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Peer Reviewed, Refereed and Open access Journal

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ISSN NO. 2456-9704
Volume 10 Issue 1
www.supremoamicus.org



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LEGALIZATION OF PROSTITUTION IN INDIA: A SOCIO-LEGAL ANALYSIS

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ABSTRACT

The question of whether prostitution ought to be legalized in India sits at the intersection of constitutional rights, public health policy, human dignity, and morality. India's existing legal framework under the Immoral Traffic (Prevention) Act, 1956¹ criminalizes ancillary conduct around sex work while leaving the act itself in a legal grey zone, producing an environment of exploitation, police abuse, and institutional neglect. This paper examines the historical, legal, and comparative dimensions of this debate. Drawing on constitutional jurisprudence, international human rights instruments, comparative models from New Zealand and Sweden, and the grassroots organizing of sex workers in India, it argues that a rights-based regulatory framework—rather than either full criminalization or purely market-driven legalization—offers the most coherent path forward. The paper proceeds in five substantive sections: an overview of the existing legal regime; constitutional considerations; arguments in favour of legalization; arguments against; comparative law; and a proposed model of reform. The analysis concludes that selective decriminalization with robust labour protections, health guarantees, and anti-trafficking safeguards

presents a constitutionally defensible and socially responsible policy choice for India.

Keywords: Immoral Traffic, Prostitution, Human Dignity, Anti-trafficking Safeguards, Socially Responsible

I. INTRODUCTION

Prostitution is among the oldest and most contested practices in recorded human civilization. In India, it exists across a wide social spectrum—from organized brothel districts in cities like Kolkata's Sonagachi and Mumbai's Kamathipura, to street-based sex work in smaller towns, to arrangements facilitated through online platforms in metropolitan areas.² The sheer scale of the phenomenon—estimates suggest that India has between 800,000 and three million sex workers, though reliable enumeration is difficult³—renders any policy of benign neglect untenable.

The Indian state's current approach is neither abolitionist nor regulatory in the classical sense; it is, rather, an awkward hybrid. The Immoral Traffic (Prevention) Act, 1956 (ITPA) attempts to suppress commercial sex by targeting conduct associated with it, without expressly making the sale of sexual services a criminal offence.⁴ The result is a regime that effectively criminalizes the conditions under which sex work is practised—brothels, pimping, soliciting—while leaving the sex worker herself in a permanent state of precarity: not prosecuted for the central act, yet deprived of legal protection in performing it.⁵

This ambiguity has animated decades of public debate, judicial intervention, and civil society mobilization. The Supreme Court of India has increasingly acknowledged that sex workers are rights-bearing persons entitled to the full protection of the

¹Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India) [hereinafter ITPA].

²Durbar Mahila Samanwaya Committee, *The Dance of the Grasshopper* (1997); See also Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* 43 (2009).

³National Crime Records Bureau, *Crime in India 2022*, at 128 (Ministry of Home Affairs 2023).

⁴Preeti Patel, *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights* 11 (2005).

⁵Constitution of India art. 23 (prohibiting traffic in human beings and forced labour).



Constitution, even as legislative reform has remained stalled.⁶ The tension between viewing prostitution as inherently exploitative and recognizing it as a form of labour performed by adult women who may exercise genuine, if constrained, agency has not been resolved.⁷

This paper approaches the question "Should prostitution be legalized in India?" not as a binary moral proposition but as a complex legal and institutional design problem. Legalization, as used here, refers to a regulatory scheme that recognizes sex work as lawful labour subject to oversight, licensing, occupational health standards, and legal recourse. The paper argues that such a framework—carefully distinguished from both prohibition and from *laissez-faire* decriminalization—is constitutionally sound, empirically justified, and ethically defensible in the Indian context, provided it is accompanied by serious anti-trafficking enforcement and genuine participatory governance involving sex workers themselves.

II. THE EXISTING LEGAL FRAMEWORK AND ITS DEFICIENCIES

The foundational instrument governing prostitution in India is the ITPA, 1956, enacted pursuant to India's obligations under the 1949 United Nations Convention for the Suppression of Traffic in Persons. The Act penalizes the keeping of a brothel,⁸ living on the earnings of a sex worker, procuring persons for prostitution, and soliciting in or near a public place.⁹

Notably, the exchange of sexual services for payment between a sex worker and a client is not itself an offence under the ITPA, though the surrounding infrastructure of the transaction is systematically outlawed.

