

# Reforming Prostitution Laws in India: A Comparative Analysis with New Zealand

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## Abstract

This research critically analyzes the existing law related to prostitution mentioned under the Immoral Traffic (Prevention) Act, 1956 (ITPA), with its partial criminalization and problems such as police harassment, denial of health care access, and insufficient rehabilitation. By comparing with New Zealand's prostitution reform Act, 2003, research mentions how regulation and decriminalization enhance the sex workers' health, rights, and dignity. The research recommends policy reform in India by implementing New Zealand's best practice in employment contracts, zoning legislation, health standards, and voluntary rehabilitation under constitutional protection in Articles 14, 19, and 21. The research finds that a rights-based based.

**Keywords-** Decriminalization, Sex Workers' Rights, Immoral Traffic (Prevention) Act (ITPA), Prostitution Reform Act (New Zealand), Brothel Regulation.

## Prostitution System in India

Whenever we hear or talk about prostitution in India, most people declare it as immoral, whereas some people support it, citing Articles 19 and 21 of the Indian Constitution. Before going into the legality of prostitution, it is essential to understand what constitutes prostitution. Prostitution (i.e., voluntary exchange of sex for money) is partially legal in India. However, activities connected with work, like pimping, operating brothels, trafficking and soliciting in public are criminalized under (ITPA), 1956. A few provisions of the constitution also protect Sex workers' rights in India. Article 14, which gives them the right to equality, they should be treated the same as everyone. Article 19 allows them to choose their profession or work freely. Article 21 gives them the right to live with dignity and personal freedom. There were a few provisions of the IPC that criminalize buying or selling under Sections 372 & 373. "ITPA 1956, formerly known as the "Suppression of Immoral Traffic in Women and Children Act of 1956", is India's main anti-human trafficking law. Its enactment satisfied both the United Nations Convention for the Prevention of Traffic in Persons and the Exploitation of Others, which was ratified in 1950<sup>1</sup> and the constitutional requirement. The Immoral Traffic Prevention Act (ITPA) mentions human trafficking but only addresses "commercial sexual exploitation" or "prostitution".

Even though a specific piece of legislation only addresses prostitution, the ITPA falls short of what prostitution entails. Furthermore, the Act does not attempt to define Independent Sex Workers; rather, it focuses on identifying shady properties as the sites of such abuse and prosecuting those who participate. A "brothel", according to the ITPA, is a premises where prostitutes work to provide benefits a different person. The term brothel is far too broad to describe the environments in which this type of exploitation occurs, such as massage Parlors and hotel rooms.

**Section 4** punishes anyone "living off" a sex worker's income, which harms innocent dependents, including children. Section 8, which describes the penalties for encouraging prostitution through solicitation or enticement, is a clear indication of victimisation. Numerous investigations conducted throughout India have demonstrated that this section is being misused by police and authorities to hold victims liable here. Owners of massage parlours and pimps who are caught abusing women in well-known seedy areas of the city are rarely, if ever, brought to justice.

Section 20 empowers a judge to evict any woman or young woman involved in prostitution from her home or any other location under his jurisdiction. The High Court ruled in the case of *Kaushilya v. State*<sup>2</sup> According to Article 13(2) of the constitution, Section 20 of the SITA must be repealed, because it violates Article 14 and Clauses (d) and (e) of Article 19(1). Section 13 of the ITPA, the government must "appoint special officers to investigate violations of this Act". The most difficult challenge these women face is the atrocities of police, arrest, and detention. Focus should be on the rights of the victim rather than on increasing police risk<sup>3</sup>.

#### **Rescue and rehabilitation system under the Immoral Traffic (Prevention) Act (ITPA) -**

The rescue and rehabilitation system under the Immoral Traffic (Prevention) Act (ITPA) has several flaws. Victims often lack clear rights to rehabilitation or compensation and are sometimes placed in protective homes against their will. These shelters are frequently unsafe, underfunded, and poorly managed, with reports of abuse and lack of basic support. There is minimal access to education or vocational training, making reintegration difficult. Section 21 requires government licensing for such homes, but monitoring is weak. Courts can send convicted women to rehabilitation instead of prison, and children must be handled by the Child Welfare Committee. Key cases like *Gaurav Jain*<sup>4</sup> and *Vishal Jeet* stress the need for proper rehabilitation and protection for women and children rescued from prostitution.

