

**THE LEGALISATION OF PROSTITUTION: A CRITICAL ENGAGEMENT WITH  
THEORY AND PRACTICE IN INDIA**

**SYNOPSIS OF THE THESIS**

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**BY**

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## **SYNOPSIS OF THE THESIS**

Prostitution, an age-old institution, still lacks acknowledgment in society. Prostitutes in the country face stigmatisation and endure significant violence at the hands of pimp's, clients and police officials. While the act of prostitution itself is legal, associated activities such as soliciting, pimping, brothel-keeping, kerb crawling, and living on the earnings of prostitutes are criminalised. Despite its legal status, prostitution faces societal backlash and police scrutiny. Prostitutes not only suffer from social stigma but are also frequently subjected to arrests and harassment by law enforcement officials. Debates surrounding the legalisation of prostitution in Indian society have persisted over time, with proponents advocating legalisation as a potential remedy to the challenges faced by sex workers and opponents expressing concerns about the potential increase in trafficking. Thus, this research aims to provide answers to these questions and shed light on the evolution of prostitution, the associated laws, relevant theories, recent developments, and fieldwork findings to support the theoretical framework. To achieve this, the thesis is structured into five Chapters, each delving into various facets of prostitution.

It's crucial to mention here that I have used the term "prostitute" rather than the term "sex worker" because of its broader and more commonly recognised usage. As my thesis has incorporated the viewpoints of both the proponents and opponents, it is essential to mention that opponents of legalisation often reject the term "sex worker" as they do not consider prostitution a legitimate occupation. Conversely, I've also employed the term "sex worker" in specific chapters, particularly when discussing the perspectives of proponents of legalisation, as even they believe that the term prostitute holds a negative connotation.

## **SCOPE OF THE STUDY**

The scope of this research is to comprehensively investigate the evolution of prostitution, encompassing both its historical development and its contemporary manifestations. The research will incorporate a thorough analysis of various models and theoretical perspectives, shedding light on the various models of prostitution that different countries have adopted around the world. It will comprehensively deal with the ITPA as this law is very important to understand prostitution in the country. A recent Supreme Court Order has uphold the dignity and rights of sex workers. A key focus will be the nuanced exploration of the contentious debate surrounding the legalisation of prostitution, presenting arguments from proponents and opponents of legalisation, and drawing insights from advocacy organisations, sex workers, and law enforcement officials.

## **OBJECTIVES**

1. To study the history, typologies, causative factors, and pathways of prostitution in India.
2. To study the arguments in favour and against the legalisation of prostitution in India.
3. To study whether the legalisation of prostitution could serve as a potential solution for the issue of prostitution in India.
4. To examine the implementation of the Immoral Traffic Prevention Act and gather comprehensive data pertaining to its execution, through both primary and secondary sources.
5. To suggest reforms of existing laws and identify different policy options to regulate prostitution and help women in prostitution improve their lives.
6. To examine the implications and challenges of the recent Supreme Court Order.

## **RESEARCH GAP**

Despite the comprehensive exploration of various aspects surrounding prostitution and its legal status in India presented in the literature review, there appears to be a research gap that could benefit from further investigation. The literature review falls short of providing a comprehensive understanding of the historical evolution of the institution of prostitution and its current status. Some of the literature has dealt with the past standing of prostitutes, while some has dealt with the contemporary status, but not a single literature review deals with the evolution it has undergone from the past to the present.

There is also a lack of in-depth exploration of the Immoral Traffic (Prevention) Act (ITPA). Given that the ITPA is the law that governs prostitution in India, the absence of thorough analysis of its provisions, implementation, and effects on sex workers' lives is a notable gap. An assessment of the ITPA's achievements, failures, and effectiveness in protecting women involved in prostitution could provide crucial insights into the legislative landscape and its impact on the ground.

While the literature extensively delves into historical, sociological, legal, and ethical dimensions, there appears to be a lack of emphasis on the real-life experiences and voices of sex workers themselves. A more in-depth qualitative inquiry into the personal narratives, challenges, aspirations, and agency of sex workers in the Indian context could provide a human-centered perspective that complements the existing analysis.

## **RESEARCH METHODOLOGY**

The research methodology adopted for this study employs a qualitative approach that combines both descriptive and analytical methods to comprehensively investigate the subject of prostitution and its legal status in India. Both primary and secondary data have been used for the research.

Secondary data sources were gathered from a range of resources, including books, journals, articles, and websites. A thorough assessment of available literature was carried out, with an emphasis focusing on the historical evolution of prostitution, contemporary debates, and the legal framework surrounding prostitution. Primary data collection involved conducting interviews with the Durbar MahilaSamanwaya Committee and Sanlaap to gain insights into their perspectives on the legalisation of prostitution in India. Interviews were also conducted with 15 sex workers from Sonagachi Red Light Area and RabindraSarani Red Light Area, with a view to understand their lived experience and their perspectives towards sex work, as well as their views on the legalisation of sex work in India. Interviews were also conducted with the police officials to learn about their understanding of the laws on prostitution and their views on the legalisation of prostitution in India.

### **CHAPTER CONTENT**

Chapter I, titled '**Prostitution in India: Historical Overview, Diverse Typologies, Routes, and Pathways**', has traced the evolution the institution of prostitution has undergone. The Chapter has examined how prostitution has changed through different phases of history. Through the lens of history, it has traced the varying phases that have marked the evolution of prostitution, ranging from prehistoric times to the contemporary era. The Chapter has comprehensively covered the multifaceted changes that have occurred in relation to the nature of prostitution, societal perspectives, the roles and social standing of prostitutes, and the various issues linked to the practice.

The Chapter has also looked into the various typologies of prostitution that are present across different countries. Prostitutes do not belong to a single homogeneous group; there is a wide variety of prostitutes found all over the world. Although variations exist among different countries, certain typologies

remain universal. A comprehensive discussion of 17 distinct types of prostitutes is presented in this Chapter based on the aforementioned factors.

The Chapter has further discussed the causative factors that drive women into this profession, providing an exploration of the numerous reasons compelling them to do so. The Chapter has discussed a myriad of factors that drive women into prostitution, spanning from voluntary engagement to coercion. The Chapter has delved deeply into an exhaustive analysis of these subjects, intricately exploring the evolution, various typologies, and fundamental factors that shape the complex landscape of prostitution. Moreover, it has provided a holistic comprehension of the multifaceted aspects associated with prostitution, establishing solid groundwork for the thesis.

Chapter II, titled '**Legal Approaches and Theoretical Perspectives on Prostitution**', has explored various models of prostitution such as abolitionism, neo-abolitionism, decriminalisation, legalisation, and criminalisation. The Chapter further examined how these models have been implemented in diverse countries across different continents, providing valuable insights into their practicality.

The Chapter has also discussed the feminist theories on prostitution such as radical feminism, liberal feminism, Marxist feminism, dominance theory, intersectional feminism, and sex-positive feminism. Each of these perspectives has offered a unique interpretation of prostitution and has helped in understanding the subject. Some feminist theories perceive sex work as a type of violence, whereas others regard it as a legitimate avenue for employment and personal independence. This chapter has offered valuable insights into international approaches to prostitution, a crucial aspect to consider when assessing their practicability on a national scale.

