



Foreword by:

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From Gendered Morality to Constitutional Promise:

A Legal Re-Examination of ITPA 1956 and
IRWA 1986 for Contemporary India

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Foreword

The regulation of trafficking, and gender representation in India lies at the uneasy intersection of constitutional promise and moral governance. While the Constitution of India guarantees dignity, equality, autonomy, and freedom of expression, the statutory frameworks governing trafficking and representation often continue to operate within older paradigms shaped by paternalism, morality, and control. This report offers a timely and rigorous examination of that dissonance.

Focusing on the Immoral Traffic (Prevention) Act, 1956 and the Indecent Representation of Women (Prohibition) Act, 1986, the study undertakes a careful doctrinal and judicial analysis of how these laws operate in contemporary India. It interrogates whether their interpretation and enforcement align with the transformative vision embodied in Articles 14, 15, 19, and 21 of the Constitution, or whether structural ambiguities and enforcement practices inadvertently undermine constitutional guarantees.

One of the notable strengths of this report is its nuanced engagement with the distinction between trafficking and consensual adult sex work. The analysis demonstrates how blurred statutory definitions, expansive enforcement powers, and a predominantly rescue-and-rehabilitation framework can lead to outcomes that compromise autonomy and dignity rather than protect them. By situating these concerns within the broader trajectory of constitutional jurisprudence—particularly the expanding recognition of privacy, decisional autonomy, and substantive equality—the report invites a principled rethinking of existing regulatory approaches.

Equally compelling is its examination of the legal framework governing representation in an era of digital transformation. The Indecent Representation of Women (Prohibition) Act, originally framed in the context of print and broadcast media, is critically assessed against the realities of algorithm-driven platforms, intermediary liability regimes, and fragmented regulatory oversight. The continued reliance on vague and morality-infused terminology such as “indecent” or “derogatory” is shown to generate uncertainty, selective enforcement, and potential chilling effects on freedom of expression. The study persuasively advocates clarity, proportionality, and harm-based standards that are consistent with constitutional principles.

Importantly, the report foregrounds the exclusionary consequences of existing legal frameworks for transgender persons and sexual minorities, even in the wake of progressive judicial pronouncements affirming gender identity and dignity. By highlighting the disconnect between constitutional jurisprudence and statutory reform, it contributes meaningfully to contemporary discussions on inclusivity and intersectional justice.

Another significant contribution of this work is its comparative and forward-looking perspective. By engaging with international instruments and evolving global practices, the report situates Indian law within a broader normative framework. It calls for harmonisation of overlapping legal regimes, gender-inclusive drafting, survivor-centric approaches, and a shift from morality-based control towards rights-based protection.

What distinguishes this study is its insistence on constitutional coherence. Rather than treating trafficking, representation, and digital regulation as isolated domains, it examines them as interconnected sites where state power and individual rights intersect. At a time when questions of gender justice, digital governance, and personal liberty occupy the forefront of public discourse, this report provides both scholarly insight and policy direction. It is hoped that its reflections will inform legislative reform, judicial engagement, and academic dialogue, and contribute to the evolution of a legal framework that truly upholds dignity, equality, and substantive justice.

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February 16, 2026



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Executive Summary

India's constitutional and legal landscape is replete with provisions for gender justice. Of these, the decades-old legal architecture on trafficking and gender representation in media are especially getting challenged with the evolving societal aspirations, jurisprudential principles, and technological advancements. Re-examining these laws to align them with contemporary realities, thus, becomes vital. This report undertakes a comprehensive legal analysis of the anti-trafficking and gender representation architecture under Indian law, with a primary focus on the Immoral Traffic (Prevention) Act, 1956 (ITPA) and the Indecent Representation of Women (Prohibition) Act, 1986 (IRWA). Anchored in constitutional principles of equality, dignity, autonomy, and freedom from exploitation, the study evaluates whether India's statutory and institutional responses adequately address the gendered and intersectional realities of trafficking and representation in contemporary society.