#### **Different models of prostitution-**

There are various models relating to the prostitution system. Criminalisation model where all the activities related to prostitution are being punished. Legalisation model, where prostitution is being regulated by the state. Nordic model, where the demand for sex workers is being punished. In this there is a comparison between Indian partial criminalisation model is compared with the legal and regulated model of New Zealand.

#### **Prostitution System in New Zealand-**

The decriminalization model adopted by New Zealand is a progressive approach that seeks to eliminate the criminal penalties for sex work, therefore to increase the human rights, protection and dignity of sex workers. The Prostitution Reform Act, 2003 recognizes sex work as a legitimate work, thereby offering sex workers the same rights and protections as those in other professions. By decriminalizing prostitution, New Zealand aims to mitigate harm, enhance workplace conditions, and allow sex workers to access health care, legal protection, and support without risking prosecution.

Position of sex workers after decriminalization. Before the Prostitution Reform Act 2003, New Zealand prostitution was regulated by restrictive legislation, such as the Crimes Act 1961, where soliciting, brothel operating, and proceeds of sex work taken by others were criminalized.

These legal provisions inclined sex workers to exploitation, sexual venereal disease, and violence. There are major transformations that can be noticed in the condition of sex workers after the enactment of the PRA,2003, in terms of exploitation, violence.

Section 8 of the Act makes a health check-up compulsory for all sex workers. Although it faced lots of criticism that it created pressure to do health check-ups regularly, and sex workers faced stigma and humiliation by this process. But somehow, it is beneficial for sex workers because it provides access to health facilities that were previously restricted. Sex workers have the right to decline a client to give certain services under section 17. It is a crucial provision to provide a sense of protection, autonomy to sex workers. New Zealand provides major amendments in the entry and exit of sex workers; they made a proper policy for this <sup>5</sup>. it is now systematized. Previously any anyone can enter this field without any filter, now their entry is monitored by the local authority. Sex work is categorized as a trap; once a person gets caught in this, it is difficult to come out of this due to pressure of pimps, financial pressure, lack of other employment opportunity. Now, New Zealand has a policy for an exit. It is easier to exist now, no one can compel them to remain in the field. This ensures a safe environment. <sup>6</sup>

### **Brothel operator certificate**

It is compulsory to get a certificate from a brothel operator. Certain guidelines need to be fulfilled by operators, like health and safety guidelines, and sex service premise guidelines. It is valid only for one year. A person can be convicted or fined if a licence is not valid. The main purpose is to ensure the safety, well-being of workers, reduce corruption, and minimise the impact on the neighbourhood. Applicants need to follow a rigid procedure to get a licence. They need to make an application to the local authority. Provide them with personal information, identification, premises details, and comply with zoning requirements. There is a provision for monitoring and inspection at intervals. They need to fulfil other provisions, also like the Restricted Premises Act 1943 and the Environmental Planning and Assessment Act 1979 (EP&A Act). Surveillance over sex worker premises is no longer under the control of the police. So it minimizes the threat of police arrest and atrocity. they try to cover different segments related to sex work like commercial sex work, massage parlours, small commercial operators, and home businesses. There are other provisions also that control the location of sex work. The Local Government Act 2002 empowers local authorities to make regulations for the location and advertisement of sex work. Advertisements should not be deceptive or misleading. This control maintains the community's wellbeing, safety, and dignity of sex workers. The Resource Management Act 1991 gives authority to local governments to control the location of sex work<sup>7</sup>.

### **Employment contracts**

In New Zealand, there is a provision to make employment contracts between sex workers and brothel operators. It creates legal obligations on parties to Work according to legal provisions; it gives legal validity to sex work by creating a provision for an enforceable contract. The contract contains provisions for terms and conditions related to working hours, remuneration, health and safety, hygiene measures, and exit policy.

## **Applying New Zealand's provisions to India-**

### **1. Decriminalization of Sex Work**

India currently follows a pattern of partial criminalization in the Immoral Traffic (Prevention) Act, 1956 (ITPA), where sex work is not criminalized but ancillary activities such as brothel-keeping, soliciting, and pimping are criminalized. India can follow New Zealand's model by shifting towards full decriminalization of consenting adult sex work. This would eliminate legal doubts, discourage police harassment, and provide safety and rights to sex workers to work without fear of criminal prosecution.