Chapter III, titled **Legislative and Judicial Approach towards Sex-Work**, examined the legal and judicial perspectives on sex workers in India, spanning from the time of the British colonial era to the present day and has covered all the significant acts pertaining to prostitution during the specified time frame. The Chapter also emphasised major landmark judgements related to sex work in India.

The Immoral Trafficking (Prevention) Act (ITPA) of 1986 is the primary law governing prostitution in India. This Chapter has extensively analysed its strengths, failures, and effectiveness in protecting women involved in prostitution. The ITPA contains certain provisions that work against the interests of prostitutes, and the Chapter has discussed why sex workers are advocating for its repeal. I have highlighted the impact of legislative and judicial interventions on the lives of sex workers and contextualised the legislative and judicial approaches within broader social and political contexts.

The Chapter IV, titled **‘Empowering Sex Workers: Supreme Court’s Landmark Directives’**, examined the recent Supreme Court Order that has recognised sex work as a profession and has upheld the rights and dignity of sex workers. The analysis presented in the Chapter has highlighted the recommendations, ramifications, and challenges to the Supreme Court's Order.

The potential implementation of this Order promises transformative empowerment, including equal legal protection for sex workers, improved safety and well-being, and a reduction in the social stigma attached to their profession. Importantly, this ruling grants sex workers the freedom to refuse consent without fearing repercussions from solicitors, police, or unruly clients. Under the Order, rape complaints of sex workers will be taken seriously by the police henceforth, and medico-legal aid will be provided to them.

The successful implementation of the Supreme Court Order recognising sex work as a profession hinges on several critical factors and, at the same time, also raises substantial questions about its practical enforcement.

The Chapter has also addressed the recent handbook released by the Supreme Court, which represents a positive development for sex workers. In this handbook, the term "sex worker" replaces "prostitute" and is recommended for use by the legal community. This change is aimed at identifying, understanding, and challenging stereotypes about women involved in sex work. Consequently, this signifies a significant advancement for sex workers, who have consistently advocated for the use of "sex worker" over "prostitute". This change covered in the Chapter represents a crucial step forward in creating a more inclusive and empathetic environment for sex workers.

The Chapter V, **‘Prostitutes, Organisations, and Law Enforcement: Perspectives from the Field’**, is entirely based on fieldwork and has analysed the data collected from various stakeholders, including the Durbar MahilaSamanwaya Committee (DMSC), Sanlaap, sex workers, and police officials. DMSC champions the empowerment of individuals involved in sex work and supports legalisation, while Sanlaap is fighting against legalisation. The inclusion of contrasting viewpoints from Sanlaap and DMSC on legalisation was pivotal for conducting a comprehensive study, ensuring the incorporation of diverse perspectives. The Chapter has also provided insights into the real-life experiences of sex workers collected from the interviews of sex workers in Sonagachi and Rabindra Sarani red-light areas and has also covered the interviews conducted with police officials at Bhavani Bhawan in Kolkata. As such, their insights were valuable in explaining how law enforcement authorities approach instances involving prostitution and human trafficking. It was also important to gain insight into their views on legalisation. Through the lenses of a diverse range of viewpoints, the Chapter has provided a summary of the



intricate debate surrounding prostitution, sex work, human trafficking, and the question of the legalisation of prostitution in India.

‘Conclusion to the Thesis’ brings together the understanding and findings gathered in the previous Chapters. The Chapter attempts to answer all the research questions posed in the introductory Chapter and presents the findings of the research.

### **RESEARCH FINDINGS**

The present study has attempted to respond to the research questions posed in the introductory Chapter in the following manner:

*What are the changes the institution of prostitution has undergone over time, and what effect these changes have meant for the prostitutes?*

The existence of prostitution has been found in history, mythology, literature, music, drama, sculpture, archaeological structures, ruins, etc. The institution of prostitution has developed greatly over time; it has undergone significant changes in perception, social acceptance, and legal frameworks.

Prostitutes in the past held a very respectable position in society; they were known by different names in the past, such as Devadasi, Praganika, Ganika, Dasi, Rupajiva, Devadasi, Apasaras, etc. Each of these categories was unique in its own way, and apart from providing sexual services, these prostitutes served different roles in the state, including entertainment, spying, aiding escapes, and even political functions. Prostitutes were skilled in the past and mastered the arts of singing, dancing, writing, arts, music, arithmetic, chess, dice, poetry, shooting arrows, fighting, and so on. They were also subjected to State taxes, thus contributing to the development of the State. Severe penalties in the form of substantial fines were imposed on individuals responsible for the harm or killing of a prostitute; fines were also imposed on men who coerced prostitutes

for sexual activity. There have been many instances in the past where prostitutes, through Gandharva marriage, married kings and, after marriage, enjoyed the status of queens. These aforementioned factors reflect prostitutes' excellent standing in the past.

During the reign of Chandra Gupta Maurya, Pataliputra emerged as a prominent center where prostitution rapidly thrived. The state implemented measures to control this institution and integrate it into the taxation framework, believing that operating brothels would generate revenue for the state. Measures were adopted to protect them as they were considered as the valuable asset of the state.

During the Sultanate period, prostitution was quite prevalent; nevertheless, it's important to note that prostitutes in this era held a relatively lower social status compared to other historical periods. During this time, they led uncertain lives and were often objectified, which was not the case in other historical eras.

Regarding the Mughal emperors, some enforced strict regulations, while others showed favour and support for prostitutes. Emperor Akbar and Aurangzeb implemented stringent measures to control the activities of prostitutes, but these efforts proved ineffective as prostitution continued to thrive in society despite numerous attempts to regulate it. The Mughal period was characterised by the existence of regulated prostitution, with emperors adopting various approaches, ranging from strict control to patronage. Despite efforts to suppress or regulate prostitution, it persisted throughout this era. Some of the Mughal emperors even married prostitutes. No matter how many restrictions were imposed, prostitution persisted and held a respected position in society due to its role in serving essential purposes.

However, the arrival of the British marked a significant turning point in the status of prostitutes. With the advent of the British in India, the status of women

involved in prostitution underwent a change. The British soldiers who were in India away from their wives needed to satisfy their sexual needs. The fear of the soldiers turning out gay in the absence of a partner to satisfy their physical needs also became a matter of concern. With this view, the courtesans, dancing girls, and devadasis were all brought under a single category so that it would be easier to control them. The Contagious Disease Act of 1864 was passed, which made it mandatory for prostitutes to register with governmental authorities and undergo periodic examinations aimed at detecting venereal diseases. Sex workers found to be infected were confined in locked hospitals and released only after complete recovery. They were ill-treated, physically assaulted, sexually abused, and underfed during this time, and they also lost their daily income. Those who refused treatment were imprisoned for life. The Act was biased, as British soldiers were exempted from this process despite the high probability of them being carriers of diseases and transmitting them to prostitutes, but there was no such test for them. The Contagious Disease Act was revoked later, and the British departed from India; however, the stigmatisation of prostitution remained. What was once legal came to be viewed criminally and unfavourably by society. The essence and respect that the prostitutes held before were no longer theirs and now they were perceived as mere individuals providing sexual services.

The Suppression of Immoral Trafficking Act was enacted in 1956 after Independence and subsequently amended to become the Immoral Traffic Prevention Act (ITPA) in 1986. It currently serves as the primary law governing prostitution in India, but it has consistently been applied against prostitutes. There is a growing demand among prostitutes and NGOs for the repeal of this Act.

