

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 9 | Issue 4

2026

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The Legal Status of Brothels in India and Its Implications

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ABSTRACT

Brothels are illegal in India, and any person or group operating a brothel may be charged under Section 3 of the Immoral Traffic (Prevention) Act, 1956. Yet several well-known brothels continue to operate. The critical question that arises is how these brothels remain in operation when the law of the land categorically prohibits them. Sex work carried on independently by an individual is not itself an offence in India, whereas brothel-based or commercialised prostitution has been made illegal. The Indian approach appears to be to phase out prostitution gradually while at the same time protecting the interests of sex workers, an approach that entails the shutting down of brothels. Despite substantial evidence of the operation of well-established brothels in metropolitan cities, brothels in India continue to exist. The Indian government needs to take a clear stand on the issue of commercialised prostitution. If the aim of the government is to phase out prostitution gradually, then brothels should not exist in India; if the aim is to regulate commercial prostitution, then steps to regulate brothels cannot be delayed. Whichever policy objective is pursued, it is time for the government to take steps in one direction or the other, rather than continuing to postpone the question of commercial prostitution. Sex work is not like any other work and can seriously affect the mental and physical health of sex workers. Against this background, this paper analyses the status of brothels in India, the allied issues of commercial prostitution and their corresponding effect on the sexual health of sex workers in India. The paper primarily employs a doctrinal research methodology based on an analysis of primary and secondary legal sources. It is supplemented by a limited content analysis of the first three pages of Google search results, conducted to assess the operational status of temporary and permanent brothels.

Keywords: sex workers, sexual health, brothel, prostitution, immoral traffic (prevention) act 1956, commercialised prostitution

I. INTRODUCTION

The Britannica Dictionary defines a 'brothel' as a building in which prostitutes are available.¹ This definition, although correct, does not convey the hardships that a sex worker may face

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¹ *Brothel*, BRITANNICA DICTIONARY, <https://www.britannica.com/dictionary/brothel> (last visited Jan. 21, 2023).

inside a brothel.² A brothel is a place where sexual services are exchanged for money. Sex workers often work under a brothel owner who runs the trade and who, in order to maximise profit, does not provide good conditions of work. Harsh conditions of work can lead to various health problems for sex workers, including problems of sexual health. Brothels have been described as breeding grounds for trafficking. Girls are sold by traffickers to brothel owners for money and are then forced into prostitution.³ A sex worker is, by the very nature of her work, vulnerable to sexually transmitted disease, post-traumatic stress disorder, drug abuse, communicable diseases, and early pregnancy and frequent abortions. This vulnerability increases where a sex worker works in a brothel, because of the unhygienic and cramped conditions in which brothels operate.⁴

Today in India, brothels are illegal,⁵ while sex work carried on independently by an individual is not itself an offence. Brothels can be classified as permanent brothels and temporary brothels. Because brothels are illegal, the police often raid any new brothel that appears and have it wound up. Brothels that remain in existence only until the next police raid can be classified as temporary brothels. Permanent brothels are those that have been in operation for years in India and continue to exist, for example the brothels in the Sonagachi area of Kolkata. Permanent brothels have continued to exist in India and, in some cities, they operate in broad daylight. The existence of unregulated brothels can have negative implications for the health of sex workers. This paper analyses the status of brothels in India, the allied issues of commercial prostitution and their corresponding effect on the sexual health of sex workers in India. The paper is divided into four sections. The first section traces the evolution of the laws on prostitution in India; the second analyses the present status of brothels in India; the third deals with the health issues faced by sex workers; and the fourth deals with the steps taken by the Supreme Court of India for the welfare of sex workers in India.

II. EVOLUTION OF LAWS ON PROSTITUTION IN INDIA

The law on prostitution that we have today is the result of a gradual evolution of the laws on prostitution in India and around the world. A study of this evolution gives an idea of the

² *Horrors of India's Brothels Documented*, BBC NEWS (Nov. 23, 2013), <https://www.bbc.com/news/world-asia-india-24530198>.

