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Sex Work: The Debate over its Status as a Profession

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ABSTRACT

The question of whether sex work should be recognized as a profession remains a deeply controversial issue in India and globally. Rooted in Indian society for centuries, sex work once enjoyed a degree of social integration and state support in ancient times. However, this perception shifted drastically during colonial rule and post-independence, leading to stigmatization and criminalization. Despite these challenges, sex work continues to exist as an undeniable economic reality, with uncountables depending on it for their survival.

This paper delves into the definition and core attributes of a profession, evaluating whether sex work aligns with these standards. It highlights the groundbreaking Indian Supreme Court judgment that acknowledged sex work as a profession under Article 21 of the Constitution, affirming the right to dignity and legal protection for sex workers. The discussion extends to international examples where sex work has been recognized as a profession, drawing valuable insights for shaping India's policy approach.

Recognizing sex work as a profession has the potential to usher in critical regulatory reforms. These reforms could promote safer working conditions, reduce societal stigma, and clearly differentiate between consensual sex work and trafficking. Such recognition would not only uphold the rights of sex workers but also contribute to broader societal goals, including the advancement of human rights, improved public health, and economic inclusivity.

I. INTRODUCTION

For those who have grown accustomed to living in the darkness yet managed to shine like, glitter, captivating those in light, the existence remains unrecognized. These individuals, often forced to exist on the fringes, continue fighting for dignity while society relegates them to those shadows, leaving them to live like scavengers without rights or respect. Films and series like *Umrao Jaan*, *Gangubai Kathiawadi*, and *Heeramandi* highlights the resilience and struggle of women in the sex work industry, offering a cultural perspective on a practice that though doused in both artistry and adversity, remains largely unrecognized and legally grey. These stories expose the paradox of a society that indirectly enjoys and demand this service yet hesitates to

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recognize it as a profession, instead labeling it as disgraceful. But recently, Supreme Court has emerged as beacon of hope by providing a ray of light in their yard; in its recent judgement of ***Budhadev Karmaskar v. State of West Bengal***,² Supreme Court held sex work equivalent to a profession by stating “*It need not be gainsaid that notwithstanding the profession, every individual in this country has a right to a dignified life under Article 21 of the Constitution of India.*”.

(A) What is sex work?

A term coined by Carol Leigh in 1980s, which refers to a range of sex related occupation. According to Oxford Dictionary, “*Sex Work*” means “*paid employment in the sex industry, comprising prostitution and pornography. The term is used to emphasize the commonality between work in this industry and other, more conventional occupations*” Simply, sex work can be defined as ‘when adults voluntarily engage in consensual sexual activities, in exchange of monetary favor or favors in kind’. This means it is not limited to any particular gender and ‘consent’ plays a very important role for practicing sex work. Sex work in this research paper is used in terms of prostitution, though both are same but “prostitution” is accompanied by moral and status based stigma- rather than the act of exchanging sexual favors for money or goods- that has defined the meaning of prostitution in many societies.

II. SEX WORK AN AGE OLD PRACTICE IN INDIA

Sex work and sex workers have always existed within the Indian social fabric.³ Early texts, such as the *Rigvede*, *Mirichhakatika*, *Kathasaritasagara* and *Kalavilasa* highlight various forms of relationships and societal practices involving sex workers. Additionally, foundational works like Kautilya’s *Arthashastra* and Vatsyayana’s *Kamasutra* provide detailed accounts of sexuality and the roles of women, indicating a nuanced understanding of companionship and sexual commerce.⁴ These texts further noted the practice of state sector employment and state funded education of such workers, along this sex-workers paid income tax and received pensions on retirement. Also, Temple dancers, courtesans, and monogamous concubines always existed in the society which was never considered immoral or illegal. In the ancient times sex-workers as professionals were part of mainstream society worthy of and deserving love and respect.

However, the arrival of British Colonial rule in the 16th century marked a drastic shift in the

² *Budhadev Karmaskar v State of West Bengal* (2011) 11 SCC 538.

