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## "SUPREME COURT TAKES A STAND: LEGALIZING PROSTITUTION AMIDST AMBIGUOUS LAWS AND POLICE INTIMIDATION"

“An ambiguous law is a dangerous one because it allows for the concept to be misused, neglected or worse, weaponized.” These are the words of a famous human rights activist Aysha Taryam which underscores the need to draw attention to the historic judgement by the Supreme Court wherein prostitution as a profession is legalized. The ambiguous statutes, varying jurisdictions, and Police Intimidation along with social stigma have resulted in the vulnerable position of sex workers in society. This long-awaited Historical judgment by the Supreme Court though heartily welcomed is yet to move out of the on-paper direction and make an impact in the real world. This blog deals with the legalization of prostitution by the Supreme Court and the intricacies of the ambiguities pertaining to the profession of prostitution, the marginalization of sex workers due to lack of human rights, and unfair police intimidation.

### The Historic judgment-

The Supreme Court in the case of *Budhadev Karmaskar vs Union of India*<sup>1</sup> observed that basic protection and human dignity also extends to sex workers and their children who are moved to the fringes of society due to social stigma attached to their work. The apex court while concluding its judgment brought to the notice of everyone present that the societal stigma attached to the life of social workers is not concealed which further puts them in a vulnerable state and they require all the protection possible. The Supreme called upon the legal agencies to be more sensitive towards the sex workers. In furtherance, SC gave directions regarding raids at brothels and how the behavior of police dealing with such situations should be schooled.

### Laws pertaining to the profession of prostitution and others-

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<sup>1</sup> *Budhadev Karmaskar vs Union of India* ( 2011) 11 SCC.

The profession of prostitution is mainly regulated by the provisions given under the Immoral Traffic (Prevention Act) of 1956 but certain provisions in other legislations such as the Indian Penal Code, of 1860 also regulate some acts and conducts of the sex workers. While the act on the one hand legalizes the prostitution industry as a whole but criminalizes public soliciting, pimping, living on earnings of prostitution, and keeping brothels. Section 3 of the ITPA criminalizes the keeping of brothels and provides for a punishment of not less than 2 years. Whereas, Section 4 provides for punishment for living on the earnings of prostitution and Section 8 of the act criminalizes public soliciting. The combined reading of all the sections together has resulted in ambiguous laws that are open for ambiguous interpretation.

The ITPA act criminalizes public soliciting and seduction in public places but the vicinity it mentions is vague and subjective and can be manipulated and misused at the whims of the people concerned. Section 8 of the act which punishes the keeping of the brothel poses as a gray area of law because the place for conducting the profession of prostitution remains unclear.

There are other provisions in the Indian Penal Code, of 1860 whose interpretation and usage have been seen to be against the rights of sex workers. The legal authorities have many times misinterpreted and misused Section 268 of The Indian Penal Code of 1860 which talks about public nuisance, the authorities intimidate the sex workers by threatening them accordingly. The police often blame gross negligence on the sex workers under Section 269 which deals with “negligence”.

These laws with ambiguous and multiple interpretations have further resulted in the marginalization of the sex workers.

### Legal Ambiguity as site of power<sup>2</sup>-

The people in authority especially the police have long used the lack of clarity and unawareness of the laws and regulations of the sex workers to exert their influence on them. The Hon’ble Court has noticed in its judgment that the behaviour of police towards the sex workers is unpleasant, both brutal and violent. . Highlighting the atrocities faced by the sex workers at the hands of the police the Supreme Court order states: “Police should treat all sex workers with dignity and should not abuse them, both verbally and physically,

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<sup>2</sup> Fassi Marisa, Legal ambiguity as a site of power and resistance: sex work and the police, <https://cyberleninka.ru/article/n/legal-ambiguity-as-a-site-of-power-and-resistance-sex-work-and-the-police-inco-rdoba-argentina>.

subject them to violence or coerce them into any sexual activity.”<sup>3</sup> It is often observed that the police use unreasonable force and harass the sex workers during their raids of the brothel.

The varying and inconsistent interpretation of the law which is at the disposal of the police has further led to the exploitation of the sex workers in the legal arena. In many instances, it has been noted that the profession of sex workers has been used against them by the police. Most of the sex workers are uneducated and are unaware of the basic legal terminologies and legal process, which aids to the advantage of the police in intimidating them at their whims. The interpretation of laws regarding voluntary and involuntary sexual practices as a profession under the Immoral Traffic (Prevention) Act, of 1956 has exposed sex workers to the violation at the expense of police. The police have continuously targeted sex workers to harass and intimidate them in public under the threat of registering cases under ITPA.<sup>4</sup> Section 15 of the said act empowers the police to search without a warrant which further adds to their undue influence on the sex workers.

The other legislations that are open to a multitude of interpretations have led to what seems like an inconsistent paradigm as far as legal proceedings are considered. Due to severe police intimidation and their unpleasant and at times unlawful behavior towards them, the sex workers refrain from approaching the police to file any complaints.

### Conclusion-

The historic judgment of the Supreme Court though recognizes the rights of sex workers and their children but we are still a long way from the practical implementation of this legal recognition. The ambiguous laws and intimidation by the legal authorities accompanied by the unawareness and illiteracy of the sex workers are a few of the hurdles in achieving the goals set by the Supreme Court.

The reform of intimidating laws, addressing the ambiguities in the laws, spreading awareness in the sex workers, and educating them about their legal rights will help in uplifting the societal status of the sex workers. The Supreme Court's directives to sensitize the legal authorities and school the police force about their behavior toward sex workers need to be urgently incorporated. In conclusion, there are still significant strides remaining to ensure sex workers their basic human and legal rights.

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<sup>3</sup> Supra 1

<sup>4</sup> Mohammed Afeef, Making a case for decriminalising sex work for the right to live with dignity, <https://theleaflet.in/making-a-case-for-decriminalising-sex-work-for-the-right-to-live-with-dignity/#:~:text=every%20sex%20worker,-.Street%2Dbased%20sex%20workers%20have%20been%20continuously%20targeted%2C%20detained%20and,registering%20cases%20under%20the%20ITPA.>