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Decriminalising Indian Sex Work: A Concern of Women Empowerment

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Abstract

Sex work has always been viewed as an international taboo, a criminal offence, and a discriminatory practice. Individuals, particularly women who engage in commercial sex are often viewed as societal undesirables and people of loose moral character; and their contribution to the workforce and economy is unrecognized. Not only this, but in order to increase the empowerment and independence of the community, it has become absolutely necessary to decriminalise this practice. By removing laws that prevent reporting of exploitation and abuse, decriminalisation allows sex workers to work more safely, thereby reducing marginalization and vulnerability.

Keywords: *sex work, prostitution, feminism, decriminalise, empowerment, patriarchy, marginalization*

1.0 Introduction

Sex work has existed in society for ages. Tracing the historical timeline, it is evident to find sex work in many forms. Prostitution and sex work have different connotations it. Prostitution is a gendered, sexualized, and racial labour system, one that typically involves the exchange of sexual services for money, goods, or other benefits; while sex work encompasses different types of intimate arrangements that blur the boundaries between erotic, emotional, and economic labour (Musto et al., 2015). The term 'prostitution' is used in a criminalised manner by the law and government. 'Sex work', on the other hand, focuses on destigmatizing the work, have inclusivity like any other profession.

Sex work or prostitution is mostly related to women or females. This bias exists due to the existence of women as sex workers predominantly. A major reason for this bias is patriarchy. Patriarchal notions tend to oppress and objectify women more than men. It also suggests that women are supposed to satisfy the needs of the man which include sexual gratifications. Patriarchy also condemns females' sexual needs and desires. The interplay of these has led to the prevalence of female sex workers more than male sex workers. Although a new trend of male sex work has been on the rise, a sexist distinction still exists. On the grounds of labelling, women are labelled more harshly than their male counterparts. Female sex workers

are described as '*randi*', '*randipan*', '*kachra*', '*gandagi*' in Hindi. For older male sex workers, terms like '*mardangi*', '*marad*', '*jawan*', '*yehi toh umar hai londo ko maze karne ki*' ('this is the age for boys to have fun'). Clear sexism exists within the society while referring to male and female sex workers. It is usually observed in the media that female workers are degraded, looked down upon and despised. While, male workers are praised, applauded, and appreciated for having multiple sexual intercourses at the benefit of money.

This paper tries to understand the role patriarchy has played over the years to criminalise sex work and demean it by calling it sex work over the ages in India. This research revolves around the central theme of decriminalising sex work and the effective implementation of sex work policies that can lead to women empowerment and breaking the stigma attached to it. The paper employs a secondary qualitative research method. News articles, research papers, government reports have been used to collect the relevant data. A PESTELE Analysis (Political, Economic, Social, Technological, Environmental, Legal and Ethical) of Immoral Traffic (Prevention) Act 1956 ITPA/PITA (India), and Dutch policy and law has been conducted to critically review the policies and laws. Policy recommendations are based upon these analyses and different relevant recommendations.

2.0 Historical Background of Sex Work in India

The historical timeline of sex work in India has been traced back to Ancient India. This portion discusses the change of sex work practices through the different periods of time - Ancient, Medieval and British Raj. There is a drastic difference seen in these practices, although patriarchal similarities exist in all eras.

2.1 Ancient Period

The article, 'Female Images in the Arthashastra of Kautilya' emphasizes the role of women, their duties, and conducts, as written by Kautilya (also known as Chanakya), in his famous book 'Arthashastra'. The article focuses on the different ways in which diverse women of Ancient India were employed to earn their living. Chanakya viewed sex work (courtesans) as an occupation and categorized women into 5 types of prostitutes. Firstly, there

were *ganikas*, who were state-appointed and were provided with an institutionalized position within the court. Secondly, there were *pratiganikas*, who were the mothers of *ganikas*. In case the *ganikas* had passed away or ran away, their mothers had to provide temporary service to the court. The salary of a *pratiganika* was half of a *ganika*. A *ganika* was expected to be beautiful, youthful and an expert in arts. Although *ganikas* did not involve in sex work directly, their main duty was to follow the King and attend to his demands. She was also expected to entertain the males in the court whenever asked. Even though the prostitutes were protected by the State, they did not have free will and make their own choices. They were protected from physical and sexual violence; punishment and fines were given to those men who would harm her beauty. Thirdly there were *rupajiva*, who made a living out of their beauty. Fourthly there were *pumscali* who were common prostitutes. Fifthly there were *bandhaki*, who were prostitutes in a brothel owned by *bandhakiposakas* (meaning keepers of harlots). All these 5 categories of prostitutes were provided with protection from violence, their profession was given royal patronage because they were considered an essential service to the men and their desires - mainly the army (Jaiswal, 2001, 51-59).

