1950s section on fundamental rights, deal with equality [39]. With the exception of making special provisions for women, children, socially and educationally backward classes, scheduled castes, and scheduled tribes, the state is prohibited from discriminating on the basis of religion, race, caste, sex, or place of birth under Articles 14 and 15, respectively [40]. Sections 3 to 9 of the Act cover the offences covered by the ITPA. It has been determined time and time again that the act's primary goal is to prevent the commoditization of women's bodies rather than to outlaw prostitution or make it a major criminal for a woman to engage in it [41]. In a well-known case, the Hon'ble Court ruled that prostitution is not a suitable source of income and that to acknowledge it as such would invite trafficking and exploitation of women and young girls [42]. Additionally, it has been ruled that since prostitution is not a basic right, it can be restricted and regulated [43]. In the aforesaid case, it was ruled that prostitution is not a sufficient means of subsistence and that by officially identifying it as such, it would be easier to sell and exploit women and young girls [44, 45]. Additionally, it has been determined that the right to prostitution is not a basic right and can therefore be restricted and controlled [46].

DISCUSSIONS

It is only normal for the study's participants to have different viewpoints on the sex industry given the wide range of social and religious circumstances from which they draw their judgments. Contrarily, prostitution has been around for a very long time and is present in every major human community [47]. The majority of participants in this study on the opinions of Indian residents towards prostitution say that it should not truly be legalized [48]. Future research should be more thorough in examining these intricacies and free from personal prejudice or societal moral standards [49]. Future research will hopefully contribute to the creation of government laws that will help persons who work in the sex industry lessen the negative effects of their actions and move on to better lives [50]. A century of reconsidering sex work from a labor perspective has already begun. Thus, just like with any other profession, their emotional and physical labor must be recognized. On a lady recently boldly placed sex work under her professional experience [51]. Natives praised her rather than mocked her. These occurrences demonstrate that not everyone views women as a sexual object [52]. The government and its agencies should pay close attention to the necessities and comforts enjoyed by sex workers and make sure that those who truly need them are provided for. The bodies responsible for enacting laws ought to

review their previous work and improve victim rescue and rehabilitation services [53]. We can anticipate that through properly implementing initiatives and policies, people's attitudes and behaviors towards sex workers will progressively shift. This will finally put into practice the important idea that sex workers are people [54].

CONCLUSION

The menace of the social evil and prostitution for human trafficking cannot be eliminated through legalization. Despite being disliked due to the degrading qualities of the occupation, prostitution has endured throughout time throughout diverse Indian society [55]. Major cities like Mumbai are home to a sizable group of sex workers who are concentrated in one location. As long as sex work is stigmatized, legalization, licensing, or police registration may be ineffective [56]. The most urgent requirement of the hour is for police to be made more aware of this, coupled with the human rights of sex workers. Legislative bodies must make sure that everyone has access to fundamental rights under both international and local law [57]. The main goal should be to better their social and economic circumstances. In order to transport them to employment that offer them support and dignity, they must be rehabilitated from their injuries and trained [58]. If prostitution is legalized, their issues will just get worse and there will be no way out since prostitution would be much more ingrained in society. However, academics play a crucial role as allies in the campaign for the rights of sex workers, and we argue in this chapter that our work should support this effort [59]. We must fight on several fronts notwithstanding the relative luxury enjoyed by academics who study sex workers' rights. While addressing the intersecting disadvantages that sex workers face through our work must remain our primary goal [60], we cannot avoid the distractions that come from also opposing the neoliberalization of our workplaces and our anti-prostitution peers. As a result of the extremely competitive funding environments that constrained funding landscapes create for researchers, marginalized populations like sex workers are being pushed further down the priority list than they once were [61]. Although the difficulties and complexities of co-creating knowledge with sex workers, stigma, illegality, and crime [62].

- A practical solution to help them improve their social standing is to offer them alternative employment that pays more than their current pay [63].
- Investigate the reformatory houses that are inadequately resourced. Since there is no other work that will treat them with respect and offer reasonable support, the reparative housing must offer the necessary literacy and training for that position.
- Therefore, there should be well-thought-out legislation or a policy in place that may stop the criminal conduct known as trafficking before the situation is deemed to be legal [64].
- It is crucial to assess the client's health in order to stop the spread of sex-transmitted illnesses in order to protect the safety of workers in this business [65].
- Only requiring routine screenings of sex workers will not prevent people from contracting the illness while engaging in sexual activity [66].

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