Currently, the institution of prostitution is looked down upon, viewed as shameful, and as posing a significant threat to society. Prostitutes are treated

with contempt and are denied the opportunity to remain respected members of society. They are subjected to abuse and exploitation by pimps, clients, and police officials. Prostitutes in present society have been looked down upon, belittled, prejudiced against, and treated with contempt. There are women who voluntarily choose to engage in prostitution, but there is a growing social perception that prostitutes are forced into this profession and no one voluntarily sells their bodies, which makes it difficult for these women to carry out their profession for a living. In this way, women caught in the raids are seen as victims of human trafficking and are forced to quit their jobs.

Looking into the evolution of prostitution, we see that it has undergone a lot of changes in regard to its nature, people's perspectives, the intensity of the matter, and various issues concerning it. The institution of prostitution gradually deteriorated over time, losing its essence and becoming a profession viewed with contempt. The stigmatisation of prostitutes and the negative perception of their occupation continue to persist today. Their profession is often met with judgement and disdain, perpetuating a cycle of marginalisation and social exclusion.

*How best to understand the legal framework regulating prostitution in India in terms of its content, lacunae, and effectiveness?*

The law governing prostitution in India is the Immoral Traffic Prevention Act of 1986 (ITPA). Prostitution, as per Section 2(f) of the ITPA, is defined as "the sexual exploitation or abuse of individuals for commercial purposes," and the term prostitutes is used to refer to an individual engaged in this exploitative practice.

The ITPA Act has proven to be a useful instrument for law enforcement in preventing the proliferation of prostitution throughout India. The Act is all-inclusive, including all the steps necessary to conduct searches, detain suspects,

remove victims from brothels, and provide required presumption provisions with regard to specific charges. It has been a crucial instrument in keeping proprietors of brothels and human trafficking under control. However, the fundamental issue is with the ITPA's unfavourable attitude towards prostitution, as the term prostitution itself conveys a negative message by classifying it as an unlawful conduct that discriminates against prostitutes. The definition of prostitutes under the ITPA Act as the sexual exploitation or abuse of persons for commercial purposes gives a negative connotation to prostitution by defining prostitution as an illegal act. Narrowing down the definition of prostitution solely to a form of sexual exploitation or abuse, nonetheless, presents another obstacle and hinders sex workers from continuing their profession.

One major defect of the ITPA Act is Section 8, which sex workers organisations advocating for legalisation are demanding be repealed. Soliciting is a crime under Section 8 of the Act, and if any woman is caught soliciting, she can be imprisoned for a period of six months, fined a certain amount of money, or be pressed with both charges, but in reality, Section 8 of the ITPA is more frequently used to intimidate and extort money and sexual favours from prostitutes, ultimately leading to their harassment. In practice, the powers granted to the police under the ITPA Act are often marred by corruption, harassment, and the targeting of vulnerable individuals involved in prostitution.

According to Section 21(b) of the ITPA, persons who are in need of correction may be detained under this Act. However, in reality, women who willingly engage in the profession of prostitution are held against their will in these correctional institutions, despite claims that forceful detention would not occur.

The ITPA also exhibits gender bias in favour of men. In an environment where prostitution is controlled primarily by men, including the police, landlords, entrepreneurs, brothel managers, pimps, procurers, and clients, these powerful

figures exert control over the women engaged in prostitution yet rarely face accountability for their actions. In contrast, women who are subjected to exploitation as sexual commodities, enabling the operation of this enterprise, bear the brunt of the penalties and legal consequences. The failure of the implementation of the ITPA to acknowledge "red light" areas and the unique challenges within them perpetuates a cycle of risk and vulnerability for women involved in prostitution.

Section 2(h) of the Immoral Traffic (Prevention) Act (ITPA) defines "public place" as any place intended for use by or accessible to the public, including public conveyances. Under this definition, a sex worker's home or workplace can be considered a "public place" because it is "open to the public" at any time. There is also a problem with the lack of a clear distinction between the sex worker's residence and public roads. Many areas where brothel-based sex work occurs are often characterised by narrow lanes and densely populated localities. This lack of delineation creates confusion and makes it hard for sex workers to distinguish between their personal spaces and public spaces.

The Immoral Traffic (Prevention) Act (ITPA) in India has proven to work against the women involved in prostitution, highlighting the need for significant changes. The Act's enforcement has resulted in the violation of fundamental rights and has disproportionately targeted sex workers. During the interview with Dr. Protim Roy of Durbar Mahila Samanwaya Committee (DMSC) he stated that one of the major demands of the DMSC is scrapping the ITPA Act and legalising prostitution in India. DMSC has criticised the ITPA Act because it views prostitution only through the lens of trafficking; the consent factor is overlooked here, and even if a person willingly migrates to become a sex worker, there is a notion that the person has been trafficked. This kind of attitude towards prostitution put forward by the ITPA Act aggravates the situation as it criminalises and marginalises the women involved in it. If not repealed, Dr.

Protim Roy stated that there is a need to at least remove certain provisions from the ITPA.

Considering the numerous loopholes outlined above, there is a compelling need to repeal the ITPA, as the Act has failed to adequately address the challenges witnessed by sex workers. A new law should be formulated to effectively combat human trafficking while also being more accommodating to the needs and rights of sex workers.

*What are the implications and challenges facing the Supreme Court's Order recognising sex work as a legitimate profession?*

19<sup>th</sup> May, 2022, witnessed a historic moment as the Supreme Court of India recognised sex work as a legitimate profession. The Supreme Court upheld the fundamental rights of sex workers to be treated with dignity and respect. Strict laws on prostitution have been relaxed, and extensive guidelines have been established to safeguard sex workers' rights, dignity, and general well-being.

The important elements of the Order are that, in cases where it is clear that a sex worker is a consenting adult, the authorities must abstain from taking any legal action against them. Also when a sex worker lodges a complaint regarding criminal, sexual, or other forms of sexual misconduct, the police must take it seriously. As regards the legal context, the Order asserted that voluntary sex work is not prohibited and that legal repercussions should only be imposed on those who operate brothels. The guidelines also stated that all the women kept in ITPA protective homes against their will should be released in a timely manner. Sex workers should also be involved in framing legislation governing sex work, and a child of a sex worker should not be separated from their mother solely due to her occupation as a sex worker.

The recommendation further specifies that the police should treat sex workers with respect, and refrain from verbal or physical abuse, use of force, or coercing



them into sexual activity. The most significant implications of this Order are that the Supreme Court has acknowledged the agency and autonomy of consenting adults engaged in the trade, safeguarded sex workers' human rights, and sought to reduce the vulnerability and marginalisation that sex workers frequently endure as a result of their profession being criminalised. The ruling establishes a legal framework to defend sex worker rights, guaranteeing that they may work in safer settings, seek legal remedies if their rights are infringed, and report incidents of abuse without fear of legal penalties. The Supreme Court Order challenges the social stigma and discrimination that have long been associated with sex work. Sex workers will be shielded from intimidation and arbitrary police arrests.

However, the implementation of recognising sex work as a profession in India faces various challenges and complexities. Sex work in India continues to be heavily stigmatised due to societal norms, cultural attitudes, and moral biases. This stigma often leads to social resistance to accepting sex work as a profession. While a recommendation has been made to integrate sex workers into the decision-making process, a legitimate concern arises about whether their opinions will genuinely be considered or if they will be included practically in the decision-making process. Effective implementation of any law reform requires political will and government prioritisation. Unfortunately, politicians may not always prioritise sex work, resulting in a lack of resources, financing, and attention committed to developing and implementing supportive policies.