2.2 Medieval Period

In Medieval India, during the Mughal period, *tawaifs* and *devadasis* were very prevalent in society. *Tawaif* comes from an Arabic word that means a band of dancing females. These women played a role in dancing, singing, poetry, and etiquettes. They received royal patronage and were praised by the highly affluent clients. Post-independence, *tawaifs* lost their patronage and affluent clients which led to the downfall of the *tawaif* system. *Devadasi* or temple sex work was also a state-sanctioned form of sex work in those times. This was more prevalent in South Indian regions. Children (Females) who hit puberty were devoted to the goddess *Yellamma* in her service and were then known as *devadasi* (servant of God). They performed duties like cleaning of the sacred items, dancing in festivities, performing religious rituals – all of which were forms of worship. When there was a decline in the monarchical system, temples received less patronage which led to the decline of the livelihood of these *devadasis*. Due to this, they turned towards sex work to sustain themselves. (Pandey, 2018, 21-43) The city temples received more royal patronage than the

ones in the villages or smaller towns. This impacted the financial and social status of *devadasis* living in the smaller regions. They were often subjugated to oppression and slavery by the temple priests. During old age, the *devadasis* received little to no care. They did not have families due to the kind of profession they were involved in. Thus, neither the state nor the temple took responsibility for these *devadasis* who were aged and were left isolated and lonely (Bhattacharji, 1987, 32-61).

2.3 British Raj

During British rule, state-regulated brothels came into existence mainly in the port cities of Bombay and Calcutta which catered to the sexual needs of soldiers, migrant men, and sailors. The places where these brothels existed came to be known as 'red light areas' which were state-regulated. In the late 19th Century, the concept of biological race and racial purity grew rapidly. British perceived themselves to be racially superior to others which led to strict regulations on interracial breeding. This led to the strict imposition of containing contagious diseases and regulating them to stop interracial breeding. Prostitutes were subjected to invasive health surveillance, quarantine, and incarceration to prevent them from transmitting contagious diseases to their clients; and to uphold their racial purity and whiteness. All efforts went into isolating the red-light areas from normal communities and parts of the city (Pandey, 2018, 21-43). During the late 19th century, there was an increase in the moral codes of conduct which led to an uprising in moral policing of women. They were categorized as good and bad women - good women were those who were involved in monogamy, refraining from other non-marital ties; bad women on the other hand were those who did not follow this moral policy. Eventually, sex workers came into the category of 'bad women' due to their nature of profession (Tambe, 2005, 160-179). This notion emerged as a result of the hierarchy in caste, class, and gender.

2.4 From Riches to Rags

Reviewing different texts and literature in history regarding sex work in India, there has been a marked shift in the ways in which women engaged in sex work have been treated. Looking at the historical timeline, in the ancient and medieval periods, direct and indirect sex

workers were given security, patronage, protection and privilege for their profession. Even though they belonged to the lower status, their livelihood and living conditions were not much affected. Coming to the colonial period, there has been a drastic change in the role of women in sex work. Due to the widespread of contagious diseases and in order to prevent-manage-treat these diseases, the sex workers had to face a lot of challenges. To save the army (who were often clients of sex workers), the brothels were situated at the outskirts of the city, away from the main hustle bustle part. These red-light areas were out of direct public reach. It was also considered that these women were the main carriers of many diseases. Thus, they were stigmatized and labelled as - dirty, vulgar, immoral, garbage, trash - all describing a typical 'whore'. Because of this stigma, the social and economic status of sex workers in India declined rapidly during British rule. They were looked down upon and were often on the receiving end of various types of violence and abuse from their male clients.

3.0 Sex Wars and Feminist Theories

'Feminist sex wars' refers to the period between the late 1970s and early 1980s where debates and discussions about the feminist movement with regards to sexuality took place. As the movement progressed, two strong but contradictory perspectives begin to emerge, which are now known as 'anti-porn' and 'pro-sex'. Anti-porn, as the name suggests, advocates the abolition of porn because according to it sexuality is favoured by patriarchy and in this way, women are merely reduced to objects of desire (Salucci, 2021). Catherine MacKinnon in her book, 'Difference & Dominance- On Sex Discrimination' talks about how the female gender's rights, responsibilities and duties are always defined with respect to their male counterparts, this philosophy has evolved into an ideology called 'Abolitionist Feminism'. It is a system defined by Kathryn Abrams, a well-known feminist legal theorist at the University of California-Berkeley as a '*strand of feminist theory that locates gender oppression in the sexualized domination of women by men and the eroticization of that dominance through pornography and other elements of popular culture.*' The supporters of this theory argue that years of oppression and subjugation have created such a sexually degraded image of women that their worth has been reduced to their capability of pleasing the male gender; they are treated as objects to be used and discarded as per the convenience of the other gender

(Bi, 2020).