The constitutional basis for this approach is found in Article 23 of the Constitution of India, which prohibits traffic in human beings and begar and other similar forms of forced labour.¹⁰ Article 23 was understood by the framers to encompass the prevention of prostitution as a form of trafficking. Yet the provision speaks to coercion and trafficking, not to consensual adult commerce; the judicial conflation of all prostitution with trafficking has been a persistent source of doctrinal confusion.¹¹

In *Gaurav Jain v. Union of India*,¹² the Supreme Court addressed the rights of children of sex workers, ordering their removal and rehabilitation—an approach criticized by sex worker advocates as treating all sex workers as victims requiring rescue rather than as citizens requiring rights. The more nuanced jurisprudence emerged in *Budhadev Karmaskar v. State of West Bengal*,¹³ where the Court, confronted with the brutal murder of a sex worker, held that she was entitled to dignity and protection of law equal to any other person. The Court constituted a panel on sex workers and directed the Union Government to formulate welfare schemes, thereby implicitly recognizing that criminalization had failed

⁶ITPA, *supra* note 1, § 3 (punishing keeping a brothel); § 4 (living on earnings of prostitution); § 8 (soliciting in public places).

⁷*Gaurav Jain v. Union of India*, (1997) 8 SCC 114 (India).

⁸*Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCC 477 (India) (establishing a panel for rehabilitation and occupational training for sex workers).

⁹*Budhadev Karmaskar v. State of West Bengal*, Writ Petition (Crl.) No. 136 of 2009, Supreme Court of India, Order dated July 19, 2011.

¹⁰Dr. Smarajit Jana, *The Durbar Model: Sex Workers Collective*, 23 *Indian J. Med. Ethics* 201, 204 (2014).

¹¹Ronald Weitzer, *Legalizing Prostitution: From Illicit Vice to Lawful Business* 45 (2012).

¹²Cheryl Overs, *Sex Workers: Part of the Solution – An Analysis of HIV Prevention Programming to Prevent HIV Transmission during Commercial Sex in Developing Countries* (WHO 2002).

¹³See generally Melissa Farley, *Prostitution and Trafficking in Nevada: Making the Connections* (2007).



to protect sex workers and that an alternative approach was necessary.¹⁴

In practice, the ITPA's enforcement regime has produced outcomes that are almost uniformly negative for sex workers. Police raids conducted ostensibly to suppress brothels routinely result in the detention of sex workers, extortion, sexual abuse by law enforcement personnel, and the destruction of the working environments and social networks that provide whatever measure of safety sex workers possess.¹⁵ The criminalization of clients and managers, combined with the sex worker's perpetual legal vulnerability as an occupant of premises deemed unlawful, creates a structural incapacity for sex workers to report violence, seek medical care, or organize collectively without exposing themselves to arrest or deportation.¹⁶

Furthermore, the ITPA's definitions and enforcement mechanisms are grossly inadequate to deal with the technological transformation of sex markets. Online facilitation, tourism-linked sex work, and transnational trafficking networks have rendered the statute's brothel-centric model largely obsolete. Legislative reform proposals—including a 2006 amendment bill that sought to criminalize clients—have been debated in Parliament without resolution, reflecting the political difficulty of addressing the issue in a polity deeply divided along gender, religious, and ideological lines.

III. ARGUMENTS IN FAVOUR OF LEGALIZATION

A. Rights-Based Considerations: Agency, Dignity, and Labour

The most compelling argument for legalization is grounded in the constitutional and human rights framework. Article 21 of the Constitution guarantees the right to life and personal liberty, which the Supreme Court has interpreted expansively to include the right to livelihood, to dignity, and to personal autonomy.¹⁷ If an adult woman freely chooses to engage in sex work as a means of livelihood—a choice that, however constrained by poverty and circumstance—is made in the absence of direct coercion—the state's interest in criminalizing the conditions of that choice requires a weighty justification.