³ Bhattacharji S, ‘Prostitution in Ancient India’ (1987) 15(2) *Social Scientist* 32, doi:10.2307/3520437

⁴ Bhattacharya S, ‘Prostitution in Ancient India’ (1988) 15(2) *Social Scientist* 32, doi:10.2307/3520437

perspective of sex work. Colonial narrative along with European missionary groups mostly portrayed the sex work and immoral and the workers as the carrier of the venereal diseases, which resulted in the widespread boycott, stigmatization and discrimination against sex workers. The Contagious Disease Act of 1864 institutionalized this view, requiring sex workers to register and undergo medical examinations in cantonment region, which facilitated state control over their bodies and resulted in severe discrimination.⁵ Although the act was eventually suspended and repealed but the stigma still persist. With passage of time, a legitimate vocation, sex work turned into a criminal activity accompanied with stigma and disgrace.

Post-independence, the Immoral Trafficking Prevention Act (ITPA), 1956 was passed which criminalized the framework of sex work and equated it with trafficking. The ITPA outlines a “rescue and rehabilitation” approach. It has a misguided conflation of sex work and sex trafficking. The “rescue and rehabilitation” approach makes certain assumptions relating to sex work: One, sex work is “immoral”; two, sex work is inherently “exploitative”. Accordingly, the approach entails legal restrictions on sex work, with procedures for rescuing and rehabilitating sex workers.⁶ The prevailing “victim approach” is central to the current legislation. Under this approach, sex workers are seen as individuals trapped in exploitation and in need of rescue and rehabilitation.⁷ By treating sex work as inherently immoral and exploitative, the law not only criminalizes associated activities but also perpetuates the stigmatization of sex workers.⁸

Even after have such a long social presence, and it is estimated that India has over 3 million commercial sex workers⁹ or having a population 657,829 as of 2016 according to UNAID ¹⁰, which is constantly on rise (if we go through several different resources the number is much larger); having lack of proper legal recognition as a profession plays a huge hurdle in their safe existence in the country. The recent judgement of *Budhadev Karmaskar v. State of West Bengal*,¹¹ by the Hon’ble SC has added fuel to the debate about the status of the work done by sex workers.

⁵Levine P, *Prostitution, Race and Politics: Policing Venereal Disease in the British Empire* (Routledge 2003); Dasgupta S, ‘Commercial Sex Work in Calcutta: Past and Present’ (2017) *Selling Sex in the City: A Global History of Prostitution, 1600s-2000s* (Brill 2018) 519-537, doi:10.1163/9789004346253_021.

⁶ Durbar Mahila Samanwaya Committee, ‘Theme Paper of the First National Conference of Sex Workers’ (Conference, Calcutta, 14-16 November 1997)

⁷ Reena Deepak, ‘Prostitution in India: A Legal and Social Analysis’, *GIBS Law Journal*, Vol. 6, No. 1, 2024, pp.43

⁸ Kaushiki Sanyal, ‘Immoral Traffic (Prevention) Bill Standing Committee Report Summary’, PRS Legislative Research, September 2008, pp. 2-3.

⁹ National aids Control Organization, Ministry of Health and Family Welfare, Government of India, available at: <http://naco.gov.in/>; last accessed 10 July 2017.

¹⁰ UNAIDS, *AIDS Data 2016* (UNAIDS 2016) <https://www.unaids.org/sites/default/files/media_asset/2016-AIDS-data_en.pdf> accessed 10 November 2024

¹¹ *Budhadev Karmaskar v State of West Bengal* 11 SCC 538

(A) Research Question

Whether Sex-work will be considered as a Profession or not?

(B) Definition of “profession”

The Supreme Court of India has defined “profession” as an occupation requiring intellectual skill, often coupled with manual skill.¹² In the case of *Sodan Singh v. New Delhi Municipal Committee*¹³, Supreme Court further stated that “*profession*” means “an occupation carried on by a person by virtue of his personal and specialised qualifications, training or skill.” And later SC expanded the scope by stating “*the words “profession, trade or calling” are very wide and include therein all activities wherein a person may usefully and/or gainfully engage himself;*”¹⁴

The term “profession” is used to denote a type of work or occupation that requires particular expertise and knowledge, which professionals attain by means of special education, training and practice. Professions are associated with occupations that develop more complex or advanced forms of knowledge bases, non-routine practices and conceptual or “white-collar” work.¹⁵ Professions frame the creation, valuation, and reproduction of knowledge. On the one hand, members of a profession together decide what kinds of knowledge are legitimate, valid and useful.¹⁶ The literature suggests several characteristics that encourage a perspective of the social process of learning and interaction: First, members of a profession collectively standardize and regulate knowledge exchange and services;¹⁷ second, professions are built on a commonly approved knowledge base;¹⁸ third, professionals are reinforced through training and education of a defined set of skills and competences;¹⁹ fourth, members of a profession share a common thought style and language ;²⁰ fifth, professions are linked to social status, power and

¹² Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735.

