

Prostitution and Victimhood: A Critique on Legal Narratives Based on Cultural Stigma

Prof. Mamta Rani

Department of Sociology

K.G. K. P.G. College,

Moradabad

Email: dr.mamta27@gmail.com

Arushi Jha

L.L.M. (Criminal),

Amity Law School,

Amity University, Lucknow

Email: arushi.p.jha@gmail.com

Abstract

A victim in the eyes of law, and a criminal in that of society; a question that no one asks: who is she to herself?

The legal narrative surrounding prostitutes and prostitution is heavily shaped by cultural perceptions that curtail sex workers within a confined binary of being either victims in dire need of rescue or criminals acting in violation of morality and social values¹. This paper is a critical analysis of how such narratives influence the enactment and amendment of criminals against prostitution, routinely disregarding the realities of those who live it every day as an extension of their profession.

Inspired by scholarships rooted in law and feminism, this study analyzes the role of cultural stigmas and prejudices in the infiltration of legal language, further encouraging a victimhood narrative, thus stripping away sex workers of their autonomy. It explores the influence of moral and political philosophies in crafting of laws which, on their part, claim to extend protection to sex workers, but result in exacerbating their marginalization through laws and state control. Additionally, a comparative analysis of various legal frameworks, including the Nordic model, highlights how different cultural stigmas and perceptions manifest in policies, further reflecting in judicial interpretations and legislative practices. This article argues for the recognition of prostitution as 'labor' instead of a crime or victimhood. In the end, it urges the legal system to listen to the voices of sex workers rather than acting on cultural narratives and biases.

Keywords

Prostitution Laws, Human Rights and Autonomy, Legal Stigmatization, Judicial Bias

Reference to this paper should be made as follows:

Received: 01.12.2024
Approved: 18.03.2025

Dr. Mamta Rani
Aruhi Jha

*Prostitution and
Victimhood: A Critique on
Legal Narratives Based on
Cultural Stigma*

*RJPP Oct.24-Mar.25,
Vol. XXIII, No. I,
Article No. 01
Pg. 1-9*

Online available at:
[https://anubooks.com/
journal-volume/rjpp-sept-
2025-vol-xxiii-no1](https://anubooks.com/journal-volume/rjpp-sept-2025-vol-xxiii-no1)

Introduction

A woman standing before the court, her crime being that of survival in a profession condemned by law and society, and her identity reduced to another debate on morality and righteousness.

Legal debate on the subject of prostitution has become a knotted chaos of cultural morality, oscillating between the two most common perceptions of it—victimhood and criminality¹. The legislature, executive and judiciary often confine sex work within a box, either that of victims of exploitation in need of immediate rescue or offenders engaged in a trade that is viewed as both immoral and illicit. Rooted in history and cultural prejudices, this has resulted in the criminalization and stigmatization of sex work across borders; the ultimate question still unanswered: *is the law truly aimed at working for the benefit of sex workers, or is the focus reinforcement of societal and cultural prejudices?*

It is fairly attested to that cultural ideologies often view sex work in the light of moral transgression, instead of as source of legitimate economic stability. The legal language often opted in statutes, judicial observations and other enforcement mechanisms showcase a deep-rooted discomfort in the commodification of the person of an individual, thereby indirectly preferring morality to individual autonomy. Some jurisdictions have been observed to limit sex work to anti-trafficking laws, commingling consensual labor with forced exploitation², both separate and co-existing realities³. Other jurisdictions opt for punitive actions under the scope of public decency and morality, thus putting a blanket over sex workers, rendering them invisible in the legal framework⁴.

This paper aims to critically analyze how cultural ideologies and perspectives on prostitution and other forms of sex work affect legal discourse and criminalization patterns. In addition, it examines whether the emphasis on the victimhood narrative and its reflection in law thereof, serves as a means of protection or a weapon of social control, and whether the legal systems manage to protect the rights of sex workers or facilitate their marginalization. By dissection of the intersection of law, morality and cultural prejudice, this paper questions the dominant legal narratives and urges for a shift in preference to an approach that recognizes and protects the agency, dignity, and labor rights of sex workers.