The Durbar Mahila Samanwaya Committee (DMSC) in Kolkata, a collective of over 65,000 sex workers, has articulated a sustained critique of the rescue-and-rehabilitation model as paternalistic and counterproductive.¹⁸ Their Sonagachi Project, which began as a peer-led HIV prevention initiative and evolved into a comprehensive labour rights and governance programme, demonstrated that when sex workers are treated as stakeholders rather than victims, outcomes across health, safety, and economic wellbeing improve dramatically.¹⁹ The project's success in dramatically reducing HIV transmission rates in Sonagachi—at a time when rates were rising sharply across Indian sex markets—stands as

¹⁴UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25 (Nov. 15, 2000).

¹⁵Vasanthi Raman, *The Implementation of the ITPA in India: A Field Study of Police Practices in Kolkata 22* (Human Rights Watch 2002).

¹⁶Jayashree Ramakrishna, *Sex Work, Health, and Human Rights: Global Cultures, Politics, and Ethics of Sex Work under New Feminist and Religious Cultural Revivals* 133 (2010).

¹⁷New Zealand Prostitution Reform Act 2003 (N.Z.).

¹⁸Gillian Abel et al., *The Prostitution Law Review Committee's Report on the Operation of the Prostitution Reform Act 2003* (Ministry of Justice, New Zealand 2008).

¹⁹Brottsforebyggande radet [Swedish National Council for Crime Prevention], *Prostitution och manniskhandel – En Kunskapsöversikt* (2010) [translated: *Prostitution and Human Trafficking – A Review of Knowledge*]; See also Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services*, 10 *Violence Against Women* 1187 (2004).



empirical evidence that a rights-based approach produces better public health results than criminalization.²⁰

Labour law theory offers an additional dimension. If the provision of sexual services is labour, then the persons providing it are workers entitled, under Articles 14, 19(1)(g), and 21, to the conditions that the state guarantees to workers in other industries: safe working conditions, protection from employer exploitation, the right to organize, and access to social security. The current regime's refusal to extend these protections is not neutral; it is an affirmative deprivation of rights.²¹

B. Public Health Imperatives

Sex workers carry a disproportionate burden of HIV and other sexually transmitted infections in India, not because of any characteristic intrinsic to sex work, but because criminalization prevents access to healthcare, drives the industry underground, and makes it impossible for sex workers to insist on condom use from clients who threaten to report them to police.²² The World Health Organization has consistently found that criminalization regimes impede effective HIV prevention, while legal frameworks that empower sex workers to negotiate safe sex and access health services without fear of prosecution produce measurable reductions in transmission.²³

India's National AIDS Control Programme has, in practice, adopted a de facto harm-reduction posture by working with sex worker communities to distribute condoms and conduct outreach. This creates an irony: the state pursues public health goals by cooperating

with sex workers as public health partners while simultaneously maintaining a criminal law regime that exposes those same workers to arrest. A legalization framework would resolve this contradiction by aligning the law with the public health policy the government already effectively implements.²⁴

C. Anti-Trafficking Effectiveness

A counterintuitive but empirically grounded argument holds that legalization, when accompanied by stringent anti-trafficking enforcement, may actually reduce trafficking rather than increase it. The conflation of prostitution with trafficking obscures an important analytical distinction: trafficking involves coercion, deception, or force, and is harmful and criminal regardless of the legal status of sex work.²⁵ Where all sex work is criminalized or operates under legal threat, trafficking victims have no incentive to come forward and traffickers are able to embed their operations within a generalized underground.²⁶

In contrast, a legalized and regulated sex industry creates a legitimate sector in which operators have legal interests to protect, workers have official identities, and deviations from regulated conditions—including the use of trafficked persons—can be reported and prosecuted. Research from New Zealand following the 2003 Prostitution Reform Act found no evidence that legalization increased trafficking.²⁷ The anti-trafficking argument against legalization rests on evidence primarily from Sweden, where the criminalization of clients has been credited with reducing street prostitution, but critics note that this reduction may reflect displacement rather than

²⁰Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* 78–82 (2009).