During the interview with DMSC, when asked about the recent Supreme Court order, Dr. Protim Roy said it is important to note that sex work is not yet acknowledged as a profession, and it is important to avoid interpreting this development as giving sex workers full labour rights or equating their line of work with other professions. The ruling merely provides guidelines to protect sex workers' rights, dignity, and general well-being. While he acknowledged



the positive aspect of this development, he expressed skepticism about its effective implementation.

After the passing of the Supreme Court's landmark Order, the next hearing was scheduled for July 27, 2022, but the distressing truth remains that the central government has chosen to postpone the scheduled hearing without providing any information on a new date. This action reflects the centre's apparent lack of prioritisation for the needs and concerns of sex workers. The centre's support is vital for ensuring the court's ruling is effectively implemented. The current circumstances have cast serious doubt on the Order's successful execution. According to reports, certain states, like Odisha, are still not abiding by the Supreme Court's directives. Bhubaneswar is the first city to report about the failure of the state to adhere to recent Supreme Court directions, but there may be more states where sex workers are facing the same issue, but these are not reported in the media. The centre's lack of compliance and the failure of certain states to adhere to the Supreme Court's Order demonstrate the urgent need for action.

While the recent Order represents a positive development, it also raises significant questions about its actual enforcement and the challenges it may encounter in practice. With persistent pressure from the Supreme Court on the centre, we can anticipate positive changes in the long run.

*Should India consider the legalisation of prostitution as a potential solution to address issues related to sex work, regulation, and the well-being of sex workers?*

Although India is a signatory of many international conventions on women's rights, has a Constitution that prohibits gender-based discrimination and exploitation, and has numerous related laws and regulations in place, it has failed to ensure adequate protection of sex workers' rights. For a long time, one of the most ignored groups has been prostitutes.

Prostitutes in India frequently endure mistreatment at the hands of both their clients and pimps. Police are also believed to be the primary perpetrators of harassment against prostitutes, which further dissuades the prostitutes from seeking assistance from law enforcement. Police are believed to use their powers to extort money and ask for sexual favours from sex workers under the pretext of raids. There are also complaints that when a sex worker approaches a police station to register their case, their complaints are not taken seriously and are not registered. Prostitutes also frequently experience unintended pregnancies due to the unwillingness of their clients to use condoms, and they are also at significant risk of acquiring various sexually transmitted diseases. Because of these aforementioned factors, there's a need to consider legalising prostitution in India.

Legalisation will subject the prostitution sector to labour laws, treating their work like any other occupation. Under legalisation, prostitutes will no longer endure economic or physical exploitation since they will be safeguarded by labour laws. Legalisation would have a variety of advantages, including an end to arbitrary police raids, harassment of sex workers, and strict rules for the client's use of protection. When prostitution is legalised, prostitutes will no longer be required to share their earnings with pimps, intermediaries, and brothel keepers, who currently take away half of their income. Prostitution also plays a major role in decreasing the rate of rape in a country; legalising prostitution will give these sexually frustrated men open access to satiate their cravings. With legalisation, the stigma associated with the profession will also be lifted, and their chance of acquiring STDs will also decrease since they will have access to better healthcare services. By lowering workplace violence, legalisation will also make their jobs safer. According to estimates, India's prostitution market is worth \$8.4 billion. Taxing it would be advantageous for the government since it would allow them to make money while simultaneously defending the rights of sex workers by investing in their advancement.

Out of 15 sex workers interviewed, from Rabindra Sarani and Sonagachi Red-light Area for the research, 7 sex workers supported legalisation while the remaining 8 had no idea what the term meant, thus reflecting a lack of legal awareness among them. However, they did highlight numerous challenges they face in their profession and expressed hope that the situation might improve in the future. The 7 sex workers who supported legalisation stated numerous reasons for the need for the profession to be legalised. One common reason they mentioned was that they wanted sex work to receive the same level of respect as any other profession in society. They expressed that their profession is stigmatised and that they do not receive the respect they deserve within society. Presently, they are constantly living in fear because their work is deemed immoral, and they might be arrested by the police at any time. They also fear potential harassment from local goons.

There have been many instances where the Supreme Court has shown a favourable attitude towards prostitution. In December 2009, the Indian Supreme Court asked the government to legalise prostitution if it couldn't stop the industry's expansion. Since prostitutes lack fundamental rights and lead miserable lives, and the government fails to curtail their growth, the question was raised by the Supreme Court: why not legalise it? In 2011, the Supreme Court of India heard a PIL<sup>67</sup> submitted by NGOs calling for the large-scale cessation of trafficking in the nation. The judges of the apex court stated that no nation has been able to totally eradicate sex work, so only through legalisation will the government be able to "monitor the trade, rehabilitate, and provide medical aid to those involved". We can observe that the Supreme Court has consistently displayed a tendency favouring legalisation.

There is always a fear that the legalisation of prostitution might increase trafficking, but in reality, the legalisation of prostitution will help curb trafficking. It will put a check on the involvement of minors in this profession

by enforcing strict rules to regulate it. Since prostitution is an illegal business that runs underground, traffickers exist, but once prostitution is legalised, these traffickers will disappear as stringent laws are employed to check trafficking.

An intriguing finding from the interview conducted with the police officials of Bhavani Bhavan for the research was that all police personnel interviewed, including IPS officer R. Rajasekaran, agreed that prostitution should be legalised in the country. Given their roles in the Anti-Human Trafficking Unit, it was presumed that they might be against legalisation and that their stance on legalisation would be like that of Sanlaap, as even Sanlaap is fighting against trafficking, but it was completely the opposite. They stated that, based on their expertise and knowledge in this field, legalisation could help control extensive human trafficking. They believed that legalising prostitution would bring up stringent rules to check trafficking and prevent minor girls from being forced into prostitution, as proper laws and regulations would be in place. They further highlighted that, with legalisation, the profession could be strictly regulated in the country, and they stated that the government should give deep thought to legalising the profession.

To ensure that minors are not forced into this profession, proper registration of sex workers should be done with the verification of original documents and a background check should be done to ensure that a woman is not a minor and a trafficked victim. Following legalisation, the government can establish a body like a self-regulatory body, similar to the one created by Durbar, to ensure that trafficked women are not coerced into prostitution. Also, interviews of the prostitutes could be conducted by the firms hired by the government at intervals to determine whether those women are working there by choice or are trafficked women. If the latter is the case, the man implicated in the trafficking should be imprisoned, and the brothel license should be revoked immediately. Also,

surprise checking of the brothels once in a while could aid in checking the involvement of minors in the profession. Government

We can see that there are prohibitions on the use of narcotics, alcohol, and marijuana, and these restrictions can be defended on the grounds that such consumption is harmful to a person's health. Contrary to them, prostitution does not impose such health hazards; it neither harms the person mentally nor physically. Therefore, imposing such prohibitions and restrictions on prostitutes cannot be justified. When abortion is legal in India, homosexuality has been legalised, and adultery is no longer a criminal offence, why not bring about a change in this aspect? Prostitution is a choice; if 'my body, my right' can be applied to abortion, then why not the same attitude be developed for prostitution? Sex work is a human right and should be given to people and respected like any other work in society.