Another similarly modified version of Abolitionism came into a practice called, 'Neo-Abolitionist'. This framework is largely used in western socio-progressive countries such as Norway, under which although the selling of sex is not criminalised because the workers are often portrayed as victims of circumstances and due to lack of education, resources and financial constraints had to engage in it, the procurers of sex are penalized. It was believed that the sale of women's bodies for financial incentives was yet another example of sexual domination of women's oppression. Both these theories advocate that anybody partaking in the buying and selling of sexual services will be criminally charged to discourage the harmful and discriminatory practice.

However, these perspectives were heavily criticized by another group of feminists called 'sex-positive feminists'. They believed that women should be able to engage in any kind of sexual activity as per their choice and consent. They put forth their argument saying, for ages females have been sexually repressed and now is the time where they actively take control over their desire and sexual representation. They should have agency over their body and be sexually liberated. The 'liberal feminists' favoured mainly two approaches in the legal framework-- decriminalisation and legalization.' Decriminalisation' refers to the elimination of all kinds of laws and penalties associated with the sex work industry. In other words, sex work would be acceptable in the eyes of the local law enforcement authorities and they would facilitate regulation within the sex work industry. 'Legalization' on the other hand, makes the act of providing sexual services and related work (pimping, owning, and managing a brothel) in exchange for money completely acceptable in the eyes of law. In societies that legalize sex work, the government extends legal work rights to the sex workers giving them benefits of healthcare services, proper accommodation facilities and charges taxes on commercial sex. Both these approaches support sex work as a road to sex positivity and women's sexual freedom and autonomy. Rather than believing that sex work and other types of commercial sex oppress women and treat them as possessions, both theories consider sex work as a means of reducing gender disparities by giving women both fiscal and sexual freedom over their bodies (Mesce, 2020).

4.0 Role of Caste/Class/Religion/Region

The practice of commercial sex has been prevailing in India for centuries but there have been some communities that have been hit harder than others. Sex work is viewed as an undignified and demeaning profession that has marginalized women from mainstream society and has put them in a box. They cannot move up the ranks, they are ill-treated, they do not feel safe and it's just a violation of their human rights.

Many lower caste communities are forced to be in this profession in the name of traditional culture. One such community is the '*bedia*' community of central India. Their primary source of income was performing arts to entertain the monarchs and other higher authorities like the zamindars, however, as the feudal system collapsed and other sources of entertainment started coming up like cinema and television, *bedia*'s were forced to delve into a profession which is seen as 'shameful' by the other communities. The *Bedia* women are prepared for the sex work industry as soon as they reach puberty. Moreover, they are forbidden to get married while the male members of the community marry outside the caste and in return offer a considerable amount of money called the 'bride price' which is also arranged by the women in their family. Even the kids do not get access to proper education due to the bullying in school and the absence of their father's name. Men, on the other hand, are generally financially unstable and depend on the livelihood which comes through sex work. A large density of *Bedia* women can be found scattered across parts of Uttar Pradesh, Rajasthan, and Madhya Pradesh. Similarly, there are many communities including *Nat*, *Naath*, *Sansi*, etc who practice sex work because they do not have options and ironically, this is the safest one. (Rana, 2020)

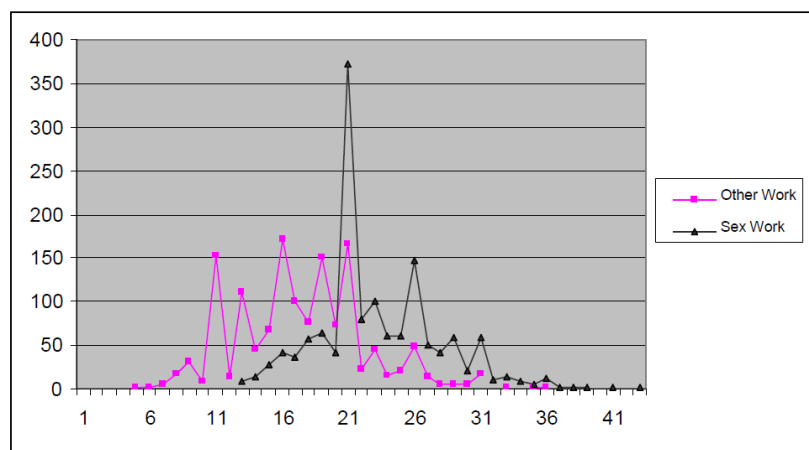
Ritualized sex work, in simple terms, is sexual exploitation of young girls usually, in a lower caste, by temple patrons. In India, it's commonly known as *Devadasi* system and was established around 300AD. The *devdasinis* are known by different names in different places such as *Jogins* in Andhra Pradesh, *Basivi* in Karnataka, *Kalavantin* in Goa and so on. The practice is interesting as it shows an intersection of religion, poverty, and societal norms. In the early days of its inception, it was a very sacred and honourable position. Many scholarly women of rich high-class families were chosen for this. They were admired because firstly,