³ *Id.*

⁴ S. R. SARODE, HISTORICAL STUDY OF PROSTITUTION TRADE IN INDIA: PAST AND PRESENT (Minor Research Project, UNIVERSITY GRANTS COMMISSION), <http://vcckarad.com/Minor%20Research%20Project%20on%20HISTORICAL%20STUDY%20OF%20PROSTITUTION%20TRADE%20IN%20INDIA%20%20PAST%20AND%20PRESENT.pdf>.

⁵ The Immoral Traffic (Prevention) Act, 1956, § 3, No. 104, Acts of Parliament, 1956 (India).

approaches that various governments have taken to regulate prostitution. It is therefore pertinent to trace briefly the evolution of the regulation of prostitution in India.

A. Early History of Prostitution in the World

The earliest brothel of which some records are available was in Egypt.⁶ The Greeks were the first to recognise brothels legally. The Romans were not behind in terms of regulating prostitution, and a good deal of pornographic literature survives in the Latin language.⁷ In Rome, prostitutes were registered by the police, and running a brothel or renting a facility for a brothel was legal.⁸ The volcanic ash that preserved the remains of Pompeii also provides evidence of highly structured and regulated brothels in Rome. A historian analysing the brothels of Pompeii notes that the stone beds and small, congested rooms must have created hardships for the sex workers who worked there.⁹

There is considerable evidence indicating that brothels were highly regulated in medieval Europe.¹⁰ However, when sexually transmitted diseases such as syphilis began to spread, brothels started to shut down.¹¹ There have been various instances in history, around the world, where brothels have been ordered to be shut down by emperors. Such orders were made with the aim of eradicating prostitution altogether. At times these orders were able to stop prostitution for a while. However, they sometimes backfired and led to the flourishing of prostitution.¹² A cursory glance at history shows that brothels were either regulated or banned. There is hardly any literature pointing to a situation in which brothels remained in operation even after being declared illegal in a country, although such a possibility cannot be ruled out.

B. History of Prostitution in India

In India too, brothels were at times legal and at times illegal. The history of prostitution in India can be traced, if only loosely, to the Vedic period, as the word 'Nruturiv', meaning dancing girls, is said to find mention in the Rig Veda.¹³ Prostitutes also find mention in the Ramayana and the

⁶ Paul Vallely, *A Brief History of Brothels*, INDEPENDENT (Jan. 21, 2006, 1:00 PM), <https://www.independent.co.uk/news/uk/this-britain/a-brief-history-of-brothels-5336946.html>.

⁷ *Id.*

⁸ *Id.*

⁹ *What Was Normal Life Like in Pompeii Before Its Destruction? Pompeii with Mary Beard*, YOUTUBE (June 21, 2021), <https://www.youtube.com/watch?v=Y0i2eNqotlY> (uploaded by Odyssey - Ancient History Documentaries).

¹⁰ Jamie Page, *Inside the Medieval Brothel*, HISTORY TODAY (Mar. 6, 2023, 2:00 PM), <https://www.historytoday.com/archive/feature/inside-medieval-brothel>.

¹¹ John Philip Jenkins, *Prostitution*, BRITANNICA (Mar. 6, 2023, 2:00 PM), <https://www.britannica.com/topic/prostitution>.

¹² Vallely, *supra* note 6.

¹³ Sarode, *supra* note 4.

Mahabharata, indicating their existence during the epic age.¹⁴ The establishment of brothels can be traced to the Mauryan period, as brothels were then seen as a source of revenue by the state.¹⁵ The devadasi system was prevalent in medieval India. The system involved the gifting of daughters by parents to temples as a religious offering. According to historical accounts, these girls were then subjected to abuse, and the practice degenerated from a religious offering into prostitution.¹⁶ Concubines were recognised during the Mughal period,¹⁷ with the only exception being the reign of Aurangzeb.

