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Open Access Law Journal, ISSN (O): 3049-0057

Editor-in-Chief – Prof. (Dr.) Amit Kashyap; Publisher – Reet Parihar

**Decriminalising Consensual Sex Work in India: A Constitutional and Human Rights Critique
of the Immoral Traffic (Prevention) Act, 1956**

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Published on: 3rd June 2025

Abstract

This article critically examines the Immoral Traffic (Prevention) Act, 1956 (ITPA), India's primary legislation addressing trafficking and commercial sexual exploitation. Using doctrinal and policy-oriented methodologies, it analyses statutory provisions, enforcement trends, judicial pronouncements, and India's international obligations. The research underscores the Act's punitive orientation, which often conflates trafficking with consensual adult sex work, thereby infringing upon constitutional guarantees under Articles 14, 19, and 21. Landmark cases such as Gaurav Jain v. Union of India and Budhadev Karmaskar v. State of W.B. reveal a slow transition from moralistic to rights-based interpretations. Comparative international models—including those in New Zealand, Sweden, and the Netherlands—highlight the need for a nuanced, human rights-compliant approach. The paper argues for a legislative shift away from criminalisation toward a victim-centric framework that affirms agency, labour rights, and a clear demarcation between trafficking and consensual sex work.

Keywords: ITPA, trafficking, sex work, constitutional rights, criminalisation, rehabilitation, human

rights, legal reform.

Introduction

Human trafficking remains one of the gravest violations of human rights. In India, the Immoral Traffic (Prevention) Act, 1956 (ITPA), initially enacted as the Suppression of Immoral Traffic in Women and Girls Act, 1956, serves as the principal legislation combating this issue.¹ Despite its original intent, the ITPA has come under significant scrutiny for criminalising adult consensual sex work alongside trafficking. This conflation undermines individual autonomy, economic rights, and constitutional freedoms under Articles 14, 19(1)(g), and 21.²

The insertion of Section 370 of the IPC in 2013 was a landmark in defining and addressing trafficking; however, the legislative and enforcement approach continues to reflect outdated moral values rather than a rights-based framework.³ This paper interrogates the ITPA's legal structure, critiques its punitive mechanisms, and proposes reforms in line with India's constitutional commitments and international obligations under the Palermo Protocol⁴ and CEDAW.

Historical and Legislative Evolution

India's anti-trafficking laws have colonial antecedents in the Cantonments Act, 1864, and the Contagious Diseases Act, 1868, which institutionalised control over women under the guise of public health.⁵ Post-independence, the SITA (1956) was enacted to align with the 1949 UN Convention.⁶ It was amended in 1986 as the ITPA, expanding its reach to all genders and introducing new provisions.

Despite these amendments, the law retained a punitive character. Sections 7 and 8 penalise solicitation and proximity to public places, while enforcement remains arbitrary.⁷ The judiciary's

¹ Immoral Traffic (Prevention) Act, No. 104 of 1956, INDIA CODE (1956).

² Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

³ Indian Penal Code, § 370 (as amended by Act No. 13 of 2013).

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov. 15, 2000, 2237 U.N.T.S. 319.

⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁶ Cantonments Act, No. 22 of 1864; Contagious Diseases Act, No. 14 of 1868.

⁷ U.N. Convention for the Suppression of the Traffic in Persons, Dec. 2, 1949, 96 U.N.T.S. 271. ITPA, §§ 7–8.

intervention in *Gaurav Jain*⁸ and *Budhadev Karmaskar* has aimed to balance morality with constitutional dignity, but enforcement practices still often lead to the custodial detention of sex workers without due process.

Legal Framework under the ITPA

The ITPA criminalises a wide range of activities surrounding sex work, including brothel-keeping (Section 3), living off the earnings of a prostitute (Section 4), procuring (Section 5), and solicitation (Section 8).⁹ Although prostitution per se is not criminalised, these peripheral offences create an environment where consensual sex work is effectively criminalised. Sections 13 and 17 empower police and magistrates to conduct raids and detain individuals in “protective homes.”¹⁰ However, such provisions lack procedural safeguards and are frequently misused. This framework contradicts the Constitution by violating the principles of equality, profession, and dignity.¹¹

Rehabilitation and Reintegration: Institutional vs. Rights-Based Approach

Section 17 of the ITPA provides for rehabilitation, yet it often results in institutionalisation rather than integration.¹² Central government schemes like Ujjawala and Swadhar Greh aim to support survivors but suffer from underfunding, inadequate oversight, and lack of survivor-led planning.¹³

Judgments such as *Prerana v. State of Maharashtra* have reiterated that confinement without due process violates Article 21.¹⁴ International norms under the Palermo Protocol and CEDAW stress survivor autonomy, informed consent, and access to legal remedies.¹⁵ A genuine shift toward community-based reintegration is imperative.