they were married to the deity itself so they were treated like goddesses and secondly, they were viewed as strong women of moral character who could control their impulses. They would look after the temple and learn classical dances, mostly Bharatanatyam and were considered auspicious (Hegde, 2018). However, after the Islamic invasion, this practice started becoming more dangerous and exploitative. The temples were destroyed, they lost their patronage and were thus left to fend for themselves. As per a survey done in 2011, the National Commission for Women estimated that there are 48,358 devadasis currently in India (Colundalur, 2011). Although the practice is outlawed in India, it has done little to nothing to improve their living conditions.

4.1 Role of Age in Sex Work

According to an article written by Sahni & Shankar which they have highlighted the doorway of women into sex work. The women usually start entering the sex work industry in their pre-teens and adolescence, within the age bracket of 15-18 years and peaking generally, at 19-22 years. However, when compared to other industries, this experience emerges at a later stage. The following graph shows the trend of entry of women in the sex work industry as compared to other industries.

Diagram 1: Frequencies of ages for entry into other labour markets and into sex work



Source: (Sahni & Shankar, 2011)

5.0 Legal Status of Sex Work: India

Sex work as a professional and legal status can be seen in the world in 3 ways - illegal; legal with restrictions; and legal with proper regulations. India follows the second aspect, i.e., sex work is legal but comes with its own limitations and restrictions. It is a very 'hush-hush' situation in India where it exists but nobody is willing to accept or talk about it openly. This stems from the nation's culture and sex-related taboos which tag along. Legally, the profession of sex work is legal in India, but what remains illegal is - brothels, pimping, soliciting, sex trafficking. The act of providing sexual service in return for monetary compensation is not illegal at all. Although any related acts to this service are punishable under Indian law.

5.1 The Immoral Traffic (Prevention) Act, 1956 - ITPA/PITA

The Immoral Traffic (Prevention) Act of 1956 governs the profession of sex work in India. As discussed above, the Act penalizes certain sex-work related activities which are mentioned under this law. Under Section 2 (a) of the law, a brothel has been defined as any house, room or conveyance, or any place; portion of the house/room/conveyance which is used for the purpose of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes (ITPA,1956). According to the law, a brothel is any place or part of any place (room, house, conveyance) where the sex work/er is exploited and abused for monetary or pleasurable gains for the client/pimp/other prostitutes/owner of the place. Section 2(f) defines the term 'sex work' which means the sexual exploitation or abuse of persons for commercial purposes and the expression 'prostitute' shall be construed accordingly. The word 'prostitute' is only used for criminalization purposes of the activities related to managing brothel, pimping etc.; and only for these purposes, sex work terms shall be used.

Section No.	Description
3	Punishment for keeping a brothel or allowing premises to be used as a brothel.
Explanation: Any tenant, lessee, occupier or owner, lessor, landlord of any premise who is involved in keeping or maintaining brothels shall be punishable.	
4.	Punishment for living on the earnings of sex work.
Explanation: any person who is making a livelihood on any or all earnings by the sex work is punishable. This includes family members too, i.e., even they are punishable.	
5.	Procuring, inducing, or taking a person for the sake of sex work.
Explanation: This is for the pimps, brothel owners and traffickers who procure/induce/take a person for sex work. These acts are punishable	
6	Detaining a person in premises where sex work is carried on.
Explanation: holding a person with or without their consent for sex work. Brothel owners and families who hold the sex worker. This is punishable.	
7.	sex work in or in the vicinity of a public place.
Explanation: Carrying out sex work in areas within 200 metres of public religious worship, educational institution, hostel, hospital, nursing homes, is illegal.	
8.	Seducing or soliciting for purpose of sex work

5.2 Is Freedom to Work Not a Fundamental Right?

Section 19 in the Fundamental Rights of the Constitution of India pertains to the Right to Freedom. One such right to freedom is to practice any profession or to carry on any occupation, trade, or business. Sex work is just like any other profession. It is a service that is being provided in exchange for money (Article 19, Constitution of India). Yet, ITPA states

that sex work is only legal when such acts occur privately. These two contradict each other. A person should be free to express their profession openly and take pride in it rather than being shunned, criticized, stigmatized, and discriminated against. Even though the sex workers are protected from trafficking as per Article 23 (1) and (2) of the fundamental rights, the reality of it is intolerable to the naked eye, which is why the creamy layer of the society oversees it. Sex work is often a part-time or a full-time role for many. Even then proper labour laws, working environment and work benefits are absent from them. (UNAIDS, 2009)

6.0 A Humanitarian Concern

Sex work often comes with its challenges and problems, indefinitely in India. There are over 20 million commercial prostitutes in India (Nagaraj, 2017). The actual number reported could be greater. These approximately 20 million prostitutes face multiple life-threatening obstacles in their entire life due to their line of profession. The factors leading to such great distress are of greater humanitarian concern.