The British also recognised prostitution and regulated it, to the extent of providing hospitals in the areas where prostitution was practised.¹⁸ Prostitutes were required to undergo medical examination and were given an identity card so that they could be tracked in the event of the spread of communicable diseases.¹⁹ All these regulations flowed from the Contagious Diseases Acts and the Cantonment Act 1864. The Cantonment Act 1864 allowed for the maintenance of prostitutes who could offer services only to the soldiers of the cantonment.²⁰ The regulation of prostitution was directed more at protecting the soldiers from communicable diseases than at the welfare of the prostitutes.²¹ Brothels were also recognised and regulated in the British era.²² However, in the year 1888 prostitution was made illegal, following conflict between locals and the British on the issue of forcing Indian girls into prostitution.²³

European girls were being trafficked during the early years of the twentieth century.²⁴ To stop the trafficking of European girls in India, the Criminal Law Amendment Act 1912 was enacted.²⁵ That Act provided for strict and speedy action against traffickers and against persons who acted as agents between client and prostitute.²⁶ Various sections were added to the Indian

¹⁴ *Id.* at 173.

¹⁵ G. Kuppuram, *Chanakya on Prostitution (Based on Arthashastra)*, 40 PROC. INDIAN HIST. CONG. 215, 215-16 (1979), <https://www.jstor.org/stable/44141963>.

¹⁶ Sarode, *supra* note 4, at 36.

¹⁷ Shadab Bano, *Marriage and Concubinage in the Mughal Imperial Family*, 60 PROC. INDIAN HIST. CONG. 353, 353-54 (1999), <https://www.jstor.org/stable/44144101>.

¹⁸ Romain Tiquet, *Prostitution in a Colonial Setting*, DIGITAL ENCYCLOPAEDIA OF EUROPEAN HISTORY (Mar. 6, 2023, 2:00 PM), <https://ehne.fr/en/encyclopedia/themes/gender-and-europe/prostitution-1800-today/prostitution-in-a-colonial-setting>.

¹⁹ M. SUNDRA RAJ, PROSTITUTION IN MADRAS: A STUDY IN HISTORICAL PERSPECTIVE (Konark Publishers Pvt. Ltd. 1993), *as cited in* Sarode, *supra* note 4, at 44.

²⁰ *Id.* at 44.

²¹ Sarode, *supra* note 4, at 44.

²² *Id.*

²³ David J. Pivar, *The Military, Prostitution, and Colonial Peoples: India and the Philippines, 1885-1917*, 17 J. SEX RSCH. 256, 256-69 (1981), *as cited in* Sarode, *supra* note 4, at 157.

²⁴ *Id.* at 157.

²⁵ *Id.* at 157.

²⁶ *Id.* at 157.

Penal Code to abolish the devadasi system.²⁷ In the year 1923, the Bombay Prevention of Prostitution Act was passed, which made keeping a brothel, renting a place for prostitution and prostitution in a prohibited area illegal.²⁸ Other Acts were also passed in order to protect girls who were made prostitutes under some custom.²⁹

After Independence, the Suppression of Immoral Traffic in Women and Girls Act, 1956 was enacted. The Act provided for the suppression of brothels.³⁰ It prohibited the use of the earnings of prostitution for livelihood by any person above eighteen years of age³¹ and solicitation by a prostitute in a public place.³² The Act was amended in 1986 and renamed the Immoral Traffic (Prevention) Act, 1956, and it is presently the law that regulates prostitution in India.

The evolution of the laws regulating prostitution indicates a trend from the regulation of brothels to their abolition. There was a time in the past when brothels were regulated by governments, whether in the ancient era of the Mauryan Empire, the medieval period of the Mughal Empire or the modern era of the British Empire. Most governments in the past tried to regulate brothels not out of choice, but because regulation was seen as a necessary evil. The idea of regulating brothels, as one can infer from the historical account given in this section, is neither far-fetched nor peculiar. The regulation of brothels has been undertaken in the past: at times to provide at least some benefit to sex workers, as in the Mauryan era, and sometimes for the benefit of the clients of sex workers, as in the British era.

Today brothels are banned in India. However, the ground reality is that brothels in many cities still exist. It therefore becomes vital for policy makers and legislators to have a clear view of the present status of brothels and of their effect on sex workers, so that they can frame appropriate laws for the betterment of the health of sex workers. An attempt has been made in the following section to provide that view.

III. STATUS OF BROTHELS IN INDIA

Brothels are often characterised by the exploitation of sex workers. Fraud, coercion, cheating and force have been reported to be used by brothel owners to compel a girl to take up

²⁷ *Id.* at 157.

²⁸ *Id.* at 158.