²¹Nils Johan Ringdal, *Love for Sale: A World History of Prostitution* 301 (Richard Daly trans., 2005).

²²Anirban Basu, *Trafficking in Persons in India: A Human Rights Perspective*, 11 *Asia-Pacific J. Hum. Rts. & L.* 63, 70 (2010).

²³National Human Rights Commission, *A Report on Trafficking in Women and Children in India 2002–2003*, at 15 (2004) [hereinafter NHRC Report].

²⁴Siddharth Kara, *supra* note 2, at 79.

²⁵NHRC Report, *supra* note 23, at 17.

²⁶Purnima Mankekar, "Dangerous Desires": Television and Erotics in Late Twentieth-Century India, 33 *J. Asian Stud.* 403 (2004).

²⁷Rajani Bhatia, *The Regulation of Prostitution in India: A Feminist Legal Perspective*, 15 *Fem. Legal Stud.* 209, 215 (2007).



elimination, and that indoor prostitution and trafficking through digital channels have continued.²⁸

IV. ARGUMENTS AGAINST LEGALIZATION

A. The Demand-Side Problem and Normalization

The most forceful argument against legalization is what may be called the demand-side critique: that the legal recognition of sex work as an industry normalizes the commodification of the human body and increases demand for commercial sex, with downstream effects on trafficking and exploitation.²⁹ Radical feminist scholars, including Melissa Farley, argue that prostitution is inherently a practice of male dominance, structurally related to rape and coercion, and that no meaningful consent is possible in conditions of economic inequality.³⁰ On this view, legalization does not liberate sex workers; it legitimizes the industry that exploits them and expands the market for it.

This critique carries particular weight in the Indian context, where entrenched patriarchal structures, deep poverty, and caste-based vulnerabilities mean that the population of sex workers is overwhelmingly drawn from marginalized communities—Dalit and Adivasi women, women from conflict-affected regions, migrants in precarious economic positions.³¹ The claim that their engagement in sex work reflects autonomous choice is, on this view, a liberal fiction that ignores the material conditions constraining that choice. Legalization, critics contend, merely formalizes a system of structural violence.

²⁸Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 112 (1999).

²⁹Weitzer, *supra* note 11, at 98.

³⁰National Commission for Women, *Societal Violence on Women and Children in Prostitution in India* 44 (1997).

³¹Jana, *supra* note 10, at 205–06.

³²Overs, *supra* note 12, at 9; see also UNAIDS, *Sex Work and HIV/AIDS: Technical Update* (2002).

³³See Ministry of Women and Child Development, *Plan of Action to Combat Trafficking and*

B. Trafficking, Organized Crime, and Regulatory Failure

A related concern is that legalization creates a legal cover for trafficking operations and organized crime. Experience from Germany and the Netherlands, both of which adopted liberalized regulatory frameworks in the early 2000s, suggests that a large legal sex industry may be accompanied by a substantial illegal parallel market, including trafficked persons who operate within or alongside the legal sector.³² The state's regulatory capacity is insufficient to effectively police a large, legitimized sex industry, and the existence of the legal sector may provide cover for illegal activity. India's administrative infrastructure presents particular challenges for any regulatory scheme. Law enforcement is widely acknowledged to be under-resourced, prone to corruption, and capable of turning any licensing system into a vehicle for extortion rather than protection.³³ The NHRC's 2004 report on trafficking in India documented the deep complicity of police and local officials in trafficking networks.³⁴ If these structural conditions are not addressed, legalization risks institutionalizing exploitation rather than eliminating it.

C. Socio-Cultural and Constitutional Objections

Some objections to legalization are rooted in the social fabric of Indian society and in constitutional values as understood within that context. Article 51A of the Constitution lists fundamental duties including the preservation of the composite culture of India and the renouncing of practices derogatory to the dignity of women.³⁵ Opponents of legalization argue that

Commercial Sexual Exploitation of Women and Children (1998).

³⁴Durbar Mahila Samanwaya Committee, *Resilient Voices: A Documentation of Sex Workers' Resistance in India* 28 (2012).