In the report, 'Status of sex workers in India' which was submitted as part of NAWO (National Alliance of Women's Organisation), the following issues were identified (Pai et. al.):

6.1 Violence

Sex workers are often subjected to sexual and physical oppression by their clients, families, or brothel owners. This discrimination stems from the fact that they are not seen as employees or workers, rather as criminals. The right to life, dignity, equality, equal protection is violated due to systemic and large-scale oppression.

6.2 Healthcare Discrimination

Sex workers are stigmatized and denied proper access to healthcare facilities - they are charged with high bill amounts and often become a source of exploiting money. It is difficult for them to get immediate treatment.

6.3 Criminalisation

The upholders of law are often one of the major stakeholders involved in oppressing sex workers. Policemen target sex workers as a way of expressing their emotional and sexual release. These policemen demand sexual favours in return for quick redressal of problems. The report mentions that over 50% of sex workers face abusive language from policemen, 37% of sex workers are threatened, 35% of them are beaten/pulled by policemen and 20% of them were asked to bribe the police. They are detained and arrested because of creating a public nuisance or indecent representation.

6.4 Social Security and Support

Sex workers have demanded their inclusion in the social protection schemes for the unorganized sector. They are a part of SHG (self-help groups), but even here there are reports of discrimination and further marginalization by the SHG members.

7.0 Implications of ITPA

To understand the implications of ITPA/PITA, a PESTELE Analysis has been conducted on the same. The purpose of doing so is to clearly identify the shortcomings and loopholes within the Act. A ranking of 1 to 7 is also given in order of importance.

Implications	The Immoral Traffic (Prevention) Act, 1956 (PITA/ITPA)	Rank
Political	<p>The Act was established in 1956 and has not been amended since. Different governments have passed and gone, yet this policy has remained untouched. The govt. has not taken active participation in attending to the needs and rights of the marginalized communities.</p> <p>With what has been provided in the Act, the rights and protection of sex workers are very limited. Ideally, brothels and pimping should be punished, yet it is not so. At times, people who work for the protection of sex workers are the ones who end up oppressing them. Effective implementation of these policies if not present.</p>	2

Economic	The Act does not specify any economic benefits or work charges specifically. Since sex work is legal 'only' privately, it can be misused in various ways of extorting money and defrauding the clients.	3
Social	The Act still uses the term 'sex work' and 'prostitute' and not 'sex work' or 'sex worker'. These terms are derogatory in nature which only serves as enhancing the already existing structural and institutional oppression more.	7
Technological	The role technology plays in sex work has not been addressed. With advancing technologies like CCTV cameras, portable and miniature gadgets; and with unlimited access to the internet, non-consensual pornography would have increased which includes child pornography. Further, invasion of privacy, exposing explicit images, videos without consent, and internet bullying and trolling also plays a major role in their lives.	5
Environmental	'Prostitutes' and brothels are found in isolated parts of society. A lot of times their locality is overcrowded and as a result, have very limited access to basic hygienic and sanitary resources. This leads to high amounts of ecological and environmental waste which is not taken care of in their areas. They live in nearby areas where piles of garbage are dumped, again adding on to them being labelled as 'trash' or 'garbage'. The Act in no way clarifies even to address this issue, which leads to widespread diseases and infection in the community.	6
Legal	The Act contradicts itself with the Fundamental Rights provided in the constitution. It mentions the freedom to choose one's own profession. Yet the Act goes against this and claims most of the sex work acts as 'illegal'. Article 23 criminalises trafficking, exploitation and forced labour, yet massive	4

	amounts of commercial sex which is deemed to be illegal takes place.	
Ethical	Considering laws and policies like ITPA, Indecent Representation of Women Acts, anti-trafficking laws and related policies are made on moral grounds of preserving the reputation of the woman, the ITPA exists as a remembrance to the females that their portrayal is in the hands of old, male, heterosexual men. Sex workers are not given the freedom to choose and express their profession publicly. What we consider as religious artefacts (idols, images, texts) are also a major source of indecent representation of women, obscenity, any public offence. This vast difference directs that if women are portrayed from the male perspective, everything is 'right'; whereas if the same thing a woman wants to achieve out of their choice is labelled as 'wrong', 'immoral' and 'public nuisance'. The morals and ethics of society are plagued with religious sentiments, and its associated factors of caste, class and status seem to have been infected too.	1

8.0 PESTELE Analysis of Netherlands

8.1 Political Factor

The Dutch government legalized prostitution and recognized it as sex work, in 2000 under Willem Kok, by adopting some policies that would enable it to regulate the industry and improve the working conditions of sex workers by giving them permits. The police, tax agencies, the Chamber of Commerce, the Ministry of Crime, and public prosecutors have formed a network that facilitates this goal. Although forced sex work (human trafficking) remains illegal. Under the new policy, the workers have access to healthcare facilities, police protection, aid from independent organisations working for them. One such organization is PG292 (sex work & Health Centre) which provides assistance in resolving financial and psychological issues by helping them form social networks and find other jobs if necessary.