²⁹ The Bombay Devadasi Protection Act, 1934, and the Madras Devadasis (Prevention of Dedication) Act, 1947, were passed to abolish the devadasi system. *Id.* at 158.

³⁰ The Suppression of Immoral Traffic in Women and Girls Act, 1956, § 3, No. 104, Acts of Parliament, 1956 (India).

³¹ The Suppression of Immoral Traffic in Women and Girls Act, 1956, § 4, No. 104, Acts of Parliament, 1956 (India).

³² The Suppression of Immoral Traffic in Women and Girls Act, 1956, § 8, No. 104, Acts of Parliament, 1956 (India).

prostitution. Brothels also provide breeding grounds for the trafficking of women. Studies point to cramped and unhygienic working conditions in brothels. The girls in brothels are often overworked and underpaid. On the material discussed below, it is reasonable to conclude that unregulated brothels are not conducive to the welfare and sexual health of sex workers.

A. Classification of Brothels in India

Brothels can be classified into two types in India. The first type consists of brothels that have been in operation for years and still continue to exist, for example the brothels of the Sonagachi area of Kolkata, the brothels of GB Road in Delhi and the brothels of the Kamathipura area of Mumbai. The second type consists of brothels that keep appearing and shutting down frequently, for example brothels running in spa centres, residential localities, hotels and massage parlours. The first category is referred to hereinafter as permanent brothels and the second category as temporary brothels. Both permanent and temporary brothels are a cause of concern, but it is the existence of the first category that is astonishing. While temporary brothels keep appearing and shutting down because of police raids, permanent brothels continue to exist in the open despite the various pieces of evidence available to the authorities. The existence of permanent brothels, even though the Suppression of Immoral Traffic in Women and Girls Act, 1956 and thereafter the Immoral Traffic (Prevention) Act, 1956 categorically prohibit the keeping of a brothel, is astonishing. As brothels are illegal in India, and as their existence has a direct correlation with the exploitation of sex workers, it is pertinent to ascertain the state of brothels in India.

The author has used the method of content analysis to ascertain the status of brothels. News articles on the internet about the operation of brothels in all the States and Union Territories of India have been analysed. Although internet-based content does not constitute conclusive proof and is subject to limitations relating to accuracy, completeness and verification, it remains a useful indicator of social phenomena and therefore warrants consideration alongside its acknowledged limitations. A further limitation of the methodology used is that only the first three pages of results, as ranked by Google, were searched for relevant material for each State and Union Territory. This limitation was adopted because thematic saturation was reached within this range, and subsequent search results yielded repetitive information without contributing new insights relevant to the study. On the basis of this methodology, the following paragraphs set out the current status of brothels in India.

i. Permanent Brothels

A search for content on brothels returns content on two types of brothels, namely permanent brothels and temporary brothels. Based on the available internet content, it may be inferred that

every State and Union Territory has reported instances of either permanent brothels, temporary brothels, or both. However, this inference is limited to the material identified through the search methodology adopted in this study. In this context, the States and Union Territories of India can be classified into two categories: the first comprising those in which a permanent brothel is operational, and the second comprising those in which temporary brothels are operating. It is submitted that the result of the content analysis shows that permanent brothels are present in Sonagachi in Kolkata, GB Road in Delhi, Kamathipura in Mumbai, Budhwar Peth in Pune, Itwari in Nagpur, Meerganj in Allahabad and Chaturbhujsthan in Muzaffarpur. These are the permanent brothels that were identified by the author by following the content analysis methodology. There may be more permanent brothels, which could be identified by using another research methodology. The list of permanent brothels provided by the author should therefore not be treated as exhaustive.

An interesting aspect of permanent brothels is that, unlike temporary brothels, they operate openly and in broad daylight. These brothels are widely known both within the city concerned and across the country. Various non-governmental organisations have conducted research on and provided assistance to the sex workers of these brothels. Some activists have spent months and years in these brothels.³³ There is no shortage of literature explaining in minute detail what happens inside a brothel,³⁴ how girls are procured, how a brothel is run,³⁵ how a sex worker becomes a brothel owner, the income of sex workers,³⁶ and how the police at times collude with brothel owners.³⁷ One study even describes a mechanism by which, with the help of the police, minor girls are recorded as adults in the eyes of the law so that clients can be offered minor girls without any legal difficulty.³⁸ These are not merely materials for academic writing and discussion. They are pieces of evidence on which action can be taken.