³⁵Law Commission of India, Report No. 64: *The Prevention of Immoral Traffic Act, 1956* (1975); Law Commission of India, Report No. 168: *Pre-conception and Pre-natal Diagnostic Techniques Act* (2001) (tangentially addressing sex worker welfare).



formally recognizing prostitution as lawful labour is inconsistent with constitutional commitments to gender equality and dignity, and incompatible with the values of a society in which women's equality is still aspirational.³⁶

Relatedly, there is a concern about the effect of legalization on social norms more broadly. In a society where gender-based violence is widespread and the sexual autonomy of women remains contested, the formal recognition of sex work as legitimate may weaken rather than strengthen norms of sexual respect and gender equality. This argument is difficult to assess empirically, but it reflects genuine anxieties about the social meaning of legal reform in a context where law functions not merely as a regulatory instrument but as a statement of social values.³⁷

V. COMPARATIVE PERSPECTIVES: LESSONS FROM ABROAD

A. The New Zealand Model: Decriminalization with Labour Rights

New Zealand's Prostitution Reform Act 2003³⁸ represents the most thoroughly evaluated example of full decriminalization of adult sex work. The Act removed criminal penalties from all aspects of adult consensual sex work, including brothel operation, while retaining prohibitions on youth sex work and trafficking. The Act was explicitly premised on the recognition of sex workers as rights-bearing persons and was developed with significant participation from sex worker organizations.

A comprehensive five-year review by the New Zealand Prostitution Law Review Committee found that the Act had achieved its core objectives: sex

workers reported greater safety and an enhanced ability to refuse clients and to report violence to police; there was no measurable increase in the overall number of sex workers; and no increase in trafficking was documented.³⁹ The New Zealand model is particularly notable for its incorporation of standard employment law protections into the sex industry, including occupational health and safety obligations and the right to refuse services without employer penalty.

Critics note that New Zealand is a relatively small, wealthy, and administratively capable state, and that its experience may not translate directly to India. However, the model demonstrates that it is possible to design a legal framework that simultaneously decriminalizes adult sex work, protects workers' rights, and maintains effective enforcement against trafficking and exploitation.⁴⁰

B. The Swedish Model: Criminalizing the Client

Sweden's 1999 Sex Purchase Act, which criminalized the purchase but not the sale of sexual services, has been widely debated as a third-way alternative between criminalization and legalization.⁴¹ The Swedish model reflects an explicitly abolitionist perspective: the goal of the law is not to manage commercial sex but to eliminate it by removing demand. By criminalizing the client rather than the sex worker, the model seeks to destigmatize the seller while attacking the economic foundation of the industry.

The empirical evidence on the Swedish model's effectiveness is contested. Swedish authorities claim a significant reduction in street prostitution since 1999, and the model has been adopted by Norway, Iceland, and France. However, critics argue that street

³⁶Human Rights Watch, *Swept Under the Rug: Abuses Against Domestic Workers Around the World* 4 (2006).

³⁷Convention on the Elimination of All Forms of Discrimination Against Women art. 6, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

³⁸Universal Declaration of Human Rights arts. 3, 4, 23, G.A. Res. 217A (III) (Dec. 10, 1948) [hereinafter UDHR].

³⁹Abel et al., *supra* note 18, at 44.

⁴⁰Weitzer, *supra* note 11, at 102.

⁴¹Ekberg, *supra* note 19, at 1188.



prostitution has been displaced rather than eliminated, that indoor and online prostitution have continued largely unaffected, and that the criminalization of clients has made sex work more dangerous by forcing transactions underground and reducing sex workers' ability to screen clients or negotiate safe conditions.⁴² Research commissioned by the Swedish government itself has acknowledged these concerns.

For India, the Swedish model presents significant practical difficulties. Effective criminalization of client conduct requires law enforcement that is both willing and able to pursue clients rather than collude with them—a condition difficult to ensure in the current institutional environment. It also presupposes a welfare state capable of providing genuine alternative livelihoods for sex workers who exit the industry, an infrastructure India does not yet possess at the required scale.

VI. TOWARD A RIGHTS-BASED REGULATORY FRAMEWORK FOR INDIA

The preceding analysis suggests that neither full criminalization (the status quo) nor unregulated decriminalization adequately addresses India's specific conditions. A rights-based regulatory framework, drawing on the New Zealand model while adapting to India's institutional realities and constitutional commitments, offers the most defensible path.