Thus the endeavour of the research has been to investigate the evolution of the institution of prostitution and how the standing of sex workers gradually declined over time. The thesis also explores the need for potential reforms within the ITPA, which may involve removing certain provisions or replacing it with an entirely new law. The research examines the setbacks faced by the Supreme Court Order due to non-compliance by the State and suggests that the legalisation of prostitution in India could offer a solution to the challenges encountered by sex workers in the country.

## **SYNOPSIS OF THE THESIS**

Prostitution, an age-old institution, still lacks acknowledgment in society. Prostitutes in the country face stigmatisation and endure significant violence at the hands of pimp's, clients and police officials. While the act of prostitution itself is legal, associated activities such as soliciting, pimping, brothel-keeping, kerb crawling, and living on the earnings of prostitutes are criminalised. Despite its legal status, prostitution faces societal backlash and police scrutiny. Prostitutes not only suffer from social stigma but are also frequently subjected to arrests and harassment by law enforcement officials. Debates surrounding the legalisation of prostitution in Indian society have persisted over time, with proponents advocating legalisation as a potential remedy to the challenges faced by sex workers and opponents expressing concerns about the potential increase in trafficking. Thus, this research aims to provide answers to these questions and shed light on the evolution of prostitution, the associated laws, relevant theories, recent developments, and fieldwork findings to support the theoretical framework. To achieve this, the thesis is structured into five Chapters, each delving into various facets of prostitution.

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The scope of this research is to comprehensively investigate the evolution of prostitution, encompassing both its historical development and its contemporary manifestations. The research will incorporate a thorough analysis of various models and theoretical perspectives, shedding light on the various models of prostitution that different countries have adopted around the world. It will comprehensively deal with the ITPA as this law is very important to understand prostitution in the country. A recent Supreme Court Order has uphold the dignity and rights of sex workers. A key focus will be the nuanced exploration of the contentious debate surrounding the legalisation of prostitution, presenting arguments from proponents and opponents of legalisation, and drawing insights from advocacy organisations, sex workers, and law enforcement officials.

## **OBJECTIVES**

1. To study the history, typologies, causative factors, and pathways of prostitution in India.
2. To study the arguments in favour and against the legalisation of prostitution in India.
3. To study whether the legalisation of prostitution could serve as a potential solution for the issue of prostitution in India.
4. To examine the implementation of the Immoral Traffic Prevention Act and gather comprehensive data pertaining to its execution, through both primary and secondary sources.
5. To suggest reforms of existing laws and identify different policy options to regulate prostitution and help women in prostitution improve their lives.
6. To examine the implications and challenges of the recent Supreme Court Order.



## **RESEARCH GAP**

Despite the comprehensive exploration of various aspects surrounding prostitution and its legal status in India presented in the literature review, there appears to be a research gap that could benefit from further investigation. The literature review falls short of providing a comprehensive understanding of the historical evolution of the institution of prostitution and its current status. Some of the literature has dealt with the past standing of prostitutes, while some has dealt with the contemporary status, but not a single literature review deals with the evolution it has undergone from the past to the present.

There is also a lack of in-depth exploration of the Immoral Traffic (Prevention) Act (ITPA). Given that the ITPA is the law that governs prostitution in India, the absence of thorough analysis of its provisions, implementation, and effects on sex workers' lives is a notable gap. An assessment of the ITPA's achievements, failures, and effectiveness in protecting women involved in prostitution could provide crucial insights into the legislative landscape and its impact on the ground.

While the literature extensively delves into historical, sociological, legal, and ethical dimensions, there appears to be a lack of emphasis on the real-life experiences and voices of sex workers themselves. A more in-depth qualitative inquiry into the personal narratives, challenges, aspirations, and agency of sex workers in the Indian context could provide a human-centered perspective that complements the existing analysis.

## **RESEARCH METHODOLOGY**

The research methodology adopted for this study employs a qualitative approach that combines both descriptive and analytical methods to comprehensively investigate the subject of prostitution and its legal status in India. Both primary and secondary data have been used for the research.



Secondary data sources were gathered from a range of resources, including books, journals, articles, and websites. A thorough assessment of available literature was carried out, with an emphasis focusing on the historical evolution of prostitution, contemporary debates, and the legal framework surrounding prostitution. Primary data collection involved conducting interviews with the Durbar MahilaSamanwaya Committee and Sanlaap to gain insights into their perspectives on the legalisation of prostitution in India. Interviews were also conducted with 15 sex workers from Sonagachi Red Light Area and RabindraSarani Red Light Area, with a view to understand their lived experience and their perspectives towards sex work, as well as their views on the legalisation of sex work in India. Interviews were also conducted with the police officials to learn about their understanding of the laws on prostitution and their views on the legalisation of prostitution in India.

### **CHAPTER CONTENT**

Chapter I, titled '**Prostitution in India: Historical Overview, Diverse Typologies, Routes, and Pathways**', has traced the evolution the institution of prostitution has undergone. The Chapter has examined how prostitution has changed through different phases of history. Through the lens of history, it has traced the varying phases that have marked the evolution of prostitution, ranging from prehistoric times to the contemporary era. The Chapter has comprehensively covered the multifaceted changes that have occurred in relation to the nature of prostitution, societal perspectives, the roles and social standing of prostitutes, and the various issues linked to the practice.

The Chapter has also looked into the various typologies of prostitution that are present across different countries. Prostitutes do not belong to a single homogeneous group; there is a wide variety of prostitutes found all over the world. Although variations exist among different countries, certain typologies

remain universal. A comprehensive discussion of 17 distinct types of prostitutes is presented in this Chapter based on the aforementioned factors.

The Chapter has further discussed the causative factors that drive women into this profession, providing an exploration of the numerous reasons compelling them to do so. The Chapter has discussed a myriad of factors that drive women into prostitution, spanning from voluntary engagement to coercion. The Chapter has delved deeply into an exhaustive analysis of these subjects, intricately exploring the evolution, various typologies, and fundamental factors that shape the complex landscape of prostitution. Moreover, it has provided a holistic comprehension of the multifaceted aspects associated with prostitution, establishing solid groundwork for the thesis.

Chapter II, titled '**Legal Approaches and Theoretical Perspectives on Prostitution**', has explored various models of prostitution such as abolitionism, neo-abolitionism, decriminalisation, legalisation, and criminalisation. The Chapter further examined how these models have been implemented in diverse countries across different continents, providing valuable insights into their practicality.

The Chapter has also discussed the feminist theories on prostitution such as radical feminism, liberal feminism, Marxist feminism, dominance theory, intersectional feminism, and sex-positive feminism. Each of these perspectives has offered a unique interpretation of prostitution and has helped in understanding the subject. Some feminist theories perceive sex work as a type of violence, whereas others regard it as a legitimate avenue for employment and personal independence. This chapter has offered valuable insights into international approaches to prostitution, a crucial aspect to consider when assessing their practicability on a national scale.

Chapter III, titled **Legislative and Judicial Approach towards Sex-Work**, examined the legal and judicial perspectives on sex workers in India, spanning from the time of the British colonial era to the present day and has covered all the significant acts pertaining to prostitution during the specified time frame. The Chapter also emphasised major landmark judgements related to sex work in India.