The experiences of many sex workers in these permanent brothels are deeply disturbing. Many of them have been tricked into entering the profession.³⁹ Many of them have been raped⁴⁰ and, in some cases, murdered. Police officers have often been blamed for the sexual harassment and

³³ *Horrors of India's Brothels Documented*, *supra* note 2 (reporting that Hazel Thompson spent a decade documenting the lives of girls trafficked into India's sex industry).

³⁴ *When Police Act as Pimps: Glimpses into Child Prostitution in India*, INDIA TOGETHER, <https://indiatogether.org/manushi/issue105/childpro.htm>.

³⁵ Jigyasa Mishra, *I Am Not a Marriageable Woman*, PEOPLE'S ARCHIVE OF RURAL INDIA, <https://ruralindiaonline.org/article/i-am-not-a-marriageable-woman>.

³⁶ *Id.*

³⁷ *When Police Act as Pimps: Glimpses into Child Prostitution in India*, *supra* note 34.

³⁸ *Id.*

³⁹ *Horrors of India's Brothels Documented*, *supra* note 2 (describing an incident in which a girl was trafficked into a brothel and raped).

⁴⁰ *Id.*

rape of sex workers and for a discriminatory attitude towards them. They have been accused of creating unnecessary problems for sex workers. In *Budhadev Karmaskar v. State of West Bengal*,⁴¹ the Supreme Court directed that, where a sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action, and affirmed that sex workers are entitled to equal protection of the law. This decision has been welcomed by sex workers, non-governmental organisations and activists. Wide powers are available to the police for raiding a brothel, and at times these powers have been misused.

ii. Temporary Brothels

In all the other States and Union Territories of the country, the content analysis indicates the existence of temporary brothels. A search for content on brothels in Kerala, Telangana, Tamil Nadu and Karnataka shows no results for permanent brothels. However, the analysis does point to certain temporary brothels which keep appearing from time to time. Action against these brothels is taken by the police whenever they have a written complaint and sufficient evidence. Brothels of this kind keep shutting down frequently because of action taken by the police.

The content analysis did not identify any permanent brothel in Kerala. However, a new challenge has emerged for the police there, as sex workers in Kerala are now taking the help of the internet to find clients. While a sex worker finding clients on her own poses no difficulty, as the act does not by itself constitute an offence, a virtual brothel operating on the internet is an extremely difficult problem for the police of Kerala to solve.

Madhya Pradesh has a well-known stretch of highway which is called 'Red Light Street' by locals.⁴² This stretch of highway is known for small settlements along the highway called 'dera'.⁴³ In these small settlements, sex workers practise prostitution.⁴⁴ It is difficult to treat these small settlements on the highway as brothels. Brothels are generally characterised by an agent either forcing girls into prostitution or facilitating prostitution for them. There is an element of coercion in a brothel. The position in these small settlements is mixed, as some women of the settlement begin sex work of their own will, while others may be pushed into it by their family where there is no other breadwinner. The tradition of sex work in the community normalises the process of entry into sex work for the women.⁴⁵ Some women do not consider sex work to be

⁴¹ *Budhadev Karmaskar v. State of West Bengal*, 2022 SCC OnLine SC 704.

⁴² Urmi Bhattacheryya, *This Road Leads to Sex Work: Who Helps MP's Child Prostitutes?*, QUINT (Mar. 9, 2020, 8:04 AM), <https://www.thequint.com/gender/women/this-highway-madhya-pradesh-young-sex-workers-dalit-community>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

wrong at all, as they accept it as a tradition.⁴⁶ It is therefore difficult to say clearly whether these settlements are brothels or settlements in which private prostitution is practised.

IV. HEALTH OF SEX WORKERS

In India, women are a group vulnerable to developing certain health problems. If a woman is a sex worker, this vulnerability increases manifold. Apart from the health issues that any woman might develop, the following are some of the health issues that sex workers are more prone to encounter.