They conduct workshops in resume building, training for job interviews. Moreover, after the implementation of the law, sex workers now work in a safe and controlled environment. There are cameras near every window (window sex work is common in the Netherlands), police would patrol the area both in uniform and civil dress, at every brothel there is an alarm system which can be heard from a considerable distance and the healthcare facilities are impeccable; sex workers have access to unlimited free STD check-ups, they are given clean linen and towels (Savalas, 2020). Thus, prostitutes have been given more or less the same rights as workers in any other industry, they have to register themselves at the Chamber of Commerce, get a license for the workplace and pay taxes as well. The minimum age to enter the profession has also increased from 18 to 21. According to reports, the brothels of Amsterdam's red light will be shut down and the workers will be relocated to a purpose-built centre to change the kind of crowd being attracted to the area.

8.2 Economic Factor

The legalization of sex work has created yet another industry that adds value to the economy. According to a report in 2014, the red-light districts and coffee shops selling sex and drugs (cannabis) contribute 2.5 billion euros a year to the economy. The sex work industry garners a lot of attention and hence, people are willing to spend as high as possible. Now of this € 2.5 billion consumption, only about half comes from the native Dutch population while the rest of it is attributed to the large numbers of tourists that visit every year. Also, the employment conditions are better because not only the sex workers are emotionally well off, they are earning the same as before in better working conditions and even in some cases higher than before (Abdul, 2019).

8.3 Social Factor

Legalization and controlled regulation of the sex work industry has also helped in destigmatizing the profession and incorporating them into mainstream society. However, there is still a long way to go to completely normalize the work. Kingley Davis, an American sociologist in his book, 'The Sociology of sex work' discusses why sex work is seen as sociologically negative when it has the basic foundations of a socially acceptable, and even

promoted, practice such as marriage (Pruitt, 2018). He further goes on to argue that it is similar to casual relationships and if that has been accepted by society, he sees no point in excluding the sex workers from it.

8.4 Technological Factor

The advent of technology has opened quite a few horizons for the sex work industry both in terms of easier accessibility and faster mobility. However, the contributions of the technological advancements are most often than not, overlooked. For instance, the invention of the car took sex work from mainstream society out into the suburban area, and phones led to better outreach in the form of escorts. Similarly, the internet and online medium led to an expansion in the sociodemographic area where people of all age groups, social classes, and places could effortlessly and quickly investigate this. The sex work industry was visible online as early as the 1980s and has since grown into a multi-billion industry. Online dating apps and sexual rendezvous websites shifted traditional sex work (like brothels) towards a more liberal and economical approach. It has also helped the sex workers to escape the stigma attached to the profession because they don't need to settle somewhere for too long. Another impact is the greater visibility and availability of male escorts which not only shatters the image of a "poor, meek and victimized girl who's pushed in this against her will" but also makes this industry slightly gender-neutral. Research indicates that men account for approximately 5-20% of sex workers in liberal democracies. Hence, technology has had a subtle yet significant impact on the sex work industry (Scott, 2017).

8.5 Environmental Factor

This paragraph briefly describes the sexual exploitation of sex workers, the nature of victimization in such a profession, and the increased risk of getting sexually transmitted diseases with respect to other cisgender women in the same age bracket. Globally HIV rates are decreasing, however, HIV epidemics among sex workers are either stable or increasing. They are as high as 9% of the total world population of new HIV infection. In Eastern and Southern Africa, the ubiquity of HIV is extremely high among female sex workers (*Sex Workers, HIV and AIDS*, 2019). "Globally, **sex workers are 13 times more at risk of**

contracting HIV, when compared to the general population, because they are economically vulnerable, unable to negotiate consistent condom use, and experience violence, criminalization, and marginalization,” said a 2018 study by UNAIDS (Chachra, 2019).