¹³ Sodan Singh v. New Delhi Municipal Committee, (1989) 4 SCC 155.

¹⁴ Shanti Devi v. Swami Ashanand, (2003) 2 SCC 26.

¹⁵ McDonald, M. (2000). Marketing planning. In K. J. Blois (Ed.), *The Oxford textbook of marketing* (pp. 454–472). Oxford, NY: Oxford University Press.

¹⁶ Fleck, L. (1935). *Entstehung und Entwicklung einer wissenschaftlichen Tatsache: Einführung in die Lehre vom Denkstil und Denkkollektiv* [Genesis and development of a scientific fact]. Basel: Benno Schwabe & Co.; Fleck, L. (1979). *Genesis and development of a scientific fact* (T. J. Trenn, F. Bradley, Eds., & T. J. Trenn, Trans.). Chicago, IL: University of Chicago Press. (Original work published 1935)

¹⁷ Freidson, E. (1994). *Professionalism reborn: Theory, prophecy and policy*. Cambridge: Polity Press.; Siebert, M., & Windrum, P. (2023). *The changing fortunes of the architectural profession in postwar Britain: Complexity, technological change, and the (re)construction of knowledge*.

¹⁸ Crompton, R. (1990). Professions in the current context. *Work, Employment and Society*, 4(5), 147–166. <https://doi.org/10.1177/0950017090004005008>

¹⁹ Winch, C. (2023). Qualifications as guarantees of proficiency: Do we understand their role? In J. Glückler, C. Winch, & A. M. Punstein (Eds.), *Professions and proficiency* (pp. 15–34). *Knowledge and Space: Vol. 18*. Cham: Springer. https://doi.org/10.1007/978-3-031-24910-5_2

²⁰ Supra 13 (Flenk); Punstein, A. M., & Glückler, J. (2020). In the mood for learning? How the thought collectives of designers and engineers co-create innovations. *Journal of Economic Geography*, 20, 543–570. <https://doi.org/10.1093/jeg/lbz019>

elite structure.^{21 22}

Additionally, Profession is defined by *Australian Council of Professions* as “A Profession is a disciplined group of individuals who adhere to ethical standards and who hold themselves out as, and are accepted by the public as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others. It is inherent in the definition of a Profession that a code of ethics governs the activities of each Profession. Such codes require behaviour and practice beyond the personal moral obligations of an individual. They define and demand high standards of behaviour in respect to the services provided to the public and in dealing with professional colleagues. Often these codes are enforced by the Profession and are acknowledged and accepted by the community.”²³

Thus, primarily, the professions are simply means of self-expression accompanied with specialized skills; not necessary but often regulated by an overseeing body to ensure high standard of conduct and service.

(C) Can sex work be equated to profession?

a. Sex work full-fills all the characteristics of being a profession

- i. Sex-work is an activity/ practice that require expertise, special knowledge and skill set.

While practicing sex-work, a person has to have the negotiation and communication skills which are fundamental to this profession; particularly during setting up of financial arrangements not limited to clients. There has to be a delicate balance between mutual needs and understanding for which one applies certain tactics, body language and intentional speech. Interaction with client requires clarity, which has to be both assertive and sensitive, catering to the variety of personalities and emotional states. Along this, the emotional intelligence and boundary setting are foundational to the activity. The sex-workers have to read through the clients to decipher their needs, create a safe

²¹ Adams, T. L. (2020). Professions. In G. Ritzer (Ed.), *The Blackwell encyclopedia of sociology*. Hoboken: John Wiley & Sons. <https://doi.org/10.1002/9781405165518.wbeosp103.pub2>; Eyal, G., & Pok, G. (2015). What is security expertise? From the sociology of professions to the analysis of networks of expertise. In T. V. Berling & C. Bueger (Eds.), *Security expertise* (pp. 37–59). Abingdon: Routledge. <https://doi.org/10.4324/9781315744797>; Supra 13 (Flank)

²² Johannes Glückler, Christopher Winch, and Anna Mateja Punstein (eds), *Professions and Proficiency* (Klaus Tschira Symposia Knowledge and Space, vol 18, Springer 2024).