A. Sexually Transmitted Disease

Sex workers are at high risk of contracting sexually transmitted disease.^{47,48} Brothels in India have extremely small, congested rooms with poor hygiene. The number of rooms in a brothel is also limited, which can lead brothel owners to create congested small spaces in order to accommodate more clients. These rooms are not sanitised after use and are in frequent use throughout the day. Brothels can therefore become breeding grounds for many diseases, especially sexually transmitted disease. Many studies find that clients often do not use condoms, and that sex workers lack the power to insist that a client use one, as they cannot afford to lose a client and the money he brings.⁴⁹

B. Post-Traumatic Stress Disorder

Sex workers are at elevated risk of post-traumatic stress disorder and other mental health disorders.^{50,51} Many sex workers have not chosen prostitution of their own free will. They may have been coerced or tricked into it. At times these sex workers have gone through trauma in their initial days in the profession. Even when they are out of that trauma and are doing their work by choice, the work itself can remind them of the traumatic experience. This puts them at high risk of post-traumatic stress disorder. Post-traumatic stress disorder is a condition in which patients suffer from anxiety, stress and nightmares when they are reminded of traumatic experiences. Apart from medical intervention, it is advised that patients stay away from the

⁴⁶ *Id.*

⁴⁷ Devajana C. Nanjunda & Pulamaghatta N. Venugopal, *Boundaries of Contagion: The Unheard Plight of Sex Workers in Karnataka*, J. ANTHROPOLOGICAL SURVEY OF INDIA (June 2, 2020), <https://journals.sagepub.com/doi/full/10.1177/2277436X20927254>.

⁴⁸ *Sex Workers*, WORLD HEALTH ORGANIZATION, <https://www.who.int/teams/global-hiv-hepatitis-and-stis-programmes/populations/sex-workers> (last visited June 24, 2026).

⁴⁹ D. M. Thappa et al., *Prostitution in India and Its Role in the Spread of HIV Infection*, 28 INDIAN J. SEXUALLY TRANSMITTED DISEASES & AIDS 69 (2007).

⁵⁰ Thilaka Ravi, *Occupational Health Hazards in Prostitution*, MED INDIA (Feb. 13, 2016), https://www.medindia.net/patients/lifestyleandwellness/prostitution_occupational_health_hazards.htm.

⁵¹ Laura Martín-Romo, Francisco J. Sanmartín & Judith Velasco, *Invisible and Stigmatized: A Systematic Review of Mental Health and Risk Factors Among Sex Workers*, 148 ACTA PSYCHIATRICA SCANDINAVICA 255, 255-64 (2023).

things, situations and people that trigger the traumatic memory. Unfortunately, for sex workers the work itself reminds them of the trauma, and staying away from sex work is not an option for many of them.

C. Drug Abuse

Often, in order to reduce the trauma of the profession, many sex workers resort to drugs. Drugs provide them the relief they need, but at the cost of their health. A sex worker often does not get the time to develop any hobby, and may therefore become vulnerable to drug addiction, as drugs fill the void of the satisfaction that pursuing a hobby would provide.

D. Increased Risk of Communicable Diseases in Times of Pandemic

The very nature of sex work is such that it puts sex workers at high risk of contracting communicable diseases in times of epidemic or pandemic.

E. Early Pregnancy and Frequent Abortions

Sex workers are often at risk of early pregnancy. Many sex workers who are brought into brothels are minors. The lack of use of condoms, together with a minor girl's lack of knowledge, can lead to early pregnancy and its allied medical complications. Sometimes the beliefs of the girl's family do not permit her to undergo an abortion. On the other hand, where a girl is allowed to abort, frequent abortion also becomes a health issue for sex workers.

F. Increased Risk of Violence

Sex workers are at high risk of violence,⁵² because their work takes place in a private place and it becomes difficult to prove a claim of violence in a court of law. The difficulty of proving a charge, along with other reasons, makes the police indifferent towards the complaints of sex workers. Often the complaints of sex workers are not addressed, and this vulnerability is well known to perpetrators, who take advantage of it.

All the risk factors mentioned above, together with the lack of any choice of partner for intimacy, seriously jeopardise the sexual health of sex workers.