The Immoral Trafficking (Prevention) Act (ITPA) of 1986 is the primary law governing prostitution in India. This Chapter has extensively analysed its strengths, failures, and effectiveness in protecting women involved in prostitution. The ITPA contains certain provisions that work against the interests of prostitutes, and the Chapter has discussed why sex workers are advocating for its repeal. I have highlighted the impact of legislative and judicial interventions on the lives of sex workers and contextualised the legislative and judicial approaches within broader social and political contexts.

The Chapter IV, titled **‘Empowering Sex Workers: Supreme Court’s Landmark Directives’**, examined the recent Supreme Court Order that has recognised sex work as a profession and has upheld the rights and dignity of sex workers. The analysis presented in the Chapter has highlighted the recommendations, ramifications, and challenges to the Supreme Court's Order.

The potential implementation of this Order promises transformative empowerment, including equal legal protection for sex workers, improved safety and well-being, and a reduction in the social stigma attached to their profession. Importantly, this ruling grants sex workers the freedom to refuse consent without fearing repercussions from solicitors, police, or unruly clients. Under the Order, rape complaints of sex workers will be taken seriously by the police henceforth, and medico-legal aid will be provided to them.

The successful implementation of the Supreme Court Order recognising sex work as a profession hinges on several critical factors and, at the same time, also raises substantial questions about its practical enforcement.

The Chapter has also addressed the recent handbook released by the Supreme Court, which represents a positive development for sex workers. In this handbook, the term "sex worker" replaces "prostitute" and is recommended for use by the legal community. This change is aimed at identifying, understanding, and challenging stereotypes about women involved in sex work. Consequently, this signifies a significant advancement for sex workers, who have consistently advocated for the use of "sex worker" over "prostitute". This change covered in the Chapter represents a crucial step forward in creating a more inclusive and empathetic environment for sex workers.

The Chapter V, **‘Prostitutes, Organisations, and Law Enforcement: Perspectives from the Field’**, is entirely based on fieldwork and has analysed the data collected from various stakeholders, including the Durbar MahilaSamanwaya Committee (DMSC), Sanlaap, sex workers, and police officials. DMSC champions the empowerment of individuals involved in sex work and supports legalisation, while Sanlaap is fighting against legalisation. The inclusion of contrasting viewpoints from Sanlaap and DMSC on legalisation was pivotal for conducting a comprehensive study, ensuring the incorporation of diverse perspectives. The Chapter has also provided insights into the real-life experiences of sex workers collected from the interviews of sex workers in Sonagachi and Rabindra Sarani red-light areas and has also covered the interviews conducted with police officials at Bhavani Bhawan in Kolkata. As such, their insights were valuable in explaining how law enforcement authorities approach instances involving prostitution and human trafficking. It was also important to gain insight into their views on legalisation. Through the lenses of a diverse range of viewpoints, the Chapter has provided a summary of the

intricate debate surrounding prostitution, sex work, human trafficking, and the question of the legalisation of prostitution in India.

‘Conclusion to the Thesis’ brings together the understanding and findings gathered in the previous Chapters. The Chapter attempts to answer all the research questions posed in the introductory Chapter and presents the findings of the research.

### **RESEARCH FINDINGS**

The present study has attempted to respond to the research questions posed in the introductory Chapter in the following manner:

*What are the changes the institution of prostitution has undergone over time, and what effect these changes have meant for the prostitutes?*

The existence of prostitution has been found in history, mythology, literature, music, drama, sculpture, archaeological structures, ruins, etc. The institution of prostitution has developed greatly over time; it has undergone significant changes in perception, social acceptance, and legal frameworks.

Prostitutes in the past held a very respectable position in society; they were known by different names in the past, such as Devadasi, Praganika, Ganika, Dasi, Rupajiva, Devadasi, Apasaras, etc. Each of these categories was unique in its own way, and apart from providing sexual services, these prostitutes served different roles in the state, including entertainment, spying, aiding escapes, and even political functions. Prostitutes were skilled in the past and mastered the arts of singing, dancing, writing, arts, music, arithmetic, chess, dice, poetry, shooting arrows, fighting, and so on. They were also subjected to State taxes, thus contributing to the development of the State. Severe penalties in the form of substantial fines were imposed on individuals responsible for the harm or killing of a prostitute; fines were also imposed on men who coerced prostitutes

for sexual activity. There have been many instances in the past where prostitutes, through Gandharva marriage, married kings and, after marriage, enjoyed the status of queens. These aforementioned factors reflect prostitutes' excellent standing in the past.

During the reign of Chandra Gupta Maurya, Pataliputra emerged as a prominent center where prostitution rapidly thrived. The state implemented measures to control this institution and integrate it into the taxation framework, believing that operating brothels would generate revenue for the state. Measures were adopted to protect them as they were considered as the valuable asset of the state.

During the Sultanate period, prostitution was quite prevalent; nevertheless, it's important to note that prostitutes in this era held a relatively lower social status compared to other historical periods. During this time, they led uncertain lives and were often objectified, which was not the case in other historical eras.

Regarding the Mughal emperors, some enforced strict regulations, while others showed favour and support for prostitutes. Emperor Akbar and Aurangzeb implemented stringent measures to control the activities of prostitutes, but these efforts proved ineffective as prostitution continued to thrive in society despite numerous attempts to regulate it. The Mughal period was characterised by the existence of regulated prostitution, with emperors adopting various approaches, ranging from strict control to patronage. Despite efforts to suppress or regulate prostitution, it persisted throughout this era. Some of the Mughal emperors even married prostitutes. No matter how many restrictions were imposed, prostitution persisted and held a respected position in society due to its role in serving essential purposes.

However, the arrival of the British marked a significant turning point in the status of prostitutes. With the advent of the British in India, the status of women

involved in prostitution underwent a change. The British soldiers who were in India away from their wives needed to satisfy their sexual needs. The fear of the soldiers turning out gay in the absence of a partner to satisfy their physical needs also became a matter of concern. With this view, the courtesans, dancing girls, and devadasis were all brought under a single category so that it would be easier to control them. The Contagious Disease Act of 1864 was passed, which made it mandatory for prostitutes to register with governmental authorities and undergo periodic examinations aimed at detecting venereal diseases. Sex workers found to be infected were confined in locked hospitals and released only after complete recovery. They were ill-treated, physically assaulted, sexually abused, and underfed during this time, and they also lost their daily income. Those who refused treatment were imprisoned for life. The Act was biased, as British soldiers were exempted from this process despite the high probability of them being carriers of diseases and transmitting them to prostitutes, but there was no such test for them. The Contagious Disease Act was revoked later, and the British departed from India; however, the stigmatisation of prostitution remained. What was once legal came to be viewed criminally and unfavourably by society. The essence and respect that the prostitutes held before were no longer theirs and now they were perceived as mere individuals providing sexual services.

The Suppression of Immoral Trafficking Act was enacted in 1956 after Independence and subsequently amended to become the Immoral Traffic Prevention Act (ITPA) in 1986. It currently serves as the primary law governing prostitution in India, but it has consistently been applied against prostitutes. There is a growing demand among prostitutes and NGOs for the repeal of this Act.

Currently, the institution of prostitution is looked down upon, viewed as shameful, and as posing a significant threat to society. Prostitutes are treated



with contempt and are denied the opportunity to remain respected members of society. They are subjected to abuse and exploitation by pimps, clients, and police officials. Prostitutes in present society have been looked down upon, belittled, prejudiced against, and treated with contempt. There are women who voluntarily choose to engage in prostitution, but there is a growing social perception that prostitutes are forced into this profession and no one voluntarily sells their bodies, which makes it difficult for these women to carry out their profession for a living. In this way, women caught in the raids are seen as victims of human trafficking and are forced to quit their jobs.