²³Professions Australia, ‘What is a Professional?’ <<https://professions.org.au/what-is-a-professional>> accessed 2 January 2025.

space for clients to open up. In the process they ought to maintain the boundaries as interactions can change to deeply personal. This ability to establish boundaries is transferable to many other fields, helping individuals maintain professional standards and protect their personal well-being.

Thus, skills of negotiation, communication, boundary setting, emotional intelligence, adaptability and financial intelligence equip sex workers with various tools which effectively enhance their profession.

- ii. Making of advance form of knowledge base i.e. non routine practice, which is simultaneously collectively standardized and regulated. And a common thought of style and reinforcement of such practices

Sex work generates a rich and diverse knowledge pool that spans practical, social, cultural, theoretical and technological realms. In the practical aspects, it develops knowledge regarding health, safety, business, and client relations, essential for their independent practice. Socially, they create a supportive web of networks and adapt to dynamic cultural expectations, gaining insights into societal outlook. Theoretically, it informs studies on gender, sexuality and informal economies, simultaneously contributing to discussions on human rights and policy reforms. In technological aspects, with coming age of digitalization, online platforms have become new marketable place for sex work, with a wide scope for connecting with customers.

Furthermore, sex-work has made the society realize time and again about the human nature and different aspect of sexual pleasure. All these knowledge pool and practices are regulate or in simple language governed usually by the community networks made by the sex-workers themselves which is unique to each community, race, area and network.

- iii. Economic structure and market demand

Sex work just like other profession is based on the concept of demand and supply. In it a specialized service which is unique to this profession is provided to the desired clients suiting to his/ her needs.

- iv. The provisions of services for compensation

The services are provided in exchange of monetary benefits in exchange of money, kind, etc. depending upon the negotiation done between the sex-worker and client.

Therefore, when sex workers engage voluntarily and with consent, possessing specialized skills, collective standards, an organized economic structure, and provisions for compensation, it can rightfully be considered a profession.

(B) The long battle for the label of profession

The self-organization of prostitutes started in the United States in the early 1970s through the establishment of a prostitutes' rights organization in San Francisco named COYOTE ("Call Off Your Old Tired Ethics"). In the mid-1970s, prostitutes started becoming organized in other parts of the world as well, including France, Switzerland, UK, Germany, Italy, the Netherlands, Canada, Australia and Brazil.²⁴ In 1985, the prostitutes' rights organizations, Dutch Red and Pink Threads and the U.S COYOTE, organized an international congress called the World Whores' Congress, welcoming prostitutes from eight different countries. The Congress, held in Amsterdam, founded the International Committee for Prostitutes' Rights (ICPR), aimed at connecting sex worker's groups all over the world. The Congress drafted and adopted the World Charter for Prostitutes' Rights, deeming it to be a profession and calling among others, for the decriminalization of adult prostitution resulting from individual decision, for the prevention of stigmatization and discrimination against prostitutes, for support for the organization of prostitutes, and for the protection of the rights of prostitutes, including social benefits according to the same regulations as all other citizens.^{25 26}

The demand for profession was accompanied by the demand for decriminalization and legalization of sex work has since gained traction. Various stakeholders, including the National Commission for Women (NCW), have argued that legal reforms are essential to regulate the trade rather than criminalize it.²⁷ Furthermore, the UN Secretary-General addressed the criminalization of sex work in his 2016 report on the fast track to ending the AIDS epidemic. He expressed the view that the decriminalization of sex work could reduce violence, harassment and HIV risk and called upon States to remove punitive laws, policies and practices that violated human rights, including the criminalization of sex work.²⁸

The legal framework governing sex work in India is marked by ambiguity, which often leaves

²⁴ Pheterson G, *A Vindication of the Rights of Whores* (Seal Press 1989).

²⁵ *Ibid.*

²⁶ Venla Roth, 'Consent and Vulnerability in Prostitution and Trafficking for the Purpose of Sexual Exploitation: Debates and Definitions' in Venla Roth (ed), *Defining Human Trafficking and Identifying Its Victims* (Brill | Nijhoff 2012) 19-76.

²⁷ Kaushiki Sanyal, 'Immoral Traffic (Prevention) Bill Standing Committee Report Summary' (PRS Legislative Research, September 2008) 3-4.