V. STEPS TAKEN BY THE SUPREME COURT OF INDIA FOR THE WELFARE OF SEX WORKERS

In the landmark judgment of *Budhadev Karmaskar v. State of West Bengal*,⁵³ the Supreme Court constituted a panel to make recommendations for:

⁵² Kathleen N. Deering et al., *A Systematic Review of the Correlates of Violence Against Sex Workers*, 104 AM. J. PUB. HEALTH e42, e42-54 (2014).

⁵³ *Budhadev Karmaskar*, *supra* note 41.

- preventing trafficking;
- the rehabilitation of a sex worker who no longer wishes to continue in sex work; and
- providing humane conditions to sex workers who wish to continue in sex work.

The panel chaired by Pradip Ghosh, after consulting all the stakeholders, made certain recommendations, and those recommendations were reflected in a draft bill. However, to date the bill has not been passed by Parliament. The Supreme Court, being dissatisfied with the progress made by the legislature, used its power under Article 142 of the Constitution of India to issue directions in the interest of sex workers, while recording that the Union of India had objected to four of the panel's ten recommendations. These directions will fill the gap until legislation is passed giving effect to the recommendations made by the panel appointed by the Supreme Court. The following directions and recommendations⁵⁴ address the protection of the interests of sex workers:

- The police should not interfere in the work of a sex worker where the sex worker is a major and is doing her work of her own free will. No criminal action should be taken against a major sex worker doing her work by choice.
- The police should treat the complaint of a sex worker just like any other complaint. Sex workers, like any other citizen, are entitled to the equal protection of the law, and the police should not treat their complaints differently from others.
- A sex worker should be provided with all the facilities available to a survivor of sexual assault, including immediate medical assistance under Section 357C of the Code of Criminal Procedure, 1973, read with the 'Guidelines and Protocols: Medico-legal Care for Survivors/Victims of Sexual Violence' issued by the MINISTRY OF HEALTH AND FAMILY WELFARE in March 2014.
- A sex worker should not be penalised if she is found in a brothel during a police raid. As voluntary sex work is not illegal and only the running of a brothel is unlawful, there is no reason to punish a sex worker found during a raid on a brothel.
- State Governments should conduct a survey of all protective homes and release any woman detained involuntarily in a timely manner. They should avoid the unnecessary detention of women in protective homes.

⁵⁴ *Budhadev Karmaskar, supra* note 41 (directions issued in exercise of the power under Article 142 of the Constitution of India).

- The police should be sensitised to treat sex workers with dignity. They should not treat sex workers as a class without rights. There should be no verbal or physical abuse of sex workers by the police.
- The media should be given proper guidelines to maintain the privacy of sex workers whenever they are rescued or arrested by the police.
- Measures taken by sex workers to ensure their health and safety, such as the use of condoms, should not be treated as an offence or as evidence of an offence.
- The Central Government and the State Governments must take suggestions from sex workers and their representatives before formulating any policy or programme involving sex workers. Sex workers may also be involved in the decision-making process in the formulation of any such policy or programme.
- The Central Government and the State Governments should take steps, through the National Legal Services Authority and the State Legal Services Authorities, to educate sex workers and make them aware of the legal position of their work, their rights and their access to the judiciary, so that they can avoid exploitation by the police or by traffickers.
- A sex worker should not be separated from her child merely because of her profession. If a child is found with a sex worker, it should not be presumed that the child is a trafficked child. If the sex worker claims to be the mother of the child, a proper test should be conducted to verify the claim.

These directions come as a respite for sex workers. Directions three, four and eight will go a long way in ensuring the good sexual health and safety of sex workers. It is submitted, however, that these directions are not exhaustive of the steps that need to be taken to ensure the sexual health and safety of sex workers. A number of measures are included in Section 5 of the Sex Workers (Welfare and Rehabilitation) Bill, 2016,⁵⁵ which need to be implemented for that purpose. These measures are as follows:

- A sex worker should be provided with an identity card bearing her photograph and the details of the members of the family dependent on her.
- Free health check-ups, medication and medicinal aids for diseases such as HIV/AIDS and sexually transmitted diseases should be provided to sex workers. The same should also be provided for any other life-threatening disease to which sex workers are exposed by reason of their work.