Legal Language and Laws Relating to Prostitution

Legal frameworks throughout the world employ a variety of terminologies and methods when dealing with laws relating to sex work, projecting underlying cultural and moral rigidities. Such linguistic preferences significantly impact the treatment and perception associated with sex workers within the legal field.

Moral and Political Impact on Legal Terminology

The very choice of words and language used in legislation often mirrors cultural values within a society and its political ideologies. One may take the example of *Germany*, a society that recognizes prostitution as a legitimate profession through the *Prostitution Protection Act, of 2016* which mandates sex workers to obtain registration certificates. Additionally, it imposes on all prostitution businesses the obligation not to function without permits, thus focusing on safeguarding the rights of sex workers and imposing State control to regulate the industry. The legal terminology reflects Germany's acknowledgment of sex work as 'labor,' thereby eventually reducing the cultural stigma and protecting the rights of sex workers.

Contrarywise, in relation to the *Nordic model*, such as being followed in Sweden, the law criminalizes the purchase of sexual services, but at the same time, decriminalizes its very sale⁵. This framework predominantly perceives sex workers as victims of exploitation, extending protection from those who purchase services from them. The *Sex Purchase Act, of 1999* exemplifies this perspective, with an object to minimize the demand for prostitution by penalizing the buyers.

Influence of Legal Discourse on Policy and Enforcement

The choice of legal language not only showcases but also shapes and contributes to policy implementation and enforcement practices. In the State of Germany, sex work is not only legalized but also regulated as it entitles the workers to social benefits, health insurance, and pensions in the same manner as any other profession would. This step facilitates safer working conditions, and makes sex work a legitimate career *choice*.

The system in Germany is in direct contrast with the Nordic model which expressly criminalizes the buyers of services; such a model can often attract unintended consequences. While the Nordic system intends to protect the rights of sex workers, the penalization drives the industry to operate underground, consequently making the conditions unsafe, and devoid of legal protection. Additionally, one may observe that such a system reinforces the perception of sex workers as victims, not only undermining their agency and autonomy⁶ But also not extending, in any form whatsoever, financial security or alternatives.

In jurisdictions where criminalization of prostitution is viewed as the solution, such as Russia, warranting eradication, the narrative that sex work is immoral and socially ill is emphasized, overlooking the underlying issues of financial instability. This eventually leads to their marginalization and blockages in access to support services.

In culmination, the choice of legal terminology and mechanisms adopted by different nations significantly impact both, the societal perception of sex work and the actual experiences of the workers. Legislations that acknowledge sex work as 'labor'

tend to promote safe and equitable conditions. On the other hand, laws that frame it as inherently exploitative may perpetuate marginalization and vulnerability⁷.

Indian Legal Framework

The paradox “*A woman’s work is legal, but her workplace is illegal*” explains clearly India’s take on prostitution—a system that neither has the ability to completely legalize nor completely penalize prostitution, consequently creating a legal framework filled with uncertainty and ambiguity. The Indian perspective is rooted in the colonial morality, cultural rigidity towards female sexuality, the conservative political debates.

The principal legislation regulating sex work in India is the *Immoral Traffic (Prevention) Act, of 1956*⁸. While it does not per se illegalize sex work, it criminalizes several related activities such as running or managing of a brothel⁹, soliciting in public places¹⁰, and living on the earnings of prostitution¹¹. Terms such as “*immoral traffic*” and “*living on earnings*” are representatives of cultural unease with the acknowledgment of sex work as a legitimate profession. The law presumes sex workers to be victims of trafficking or other forms of coercion, eliminating the possibility of ‘*choice*’ or ‘*voluntary participation*.’ The adoption of words like “*public decency*” and “*soliciting*” gives the enforcement agencies scope for arbitrary detentions and exploitation of workers.