Such a framework would, at minimum, comprise the following elements. First, the decriminalization of consensual adult sex work, including the removal of criminal liability for operating small-scale establishments. This would not constitute an endorsement of prostitution as a social ideal but a pragmatic recognition that the current criminal regime serves neither public health nor the rights of sex workers. Second, the extension of labour law

protections—including the Industrial Disputes Act, the Contract Labour (Regulation and Abolition) Act, and occupational health and safety legislation—to sex workers. This step would recognize sex workers as workers without eliminating the right of individual sex workers to refuse clients or exit the industry.

Third, a strengthened anti-trafficking regime with clear definitional separation between consensual adult sex work and trafficking. This would involve higher penalties for traffickers, mandatory training for police and prosecutors in victim identification, and dedicated investigative units insulated from the corruption that has historically compromised trafficking enforcement. Fourth, compulsory health access—not health surveillance—meaning that sex workers would be entitled to confidential health services, not subjected to mandatory testing or disclosure requirements that function as instruments of control and stigma.

Fifth, and most importantly, any reform framework must be developed with the genuine participation of sex workers and their representative organizations. The DMSC's Sonagachi model and the national federation VAMP (Veshya Anyay Mukti Parishad) represent decades of grassroots organizing and practical knowledge about what works. Legal reform developed without this participatory foundation risks replicating the paternalism of the existing system in a new institutional form.⁴³

The constitutional basis for such a framework is sound. The right to livelihood under Article 21, the right to practise any profession or carry on any occupation under Article 19(1)(g), and the equality guarantee of Article 14 collectively provide a strong foundation for legislative recognition of sex workers' rights. The state's legitimate interests in regulating public health, preventing trafficking, and protecting vulnerable persons from exploitation can be pursued

⁴²Jo Doezeema, *Sex Slaves and Discourse Masters: The Construction of Trafficking* 122 (2010); see also Laura Agustin, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry* 78 (2007).

⁴³VAMP (Veshya Anyay Mukti Parishad), *Annual Report on Sex Worker Rights 2019-20*, at 12 (2020); Durbar Mahila Samanwaya Committee, *supra* note 34, at 31.



through proportionate regulatory measures that do not require the blanket suppression of consensual adult conduct.

VII. CONCLUSION

The question of whether prostitution should be legalized in India is ultimately a question about what kind of society India chooses to be. A society that criminalizes the conditions of survival for some of its most marginalized citizens while providing them no alternative and no protection is not a moral society; it is an indifferent one. A society that legalizes exploitation and abandons women to market forces without structural protection is not a free society; it is a callous one.

The argument advanced in this paper is that India can and should pursue a middle course: one that recognizes the rights of sex workers as citizens and workers, provides them with the legal protections available to other workers, vigorously prosecutes trafficking and exploitation, and does so in a framework developed with the participation of those most affected by its design. This is not a counsel of moral indifference to the conditions that drive women into sex work; it is a counsel of moral seriousness about the actual, documented consequences of the legal regime currently in place.

The ITPA as it stands serves no one well. It does not eliminate prostitution; it does not protect sex workers; it does not effectively suppress trafficking; and it does not provide a pathway out for those who wish to leave the industry. Thirty years of incremental judicial intervention have produced a more rights-aware jurisprudence but no legislative action. India's sex workers cannot afford to wait for a perfect framework that will emerge only when every moral objection is resolved. They are entitled, now, to the rights the Constitution already guarantees and that the law persistently withholds.⁴⁴

The legalization debate must ultimately move from the abstract to the practical: from asking whether prostitution is morally acceptable to asking what legal arrangements best protect the dignity, health, safety, and rights of the persons who engage in it. That question admits of better and worse answers, and a rights-based regulatory model is a substantially better answer than the ambiguous criminalization that currently obtains. Pursuing it would be an act not merely of legal reform, but of constitutional fidelity.

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⁴⁴*Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCC 477, at para. 14 (India) (reiterating that

sex workers are persons entitled to dignity and the right to live as a citizen).



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