²⁸ UNGA 'Report of the Secretary-General on the Work of the Organization' (26 April 2016) UN Doc A/70/811 and A/70/811/Corr.1, paras 53 and 75(f).

sex workers vulnerable to harassment and exploitation. The primary law, the Immoral Traffic (Prevention) Act (ITPA) of 1956, criminalizes various activities associated with sex work, such as solicitation and brothel-keeping, without prohibiting sex work itself. This creates a legal grey zone, where sex workers are viewed as victims needing rescue rather than individuals with agency and rights.²⁹ And the same outlook was followed by the Hon'ble Supreme Courts in several cases, for e.g. in the *Gaurav Jain v. UOI*,³⁰ SC stated “ Women found in the flesh trade should be viewed more as victims of adverse socio-economic circumstances rather than as offenders in our society.”; by all this the sex workers who were voluntarily involved in this work were also termed as victims and were forced to rehabilitate. Thus, further adding fuel to the fire of discrimination and stigmatization faced by these sex workers. But, a part of this has come a halt, in recent case of *Budhadev Karmaskar v. State of West Bengal*,³¹ Supreme Court held sex work equivalent to a profession. The *Budhadev Karmaskar v. State of West Bengal*³² case in 2011 marked a pivotal shift in the legal discourse surrounding sex work. The Court constituted a panel, chaired by Mr. Pradip Ghosh, which was tasked with providing recommendations on three key areas: preventing trafficking, rehabilitating sex workers who wished to leave the trade, and creating conditions conducive to those who wished to continue sex work with dignity. One of the most significant outcomes of the panel's work was its recommendation to amend the ITPA to recognize the legal status of sex workers and provide them with official identification documents, such as voter IDs, ration cards, and PAN cards. The panel further emphasized the need for amendments that would distinguish between consensual sex work and sex trafficking, as the current legal framework conflates the two, subjecting both sex workers and trafficking victims to criminal penalties.

Further, in *State of Karnataka vs. M.R Hiremath*,³³ the Karnataka HC has observed that prostitution is not illegal in India and adults have the right to engage in consensual sexual activities for commercial sexual activities for commercial purposes. And similar observation was of the Bombay HC in the *Kajal Mukesh Singh v. State of Maharashtra*³⁴ that there are no national anti-prostitution legislation. Only commercial sexual exploitation or abuse of a person is banned, save under some circumstances, such as when someone is caught soliciting or seducing another person.

In addition to this **Justice Verma Commission (2012-13)** had also acknowledged that there is

²⁹ Reena Deepak, 'Prostitution in India: A Legal and Social Analysis' (2024) 6(1) GIBS Law Journal 2-46.

³⁰ *Gaurav Jain v Union of India* (1997) 8 SCC 114.

³¹ *Budhadev Karmaskar v State of West Bengal* (2011) 11 SCC 538.

³² *ibid*

³³ *State of Karnataka v M.R. Hiremath* (2019) 7 SCC 515.

³⁴ *Kajal Mukesh Singh v State of Maharashtra* (Criminal Writ Petition No 6065 of 2019) (2020) Bom HC.

a distinction between women who are trafficked for commercial sexual exploitation and adult, consenting women who are in sex work of their own volition, and the same was held by the **Standing Committee on Human Resource Development** submitted its **182nd Report** on ‘The Immoral Traffic (Prevention) Amendment Bill, 2006’ on November 23, 2006.

Thus, sex work in India is regarded as profession and is legal per say but not the commercial aspect of sex work itself.

(C) Various Legal Frameworks across globe recognize sex work as profession

In countries like Netherland, Germany, New Zealand, Australia, Canada and Some states of USA i.e. Nevada and Maine, have either decriminalized it or legalized to some extent. A common factor in these regions is the recognition of sex work as a profession for regulatory purposes, which allows for legal oversight and contributes to safer, more regulated working conditions.

III. CONCLUSION

The recognition of sex-work as a profession by the Supreme Court is a positive step towards providing them a fair recognition as a citizen and visibility. The acknowledgement has opened a future prospect for establishment of safer, regulated work environments, where sex workers can operate with the same protection as those in other professionals. This also offers a distinction between voluntary and bonded sex-work, which assist the anti-trafficking laws in the country. This legal recognition also offers sex workers the right to report abuse, seek justice, and access support systems without fear of criminalization. Ultimately, this step is significant not only in improving the lives of sex workers but also in addressing broader societal issues of human rights, economic inclusion, and public health.