PRA in New Zealand requires health and safety standards, such as mandatory access to check-up medical services under Section 8. In India, there is no official provision for the provision of routine medical services or STI prevention services to sex workers. By including similar health requirements, India can enhance public health and prevent the exclusion of sex workers from critical healthcare services.

## **2. Legal Recognition and Employment Contracts**

The PRA recognizes sex work as a proper occupation, thus permitting the state to provide formal employment contracts with protections like payment, working conditions, and the right to reject services (Section 17). Applying this in India would professionalize the sector and see sex workers accorded the same legal protection as employees in any other profession.

## **3. Brothel Operator Certification and Regulation**

New Zealand mandates that brothel operators be certified after they have been subjected to background screening and adherence to health and safety standards. India can establish the same kind of licensing mechanism such that brothel owners ensure the use of safe, clean, and non-exploitative surroundings. This will also aid in the identification and prosecution of real culprits instead of targeting sex workers directly.

## **4. Local Governance and Zoning**

Under New Zealand's Local Government Act 2002 and Resource Management Act 1991, local governments control the site and operation of brothels. India may learn from such a strategy by authorizing local governments to come up with zoning regulations enabling sex work in secure, specific zones, instead of summarily evicting sex workers or driving them into insecure environments.

## **5. Advertisement Regulation**

The PRA would allow sex workers to promote their services in a non-exploitative, truthful, and respectful manner to public standards. Presently, advertisement of sex work is illegal in India, and this compels communication into back channels. Reformed advertising, with transparent guidelines, would allow sex workers to safely meet clients without depending on agents who abuse them.

## **6. Support for Exit and Rehabilitation**

New Zealand facilitates voluntary sex work exit via mental health care, education, labour training, and housing assistance. India's ITPA rehabilitation shelters are, in contrast, poorly managed and coercive. A voluntary, rights-based support system would provide genuine alternatives to exiting sex work while maintaining their dignity and agency.

## **7. Constitutional Alignment and Human Rights**

Enacting these provisions would make India's legal strategy consistent with its constitutional obligations under Articles 14 (equality), 19 (liberty of profession), and 21 (right to life with dignity). Such a rights-based, decriminalized approach like New Zealand's PRA would enable Indian sex workers to work and live safely, with respect, and with access to justice.

## Conclusion

The contrast between New Zealand and India serves to emphasize the vast difference in legal responses to sex work. While India continues to have a partially criminalized framework under the ITPA, focusing on surrounding activities of sex work and most commonly resulting in police harassment and stigmatization, New Zealand has implemented a fully decriminalized, rights-based model under the PRA, 2003.

New Zealand's model provides rights to sex workers, access to health services, makes employment contracts enforceable, and guards against exploitation, securing their rights and dignity. India can implement some of the provisions of New Zealand. India can adopt some of the provisions of New Zealand. We have brothels and massage parlours and such places where sex work is happening, but the Immoral Traffic Act does not permit this, so after so many years, we are unable to stop these places. We can put a certificate system for brothels in place, an entry and exit policy, as well as sex service premises guidelines. If India extended such reforms, it could make the transition from a repressive to a protective regime, make its laws align with constitutional principles under Articles 14, 19, and 21, and greatly enhance the lives and security of sex workers nationwide.

## Bibliography

1. P. Mayhew & E. Mossman, *Exiting Prostitution: Models of Best Practice*, Ministry of Justice, New Zealand 2007.
2. Sex Services Premises Planning Advisory Panel, *Sex Services Premises: Planning Guidelines*, N.S.W. Department of Planning, Australia 2004.
3. Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, ed. Prostitution Law Review Committee, Ministry of Justice, New Zealand 2008.
4. United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271.
5. Immoral Traffic (Prevention) Act, No. 104 of 1956, India Code (1956).
6. Prostitution Reform Act 2003, 2003 S.N.Z. No. 28 (New Zealand).
7. A Critical Analysis of Immoral Traffic (Prevention) Act, 1956 with Special Reference to Criminal Amendment Act, 2013, *International Journal of Law Management and Humanities* (2021), <https://www.ijlmh.com/paper/a-critical-analysis-of-immoral-traffic-prevention-act-1956-with-special-reference-to-criminal-amendment-act-2013>.