Looking into the evolution of prostitution, we see that it has undergone a lot of changes in regard to its nature, people's perspectives, the intensity of the matter, and various issues concerning it. The institution of prostitution gradually deteriorated over time, losing its essence and becoming a profession viewed with contempt. The stigmatisation of prostitutes and the negative perception of their occupation continue to persist today. Their profession is often met with judgement and disdain, perpetuating a cycle of marginalisation and social exclusion.

*How best to understand the legal framework regulating prostitution in India in terms of its content, lacunae, and effectiveness?*

The law governing prostitution in India is the Immoral Traffic Prevention Act of 1986 (ITPA). Prostitution, as per Section 2(f) of the ITPA, is defined as "the sexual exploitation or abuse of individuals for commercial purposes," and the term prostitutes is used to refer to an individual engaged in this exploitative practice.

The ITPA Act has proven to be a useful instrument for law enforcement in preventing the proliferation of prostitution throughout India. The Act is all-inclusive, including all the steps necessary to conduct searches, detain suspects,



remove victims from brothels, and provide required presumption provisions with regard to specific charges. It has been a crucial instrument in keeping proprietors of brothels and human trafficking under control. However, the fundamental issue is with the ITPA's unfavourable attitude towards prostitution, as the term prostitution itself conveys a negative message by classifying it as an unlawful conduct that discriminates against prostitutes. The definition of prostitutes under the ITPA Act as the sexual exploitation or abuse of persons for commercial purposes gives a negative connotation to prostitution by defining prostitution as an illegal act. Narrowing down the definition of prostitution solely to a form of sexual exploitation or abuse, nonetheless, presents another obstacle and hinders sex workers from continuing their profession.

One major defect of the ITPA Act is Section 8, which sex workers organisations advocating for legalisation are demanding be repealed. Soliciting is a crime under Section 8 of the Act, and if any woman is caught soliciting, she can be imprisoned for a period of six months, fined a certain amount of money, or be pressed with both charges, but in reality, Section 8 of the ITPA is more frequently used to intimidate and extort money and sexual favours from prostitutes, ultimately leading to their harassment. In practice, the powers granted to the police under the ITPA Act are often marred by corruption, harassment, and the targeting of vulnerable individuals involved in prostitution.

According to Section 21(b) of the ITPA, persons who are in need of correction may be detained under this Act. However, in reality, women who willingly engage in the profession of prostitution are held against their will in these correctional institutions, despite claims that forceful detention would not occur.

The ITPA also exhibits gender bias in favour of men. In an environment where prostitution is controlled primarily by men, including the police, landlords, entrepreneurs, brothel managers, pimps, procurers, and clients, these powerful

figures exert control over the women engaged in prostitution yet rarely face accountability for their actions. In contrast, women who are subjected to exploitation as sexual commodities, enabling the operation of this enterprise, bear the brunt of the penalties and legal consequences. The failure of the implementation of the ITPA to acknowledge "red light" areas and the unique challenges within them perpetuates a cycle of risk and vulnerability for women involved in prostitution.

Section 2(h) of the Immoral Traffic (Prevention) Act (ITPA) defines "public place" as any place intended for use by or accessible to the public, including public conveyances. Under this definition, a sex worker's home or workplace can be considered a "public place" because it is "open to the public" at any time. There is also a problem with the lack of a clear distinction between the sex worker's residence and public roads. Many areas where brothel-based sex work occurs are often characterised by narrow lanes and densely populated localities. This lack of delineation creates confusion and makes it hard for sex workers to distinguish between their personal spaces and public spaces.

The Immoral Traffic (Prevention) Act (ITPA) in India has proven to work against the women involved in prostitution, highlighting the need for significant changes. The Act's enforcement has resulted in the violation of fundamental rights and has disproportionately targeted sex workers. During the interview with Dr. Protim Roy of Durbar Mahila Samanwaya Committee (DMSC) he stated that one of the major demands of the DMSC is scrapping the ITPA Act and legalising prostitution in India. DMSC has criticised the ITPA Act because it views prostitution only through the lens of trafficking; the consent factor is overlooked here, and even if a person willingly migrates to become a sex worker, there is a notion that the person has been trafficked. This kind of attitude towards prostitution put forward by the ITPA Act aggravates the situation as it criminalises and marginalises the women involved in it. If not repealed, Dr.

Protim Roy stated that there is a need to at least remove certain provisions from the ITPA.

Considering the numerous loopholes outlined above, there is a compelling need to repeal the ITPA, as the Act has failed to adequately address the challenges witnessed by sex workers. A new law should be formulated to effectively combat human trafficking while also being more accommodating to the needs and rights of sex workers.

*What are the implications and challenges facing the Supreme Court's Order recognising sex work as a legitimate profession?*

19<sup>th</sup> May, 2022, witnessed a historic moment as the Supreme Court of India recognised sex work as a legitimate profession. The Supreme Court upheld the fundamental rights of sex workers to be treated with dignity and respect. Strict laws on prostitution have been relaxed, and extensive guidelines have been established to safeguard sex workers' rights, dignity, and general well-being.

The important elements of the Order are that, in cases where it is clear that a sex worker is a consenting adult, the authorities must abstain from taking any legal action against them. Also when a sex worker lodges a complaint regarding criminal, sexual, or other forms of sexual misconduct, the police must take it seriously. As regards the legal context, the Order asserted that voluntary sex work is not prohibited and that legal repercussions should only be imposed on those who operate brothels. The guidelines also stated that all the women kept in ITPA protective homes against their will should be released in a timely manner. Sex workers should also be involved in framing legislation governing sex work, and a child of a sex worker should not be separated from their mother solely due to her occupation as a sex worker.

The recommendation further specifies that the police should treat sex workers with respect, and refrain from verbal or physical abuse, use of force, or coercing

them into sexual activity. The most significant implications of this Order are that the Supreme Court has acknowledged the agency and autonomy of consenting adults engaged in the trade, safeguarded sex workers' human rights, and sought to reduce the vulnerability and marginalisation that sex workers frequently endure as a result of their profession being criminalised. The ruling establishes a legal framework to defend sex worker rights, guaranteeing that they may work in safer settings, seek legal remedies if their rights are infringed, and report incidents of abuse without fear of legal penalties. The Supreme Court Order challenges the social stigma and discrimination that have long been associated with sex work. Sex workers will be shielded from intimidation and arbitrary police arrests.

However, the implementation of recognising sex work as a profession in India faces various challenges and complexities. Sex work in India continues to be heavily stigmatised due to societal norms, cultural attitudes, and moral biases. This stigma often leads to social resistance to accepting sex work as a profession. While a recommendation has been made to integrate sex workers into the decision-making process, a legitimate concern arises about whether their opinions will genuinely be considered or if they will be included practically in the decision-making process. Effective implementation of any law reform requires political will and government prioritisation. Unfortunately, politicians may not always prioritise sex work, resulting in a lack of resources, financing, and attention committed to developing and implementing supportive policies.

During the interview with DMSC, when asked about the recent Supreme Court order, Dr. Protim Roy said it is important to note that sex work is not yet acknowledged as a profession, and it is important to avoid interpreting this development as giving sex workers full labour rights or equating their line of work with other professions. The ruling merely provides guidelines to protect sex workers' rights, dignity, and general well-being. While he acknowledged

the positive aspect of this development, he expressed skepticism about its effective implementation.