Evolution Through Judicial Interpretation

Despite the rigid and restrictive joys of words in the ITPA, the judiciary has occasionally opted for progressive interpretations in matters of prostitution. In the case of *Budhadev Karmaskar v. State of West Bengal*¹², the Supreme Court acknowledged sex workers’ right to dignity¹³ And livelihood under Article 21 of the constitution. In an appeal¹⁴ Under the same name, further guidelines were laid out by the Court. Similarly, the case of *Kajal Mukesh Singh v. State of Maharashtra*¹⁵, the Bombay High Court held that adult sex workers engaging in voluntary sex work cannot be detained or penalized. Such rulings pave the way for the welfare of sex workers while still operating within the limits of the established framework of moral ambiguity.

Comparative Analysis of Legal Frameworks of Different Cultures

Does prohibiting sex work protect those involved or does it endanger them?
One may find answer to this question within the legal framework adopted by respective countries. Different nations regulate prostitution through different legal models, each model reflecting their distinctive cultural, moral and political views. The different legal models have been discussed as follows, compartmentalizing them into the *Nordic model*, *legalization*, and *complete criminalization* narratives.

The Nordic Model: Partial Criminalization Meets the Victimhood Narrative

First implemented in Sweden through the *Sex Purchase Act of 1999*, the Nordic Model penalizes the buyers of sexual services, and decriminalizes its sellers in the assumption that all sex workers are victims of exploitation, thus aiming to bring a halt to prostitution by attempting to reduce its demand. Countries other than Sweden which follow this model are Norway, Canada, and France. This model views prostitution as gendered violence, thereby aiming to promote the rescue of sex workers.

Application of the Nordic model has led to the operation of this industry underground, which exposes the workers to violence and the inability to either screen clients or report any violence to have committed against them. Additionally, the attempt to reduce demand has introduced unsafe working conditions and increased policing, which has led to an unfortunate indirect criminalization¹⁶.

Recognizing Sex Work as Labor: Absolute Legalisation and Regulation

In comparison to the aforementioned, some countries have opted for legalization and regulation of sex work, as opposed to complete silence or partial involvement, treating it as a legitimate profession with defined labor rights. The countries which follow this model include Germany, New Zealand, and the Netherlands.

These States recognize sex work as an economic activity and integrate it into the formal legal market, additionally providing various health benefits, legal protections, and safe working conditions, which as a consequence reduces incidents of exploitation due to regulatory oversight. This is not to say that the stigma surrounding prostitution is absolutely eliminated but is certainly reduced to a great extent.

Absolute Criminalization: The Harsh Road

Total prohibition is another approach that is opted for by some jurisdictions in the world, wherein all aspects associated with sex work, that is, selling, buying, and its solicitation thereof, are deemed to be criminal offenses. This model has been observed to be implemented in jurisdictions such as Russia, Iran, and Saudi Arabia. These jurisdictions perceive sex work as inherently immoral and opt for its absolute eradication.

In the current economic state of the world, it is nearly impossible to completely eradicate prostitution, thus, this approach leads to pushing of sex work underground, thereby increasing vulnerability in terms of violence and exploitation of the marginalized communities¹⁷, resulting in mass arrests and human rights violations. In addition, it restricts sex workers from accessing healthcare, legal aid, and other social services¹⁸ which are extended to the marginalized.

While India does not completely criminalize sex work, its restrictive framework and conservative approach results in similar effects. Sex workers are

routinely arrested, and subjected to police violence in the name of *rescue operations*. The global trend is leaning towards opting for decriminalization or legalization of prostitution, acknowledging that punitive restrictions increase harm to the workers instead of preventing their exploitation¹⁹. The legal challenge in India lies in creating balance in cultural sensitivities and establishing a framework which is rights-based²⁰, thereby aiming at prioritizing the safety and dignity of sex workers.