⁵⁵ *Introduction of the Sex Workers (Welfare and Rehabilitation) Bill, 2016*, PARLIAMENT DIGITAL LIBRARY, <https://eparlib.nic.in/handle/123456789/752244> (last visited June 25, 2023).

- Scholarships for the children of sex workers should be provided under the relevant scheme of the Central Government or the State Government.
- A residential plot and financial assistance for the construction of a house should be provided to a sex worker, provided she is willing to accept such assistance.
- A sex worker, or an adult member of her family, should be provided with training to develop livelihood skills, so that she or the family member can take up a new profession if willing to do so. A stipend of three thousand rupees should be provided during the training programme.
- Sex workers should be admitted to educational institutions without any discrimination on the ground of the work they do.

All these measures, especially the measure of a regular health check-up, are extremely important for ensuring the good sexual health of sex workers. It is submitted that they should be implemented immediately and without unnecessary delay.

VI. CONCLUSION AND SUGGESTIONS

Sex workers are at higher risk of many serious diseases. Their risk of disease often increases if they are working in brothels.⁵⁶ Brothels are places of work for many sex workers in India, and are often the place where the physical, social and economic exploitation of sex workers occurs. There is a high correlation between the existence of brothels and numerous forms of exploitation of sex workers, including exploitation that can lead to serious sexual health problems. Brothels, despite being illegal, are operational in India.

The content analysis conducted in this study revealed internet-based reports indicating the existence of either permanent or temporary brothels in every State and Union Territory examined. The operation of a brothel, wherever established, is a clear violation of Section 3 of the Immoral Traffic (Prevention) Act, 1956. This dichotomy, of brothels being illegal on the one hand and permanent brothels running in broad daylight on the other, is a cause of concern. This blatant violation, or non-implementation, of a law that has been in force for many years has a direct bearing on the sexual health of sex workers. It is submitted that maintaining an ineffective provision for eradicating brothels over so many years is unacceptable. It is understandable that shutting down permanent brothels which have existed for a long time, and which are home to thousands of sex workers, is not an easy task. A number of complicated factors, such as the livelihood of sex workers, their displacement and their migration into society without stigma, need to be taken into account before the eradication of permanent brothels. However, this cannot

⁵⁶ Sarode, *supra* note 4, at 148.

be an excuse for inaction on the part of governments. The hard question needs to be answered: should brothels be regulated, or should they be eradicated completely? A thorough review is required of where India stands on the regulation of brothels. The result of that review might not be in favour of regulating brothels, or it might favour regulation for the betterment of sex workers. Whatever the result, the existence of brothels despite a law being in place for their abolition provides a very strong case for at least a review of India's position on the regulation of brothels.

The Supreme Court of India has done commendable work in seeking to ensure the health and safety of sex workers. In *Budhadev Karmaskar v. State of West Bengal*,⁵⁷ the Supreme Court ordered the constitution of a panel chaired by Pradip Ghosh to make recommendations for ensuring humane conditions of work for sex workers. Recommendations were also sought for the rehabilitation of sex workers after they leave sex work. The author understands the panel's recommendations to be reflected in the Sex Workers (Welfare and Rehabilitation) Bill, 2016. Section 5 of that Bill provides for a number of measures to ensure the good sexual health of sex workers, including regular health check-ups to guard against sexually transmitted disease. However, that legislation is still pending in Parliament. The Supreme Court of India, being dissatisfied with the progress of the Central Government in having the bill passed, has issued directions for the welfare of sex workers. These directions include, among other things, the equal protection of the laws for sex workers, the right to immediate medical assistance under Section 357C of the Code of Criminal Procedure, 1973 in cases of sexual assault against a sex worker, and the right not to be punished if caught in a brothel during a police raid. These directions will operate until legislation giving effect to them is passed.

It is submitted that two things are extremely important if the sexual health and safety of sex workers are to be secured. First, there must be a clear mandate on how the issue of brothels is to be resolved. Whether it is resolved by the complete eradication of brothels or by their regulation, whichever approach the government adopts, it is time for prompt action. Secondly, all the bills and directions that are for the welfare of sex workers need to be enacted as legislation as soon as possible. It is about time that sex workers were allowed to live a dignified life.

⁵⁷ *Budhadev Karmaskar*, *supra* note 41.