After the passing of the Supreme Court's landmark Order, the next hearing was scheduled for July 27, 2022, but the distressing truth remains that the central government has chosen to postpone the scheduled hearing without providing any information on a new date. This action reflects the centre's apparent lack of prioritisation for the needs and concerns of sex workers. The centre's support is vital for ensuring the court's ruling is effectively implemented. The current circumstances have cast serious doubt on the Order's successful execution. According to reports, certain states, like Odisha, are still not abiding by the Supreme Court's directives. Bhubaneswar is the first city to report about the failure of the state to adhere to recent Supreme Court directions, but there may be more states where sex workers are facing the same issue, but these are not reported in the media. The centre's lack of compliance and the failure of certain states to adhere to the Supreme Court's Order demonstrate the urgent need for action.

While the recent Order represents a positive development, it also raises significant questions about its actual enforcement and the challenges it may encounter in practice. With persistent pressure from the Supreme Court on the centre, we can anticipate positive changes in the long run.

*Should India consider the legalisation of prostitution as a potential solution to address issues related to sex work, regulation, and the well-being of sex workers?*

Although India is a signatory of many international conventions on women's rights, has a Constitution that prohibits gender-based discrimination and exploitation, and has numerous related laws and regulations in place, it has failed to ensure adequate protection of sex workers' rights. For a long time, one of the most ignored groups has been prostitutes.

Prostitutes in India frequently endure mistreatment at the hands of both their clients and pimps. Police are also believed to be the primary perpetrators of harassment against prostitutes, which further dissuades the prostitutes from seeking assistance from law enforcement. Police are believed to use their powers to extort money and ask for sexual favours from sex workers under the pretext of raids. There are also complaints that when a sex worker approaches a police station to register their case, their complaints are not taken seriously and are not registered. Prostitutes also frequently experience unintended pregnancies due to the unwillingness of their clients to use condoms, and they are also at significant risk of acquiring various sexually transmitted diseases. Because of these aforementioned factors, there's a need to consider legalising prostitution in India.

Legalisation will subject the prostitution sector to labour laws, treating their work like any other occupation. Under legalisation, prostitutes will no longer endure economic or physical exploitation since they will be safeguarded by labour laws. Legalisation would have a variety of advantages, including an end to arbitrary police raids, harassment of sex workers, and strict rules for the client's use of protection. When prostitution is legalised, prostitutes will no longer be required to share their earnings with pimps, intermediaries, and brothel keepers, who currently take away half of their income. Prostitution also plays a major role in decreasing the rate of rape in a country; legalising prostitution will give these sexually frustrated men open access to satiate their cravings. With legalisation, the stigma associated with the profession will also be lifted, and their chance of acquiring STDs will also decrease since they will have access to better healthcare services. By lowering workplace violence, legalisation will also make their jobs safer. According to estimates, India's prostitution market is worth \$8.4 billion. Taxing it would be advantageous for the government since it would allow them to make money while simultaneously defending the rights of sex workers by investing in their advancement.

Out of 15 sex workers interviewed, from Rabindra Sarani and Sonagachi Red-light Area for the research, 7 sex workers supported legalisation while the remaining 8 had no idea what the term meant, thus reflecting a lack of legal awareness among them. However, they did highlight numerous challenges they face in their profession and expressed hope that the situation might improve in the future. The 7 sex workers who supported legalisation stated numerous reasons for the need for the profession to be legalised. One common reason they mentioned was that they wanted sex work to receive the same level of respect as any other profession in society. They expressed that their profession is stigmatised and that they do not receive the respect they deserve within society. Presently, they are constantly living in fear because their work is deemed immoral, and they might be arrested by the police at any time. They also fear potential harassment from local goons.

There have been many instances where the Supreme Court has shown a favourable attitude towards prostitution. In December 2009, the Indian Supreme Court asked the government to legalise prostitution if it couldn't stop the industry's expansion. Since prostitutes lack fundamental rights and lead miserable lives, and the government fails to curtail their growth, the question was raised by the Supreme Court: why not legalise it? In 2011, the Supreme Court of India heard a PIL<sup>67</sup> submitted by NGOs calling for the large-scale cessation of trafficking in the nation. The judges of the apex court stated that no nation has been able to totally eradicate sex work, so only through legalisation will the government be able to "monitor the trade, rehabilitate, and provide medical aid to those involved". We can observe that the Supreme Court has consistently displayed a tendency favouring legalisation.

There is always a fear that the legalisation of prostitution might increase trafficking, but in reality, the legalisation of prostitution will help curb trafficking. It will put a check on the involvement of minors in this profession



by enforcing strict rules to regulate it. Since prostitution is an illegal business that runs underground, traffickers exist, but once prostitution is legalised, these traffickers will disappear as stringent laws are employed to check trafficking.

An intriguing finding from the interview conducted with the police officials of Bhavani Bhavan for the research was that all police personnel interviewed, including IPS officer R. Rajasekaran, agreed that prostitution should be legalised in the country. Given their roles in the Anti-Human Trafficking Unit, it was presumed that they might be against legalisation and that their stance on legalisation would be like that of Sanlaap, as even Sanlaap is fighting against trafficking, but it was completely the opposite. They stated that, based on their expertise and knowledge in this field, legalisation could help control extensive human trafficking. They believed that legalising prostitution would bring up stringent rules to check trafficking and prevent minor girls from being forced into prostitution, as proper laws and regulations would be in place. They further highlighted that, with legalisation, the profession could be strictly regulated in the country, and they stated that the government should give deep thought to legalising the profession.

To ensure that minors are not forced into this profession, proper registration of sex workers should be done with the verification of original documents and a background check should be done to ensure that a woman is not a minor and a trafficked victim. Following legalisation, the government can establish a body like a self-regulatory body, similar to the one created by Durbar, to ensure that trafficked women are not coerced into prostitution. Also, interviews of the prostitutes could be conducted by the firms hired by the government at intervals to determine whether those women are working there by choice or are trafficked women. If the latter is the case, the man implicated in the trafficking should be imprisoned, and the brothel license should be revoked immediately. Also,



surprise checking of the brothels once in a while could aid in checking the involvement of minors in the profession. Government

We can see that there are prohibitions on the use of narcotics, alcohol, and marijuana, and these restrictions can be defended on the grounds that such consumption is harmful to a person's health. Contrary to them, prostitution does not impose such health hazards; it neither harms the person mentally nor physically. Therefore, imposing such prohibitions and restrictions on prostitutes cannot be justified. When abortion is legal in India, homosexuality has been legalised, and adultery is no longer a criminal offence, why not bring about a change in this aspect? Prostitution is a choice; if 'my body, my right' can be applied to abortion, then why not the same attitude be developed for prostitution? Sex work is a human right and should be given to people and respected like any other work in society.

Thus the endeavour of the research has been to investigate the evolution of the institution of prostitution and how the standing of sex workers gradually declined over time. The thesis also explores the need for potential reforms within the ITPA, which may involve removing certain provisions or replacing it with an entirely new law. The research examines the setbacks faced by the Supreme Court Order due to non-compliance by the State and suggests that the legalisation of prostitution in India could offer a solution to the challenges encountered by sex workers in the country.