The Perception of Victimhood: Protection or Societal Control?

One must sit and contemplate, if the law views sex workers as victims, why does it impose punishment upon them? The never-ending legal discourse on prostitution in India is deeply influenced by what one may call the *victimhood perception*, which views all sex workers as individuals who have been coerced by another into the profession, and are, thus, in dire need of recourse, as if the economic state of the country is not bad enough for them to willingly opt for this profession. One may further note, that while this perspective acknowledges the exploitation and trafficking of various individuals into this trade, which is an established reality, it often disregards the agency of sex workers who enter into this profession due to economic necessities or rather, its lack thereof. More critically, the provisions aimed at protecting sex workers in the name of victimhood often end up criminalizing and disempowering them instead, leaving them devoid of options.

The Roots of the Immoral Traffic (Prevention) Act, 1956²¹ May be found in the assumption that no woman would or should voluntarily engage in sex work. This perspective is reflected in the various provisions of the law such as sections 5 and 6 of the Act of 1956, and while these provisions are aimed at the prevention of forced prostitution, they tend to also target consensual sex work under the presumption that sex work in all forms is conducted through trafficked victims. In addition, as previously discussed, provisions of the aforementioned Act allow the detention of adult sex workers in preventive homes, despite having asserted their right to work, showcasing a paternalistic approach and denial of autonomy. Language may seem as though it is of minimal significance, but it plays a pivotal role in the field of law. It is said that it reflects the very objective of the legislature; so, when Courts are seen making use of terms or phrases that infantilize sex workers, such as “*fallen women*” or “*victims of moral corruption*,” it further reinforces the idea that they are incapable of making independent choices.

The victimhood perception ultimately serves as a tool of social control, rejecting the agency of these workers²². A more impactful approach would be prioritizing economic and legislative reforms that aim at empowering sex workers and extending security as opposed to state-imposed rescue operations and rehabilitation.

Contemplating Legislative and Policy Amendments

There are many legal reforms that may be introduced in the form of renewed approaches and legal language which are beneficial to those involved in the profession of sex work. It is imperative to repeal punitive provisions in the ITPA through *the decriminalization of solicitation and brothel-running*, and formulation of a system that allows for safe working environments, while simultaneously removing section 4 of the legislation. Safe working environments can be achieved by providing access to *labour rights* including health benefits, financial inclusion²³, and ensuring workplace security by establishing mechanisms that allow sex workers to report crimes committed against them without the consuming fear of prosecution.

While India does not have express provisions curtailing to issues surrounding the profession of prostitution, it does have anti-trafficking laws. By bringing amendments to the existing anti-trafficking laws such as the exclusion of those individuals who are voluntarily engaged in sex work, and differentiating them from those who are not. The aim should be to shift from penalizing sex workers to prosecuting the traffickers and abusive clients. In addition, amendments should be made to sections 17 and 19 of ITBA, allowing rehabilitation to be a voluntary act, and not state imposition. Policies should be drafted concerning livelihood programs, which offer economic alternatives for those wanting to leave sex work.

Conclusion: Beyond ‘Immorality’-A Rights-Oriented Future

“Law should be a shield, not a weapon. Justice should empower, not punish.”

The legal debates in India remain limited to a paternalistic framework that blends morality with justice²⁴. While legislation to the likes of the Immoral Traffic (Prevention) Act claims to operate on the objective of extending protection to sex workers from exploitation, they end up serving as tools of oppression, reinforcing stigma, criminalization, and corruption instead of addressing the existing systematic inequalities in the functioning of our society.

This paper analyses the cultural and ideological impacts that have given shape to India’s legal stance on prostitution, highlighting selective enforcement and narrations of victimhood, and the failure of contemporary legislation to protect those they allegedly aim to protect. Comparative analysis with various models globally depicts that decentralization, which is devoid of increased policing or state-imposed rehabilitation, offers the most efficient path toward safeguarding the rights of sex workers.