Comparative Jurisprudence and Global Models

International approaches vary widely:

- New Zealand: The Prostitution Reform Act, 2003 decriminalises sex work and regulates it like

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

⁹ ITPA, §§ 3–8.

¹⁰ *Id.*, §§ 13, 17.

¹¹ INDIA CONST. arts. 14, 19(1)(g), 21.

¹² ITPA, § 17.

¹³ Ujjawala Scheme, Ministry of Women and Child Development, Govt. of India.

¹⁴ *Prerana v. State of Maharashtra*, 2003 SCC OnLine Bom 547.

¹⁵ Palermo Protocol, *supra* note 4.

any other profession.¹⁶

- Sweden (Nordic Model): Criminalises the purchase but not the sale of sex, aiming to deter demand.¹⁷
- Netherlands: Adopts a regulatory model permitting sex work in licensed zones, ensuring access to labour protections.

These models reflect evolving understandings of sex work as labour, a perspective absent from India's legal framework.

Critical Evaluation and Recommendations

The ITPA's enforcement disproportionately targets marginalised communities—Dalits, Adivasis, transgender persons—often subjecting them to violence, incarceration, and stigma.¹⁸ Judicial pronouncements such as *Justice K.S. Puttaswamy v. Union of India*¹⁹ affirm privacy and autonomy as facets of life under Article 21, which the ITPA fails to uphold.

Recommendations:

1. **Decriminalise consensual adult sex work:** This involves removing criminal penalties associated with sex work, allowing adults to engage in sex work without fear of legal repercussions. By decriminalising consensual adult sex work, we can promote safety, health, and human rights for workers, leading to improved working conditions and greater access to services.
2. **Introduce statutory distinctions between trafficking and sex work:** It is essential to clearly differentiate between trafficking, which involves coercion and exploitation, and consensual sex work, which is entered into voluntarily. Establishing these distinctions legally will help prevent the conflation of the two, ensuring that sex workers are not unjustly criminalised while also providing protections for those who are victims of trafficking.
3. **Ensure due process and judicial oversight in all rescue and rehabilitation measures:** To protect the rights of individuals involved in sex work and trafficking, there must be a commitment to due process during any rescue or rehabilitation operations. This includes having judicial oversight to guarantee accountability, prevent abuse of power, and safeguard the rights of those

¹⁶ Prostitution Reform Act 2003 (N.Z.).

¹⁷ Swedish Penal Code, ch. 6, § 11 (amended 1999).

¹⁸ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹⁹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

being assisted.

4. **Establish survivor-led reintegration frameworks, backed by legislation:** Develop programs for individuals who have been affected by sex work, including survivors of trafficking, that prioritize their voices and experiences in the reintegration process. These frameworks should be supported by legal provisions that ensure access to necessary resources, services, and support systems for sustainable reintegration into society.

Conclusion

The ITPA, or Immoral Traffic (Prevention) Act, in its current form, presents significant incompatibilities with the constitutional guarantees established in India as well as with the international obligations related to human rights that India has committed to uphold. The ongoing enforcement of this act not only perpetuates a harmful stigma associated with sex work but also denies individuals their agency, leading to the systematic oppression and marginalisation of sex workers in society. Any legal reform must place a strong emphasis on the principles of autonomy, dignity, and protection for these individuals. This can be achieved by clearly distinguishing consensual sex work—a profession chosen by informed adult individuals—from trafficking, which is inherently exploitative. Decriminalising consensual sex work while imposing strict penalties on trafficking will be a vital step towards justice and human rights for all involved.

Furthermore, as the esteemed Dr. B.R. Ambedkar astutely noted, the advancement and progress of any society is measured by the status and treatment of its women. In light of this perspective, it is evident that until sex workers are recognised and treated as rights-bearing citizens, India's assertion of constitutional morality and commitment to human rights remains fundamentally incomplete and deeply flawed. The recognition of sex work as legitimate labour is not only a matter of legal reform but also a moral imperative that reflects the true values of dignity and respect for all citizens, regardless of their chosen profession.

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