8.6 Legal Factor

The predominant characteristic of the 2000 reforms concerned lifting the prevailing ban on brothels by eliminating articles 250bis (which stated that owning a brothel and/or helping someone to become a prostitute is illegal) and 432 (which defined punishment for convicted pimps) from the Criminal Code. Besides, new policies were introduced requiring brothels and prostitutes to be registered and licensed, thereby validating sex work as a profession. (The Audacity of Tolerance: A Critical Analysis of Legalized sex work in Amsterdam’s Red-Light District, 2019b) At the same time, the government wanted to minimize sexual exploitation and hence, set the official age of legal sex workers 18. Furthermore, stricter punishments were enforced under article 273f of the criminal code should someone be convicted of forcing an innocent into prostitution including-

1. Anybody who forces someone into sex work can receive a sentence up to 8 years. If the individual is a minor the sentence can be increased up to 12 years as well.
2. If the transgression of the law results in bodily harm, the sentence can be increased up to 15 years.
3. Lastly, if the violation results in the death of the individual, the sentence can be further extended up to 18 years.

Illegal sex work refers to any form of sex work that is required to have a license under the Amsterdam Municipal Ordinance (APV) but does not have one (Red Light Secrets, 2019). This includes activities like- illegal home sex work, illegal massage parlours, illegal escort agencies. This system has been working well for the government, however, there is still a long way to go.

8.7 Ethical Factor

There are a variety of arguments and facets when it comes to sex work. A lot of people believe that decriminalisation of sex work somehow asserts male dominance over the female body. It strengthens the idea that women are just meant to be objects of sexual desires. Some counter-argue by saying 'how could paying for it establish any kind of entitlement?' Some argue that sex work is not consensual. The absence of choice does not make it a voluntary practice. However, others say, 'Is teaching consensual? Just because it is stigmatized and hence, seen as a shameful practise doesn't make it any less of a profession.'

9.0 Recommendations

- The recommendation to the Indian government is to address the issues and concerns of the sex workers so that they feel equally protected and safe instead of treating them as outcasts.
- It is important to learn from measures and policies successfully implemented in other countries to tackle HIV/AIDS and destigmatize the profession so the people can live respectable lives.
- Citizenship, right to education, representation at local, national, and international levels, inclusion in policymaking, effective health care and freedom from gender notions of women's chastity in a patriarchal society can only be achieved if the government becomes mindful of its actions and steps.
- Sex work and trafficking are not synonymous. Trafficking is a serious criminal offence that violates human rights. Trafficking of children and adults should be dealt with within separate laws to ensure justice.
- A short interview of the sex worker before entering the trade to ensure that it's voluntary.
- Ensure witness protection for sex workers testifying against traffickers.
- Ensure maximum participation of sex workers in policymaking. So that they will be adequately represented in the legislature
- Conduct workshops teaching different skills if the workers want to shift to another industry.

- Ensure justice to sex workers by making the legal fee as minimal as possible and giving them lawyers who are trained in these sensitive issues.
- Easy access to healthcare facilities.

10.0 Conclusion

The interplay of patriarchy with its elements of caste, class and gender has affected the sex worker community throughout the history of India. From being considered as royalty to being named as trash, the community has indefinitely gone through innumerable changes. The legal status of sex work in India is still very archaic and needs to be amended for the greater good of the community. Sex work lies in a very grey area in the country - neither fully legalized and regulated nor entirely decriminalised. The laws prevent the majority of female sex workers from achieving their potential and living independently. Empowerment, self-determination, and self-autonomy are highly essential. The paper adopts the laws from Dutch policies and recommends few ideals into the Indian context. These recommendations are for the policymakers and changemakers to implement and utilize accordingly for the benefit, empowerment and uplifting of the underserved community of sex workers.

References

- Abdul, G. (2019, February 19). *It's Legal to Sell Sex in Amsterdam, But Don't Expect the Same Rights As Other Workers*. Foreign Policy. <https://foreignpolicy.com/2019/02/19/its-legal-to-sell-sex-in-amsterdam-but-dont-expect-the-same-rights-as-other-self-employed-workers-netherlands-legal-prostitution-sex-workers/>
- Amsterdam's policy. (2019, February 28). Red Lights Secret. <https://www.redlightsecrets.com/history/amsterdam-s-policy/>
- Article 19 in The Constitution Of India 1949. (n.d.). Indian Kanoon. <https://indiankanoon.org/doc/1218090/>
- Bhandari, S. (2010, June 19). sex work in Colonial India - Mainstream. Mainstream. <http://www.mainstreamweekly.net/article2142.html>

Bhattacharji, S. (1987). sex work in Ancient India. *Social Scientist*, 15(2), 32-61. <https://doi.org/10.2307/3520437>

Bi, J. (2020, May 26). Summary and Notes: Difference and Dominance by Catherine McKinnon. Johnathan at Limbo. <https://johnathanbi.com/book-notes-summaries/difference-and-dominance>