Legal reformations in India ought to proceed beyond modernistic assumptions, as well as, acknowledge sex work as ‘labor,’ promoting sex workers’ right to have access to legal protections, justice, and basic human dignity. In order to ensure this, it becomes imperative to repeal punitive provisions, acknowledge

sex work as a legitimate profession, and mark a shift in policies from punishment to protection, ensuring that anti-trafficking laws are implemented without violating the rights of consenting adults who are engaged in sex work. International conventions like the CEDAW promote measures to eliminate exploitation in the field of prostitution while protecting the human rights of those involved²⁵.

The part forward is not that of executing forced ‘rescue’ operations but of empowerment, economic empowerment. True justice lies not in the criminalization of sex workers who are merely trying to survive, but in the mechanisms which force them into vulnerability in the first place. Decriminalization is not a mere legal reform, it is a shout for dignity, autonomy, and acknowledgment of sex workers as citizens having rights, rather than subjects of state control.

Footnote

1. Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* 121 (Edward Elgar Pub. 2018)
2. Prabha Kotiswaran, Born into Brothels: Toward a Legal Ethnography of Sex Work in an Indian Red-Light Area, 33 *Law & Soc. Inquiry* 579 (2008).
3. Global Network of Sex Work Projects, *The Impact of Anti-Trafficking Legislation on Sex Workers* (2018), <https://www.nswp.org/resource/the-impact-anti-trafficking-legislation-sex-workers>
4. Darshana Mitra, Navigating the Law: Sex Workers’ Rights in India, 15 *J. Hum. Rs. Prac.* 189 (2020).
5. Janice Raymond, *Not a Choice, Not a Job: Exposing the Myths About Prostitution and the Global Sex Trade* 72 (Potomac Books 2013).
6. Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* 78 (Princeton Univ. Press 2011).
7. Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* 45 (Princeton Univ. Press 2011).
8. Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).
9. Section 3, *ibid.*
10. Section 8, *ibid.*
11. Section 4, *ibid.*
12. 2011 (11) SCC 538
13. *Cops Must Treat Sex Workers with Dignity*, Media to Not Publish Raid Pics: SC Issues Directions, India Times (May 26, 2022), <https://www.indiatimes.com/news/india/cops-must-treat-sex-workers-with-dignity-media-to-not-publish-raid-pics-sc-issues-directions-570571.html>

14. Criminal Appeal No(s).135/2010
15. 2020 SCC Online Bom 954
16. Brittany McBride et al., *Underreporting of Violence to Police Among Women Sex Workers in Canada: Amplified Inequities for Immigrant and In-Call Workers Prior to and Following End-Demand Legislation*, 22 Health & Hum. Rs. 257 (2020).
17. Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* 134 (Princeton Univ. Press 2011).
18. Open Soc’y Found., *Sex Worker Health and Rights: Where Is the Funding?* 12 (2006), <https://www.opensocietyfoundations.org/uploads/6d1e1c6f-0b2a-4e7e-8b5e-8c7bb5e3a9f3/where-is-the-funding-20060501.pdf>
19. Darshana Mitra, *Navigating the Law: Sex Workers’ Rights in India*, 15 J. Hum. Rs. Prac. 189 (2020)
20. Sunil Gupta, *Human Trafficking and Prostitution in India: A Critical Analysis*, 10 J. Indian L. & Soc’y 134 (2019).
21. Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India)
22. Kamala Kempadoo & Jo Doezema, *Global Sex Workers: Rights, Resistance, and Redefinition* 54 (Routledge 1998).
23. Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* 102 (Princeton Univ. Press 2011).
24. Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton Univ. Press 2011)
25. Convention on the Elimination of All Forms of Discrimination Against Women art. 6, Dec. 18, 1979, 1249 U.N.T.S. 13