Chachra, M. (2019, August 9). *HIV Rates Are Down. There's Little Else Going For India's Sex Workers.* IndiaSpend. <https://www.indiaspend.com/hiv-rates-are-down-theres-little-else-going-for-indias-sex-workers/>

Colundalur, N. (2011, January 21). "Devadasis are a cursed community." *The Guardian*. <https://www.theguardian.com/lifeandstyle/2011/jan/21/devadasi-india-sex-work-religion>

Cruz, J., & Iterson, S. (2021). *The Audacity of Tolerance: A Critical Analysis of Legalized Prostitution in Amsterdam's Red Light District - Humanity in Action*. Humanity in Action. Retrieved 10 September 2021, from https://www.humanityinaction.org/knowledge_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district/

FERRER, I. (2017, August 28). How a brothel in Amsterdam empowers sex workers https://english.elpais.com/elpais/2017/08/28/inenglish/1503919322_472902.html

Hegde, S. U. (2018). The Ritualized Prostitution of India's Devadasis: Re-Configuring an International Feminist Critique of Human Rights. *NCJ Int'l L.*, 43, 204.

Jaiswal, S. (2001). Female Images in the Arthashastra of Kautilya. *Social Scientist*, 29(3/4), 51-59.

Mesce, G. (2020) Sex Work Decriminalization and Feminist Theory https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1368&context=senior_theses#:~:text=While%20first%20and%20second%2dWave,a%20moral%20or%20ethical%20stand

Musto, J., Jackson, C. A., & Shih, E. (2015, December). sex work and Sex Work. *International Encyclopedia of the Social & Behavioural Sciences*.
<http://dx.doi.org/10.1016/B978-0-08-097086-8.86125-5>

Nagaraj, A. (2017, December 13). Rescued child sex workers in India reveal hidden cells in brothels. Reuters.
<https://www.reuters.com/article/us-india-trafficking-brothels-idUSKBN1E71R1>

Pai, A., VAMP, Seshu, M., & Gupte, M. (0). Status of sex workers in India.
https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDA

Pandey, S. (2018). Trafficking of Children for Sex Work in India: Prevalence, q History, and Vulnerability Analysis. *Explorations*, 2(1), 21-43.

PAUL, S. (2016, October 18) The economics of sex trade
<https://newsroom.ucla.edu/stories/the-economics-of-the-sex-trade>

Pruitt, M. (2018). The Social Implications of Prostitution. *Sociology Class Publications*.
https://scholarlycommons.obu.edu/cgi/viewcontent.cgi?article=1002&context=sociology_class_publications

Rana, U. (2020, March 3). Prostitution in northern Central India: an ethnographical study of Bedia community. *International Journal of Anthropology and Ethnology*. <https://ijae.springeropen.com/articles/10.1186/s41257-020-0027-5#citeas>

Sahni, R., & Shankar, V. K. (2011, April). The First Pan India Survey of Sex Worker: A summary of preliminary findings. [THE FIRST PAN-INDIA SURVEY OF SEX WORKERS](#)

Salucci, M. (2021, January 22). The History of the Sex Wars. *Nss Magazine*.
<https://www.nssgclub.com/en/pills/24941/sex-wars-feminism-porn>

Savalas, A. (2020, May 23). Protecting Sex Workers: A Case for Decriminalizing Prostitution. *Medium*.
<https://asavalas.medium.com/protecting-sex-workers-a-case-for-decriminalizing-prostitution-b79467994d90>

Scott, J. (2017, August 7). *Technology drives the need to rethink sex work industry regulations*. *The Conversation*.

<https://theconversation.com/technology-drives-the-need-to-rethink-sex-work-industry-regulations-79656>

Sethia, S. (2018, October 4). The Legality of Sex Work in India | One Future Collective. One Future Collective.

<https://onefuturecollective.org/law-and-gender-the-legality-of-sex-work-in-india/>

Sex workers, HIV and AIDS. (2019, October 10). Avert. <https://www.avert.org/professionals/hiv-social-issues/key-affected-populations/sex-workers>

Study: More violence, STDs when sex work is criminalized. (2021, May 11). KOAM.

<https://www.koamnewsnow.com/study-more-violence-stds-when-sex-work-is-criminalized/>

Tambe, A. (2005). THE ELUSIVE INGÉNUE A Transnational Feminist Analysis of European sex work in Colonial Bombay. *Gender & Society*, 19(2), 160-179.

The Immoral Traffic (Prevention) Act, 1956. Indiankanoon.org. (2021). Retrieved 10 September 2021, from <https://indiankanoon.org/doc/69064674/>.

[W_NGO_Ind_17395_E.pdf](#)

THE IMMORAL TRAFFIC (PREVENTION) ACT. (1956). <https://www.indiacode.nic.in/bitstream/123456789/1661/1/A1956104.pdf>