The analysis reveals a persistent disconnect between constitutional guarantees under Articles 14, 15, 19, 21, and 23 and their statutory implementation. While constitutional jurisprudence has progressively expanded notions of personal liberty, decisional autonomy, and dignity, both the ITPA and IRWA continue to operate within morality-driven and paternalistic legal frameworks. The ITPA, in particular, fails to clearly distinguish between trafficking and consensual adult sex work, resulting in the indirect criminalization of sex workers and the re-victimization of survivors through coercive rescue operations, arbitrary raids, and compulsory institutional detention. Such practices undermine autonomy, privacy, and due process, thereby contravening constitutional mandates.

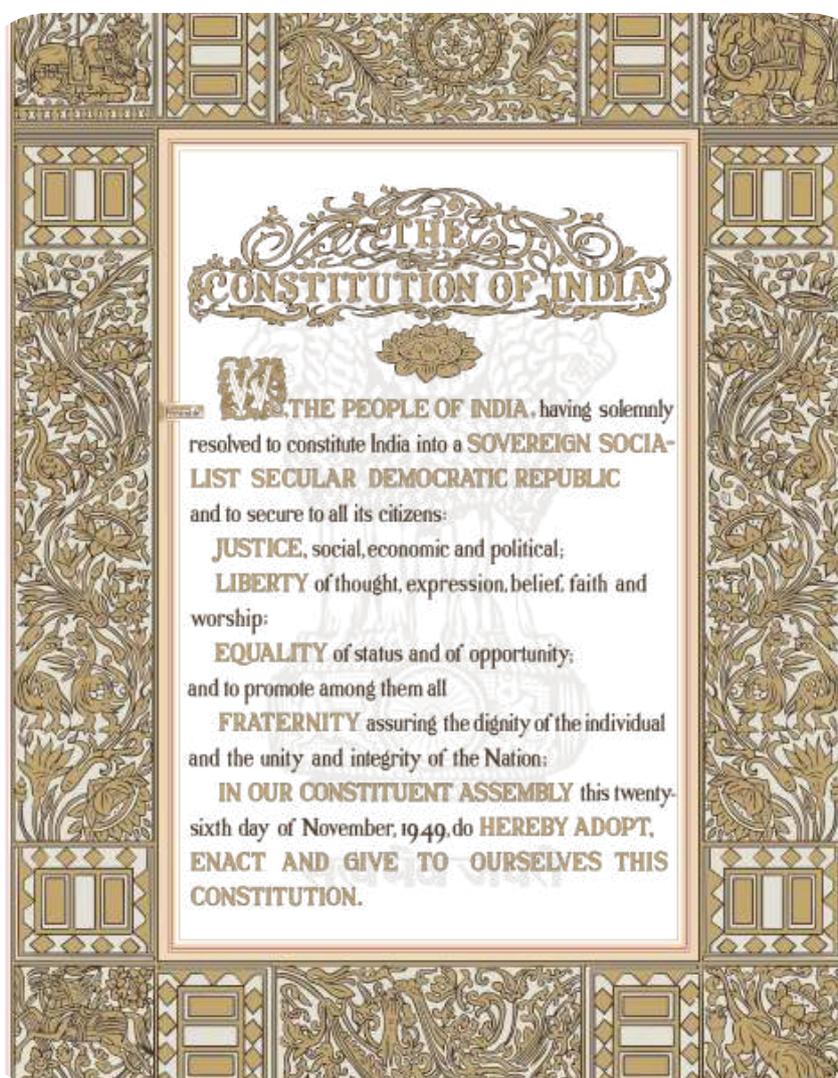
The report further highlights the gender-exclusionary nature of India's anti-trafficking framework. Despite judicial recognition of transgender rights, the statutory provisions remain largely women-centric, rendering transgender persons, gay men, and other LGBTQIA+ individuals invisible and vulnerable to discriminatory enforcement. Fragmentation and overlap among multiple statutes, such as the ITPA, Bharatiya Nyaya Sanhita (BNS), and the Information Technology Act (IT Act), further exacerbate inconsistencies in definitions, enforcement standards, and survivor protection.



In relation to gender representation, the IRWA is found to be outdated, vague, and ill-equipped to address contemporary digital and algorithm-driven media ecosystems.

Its reliance on undefined notions of “indecenty” enables moral policing, arbitrary censorship, and chilling effects on free speech, while failing to adopt a harm-based or consent-sensitive approach.

The report concludes by emphasizing the urgent need for comprehensive legal reform. It advocates a survivor-centric, gender-inclusive, and rights-based framework that clearly differentiates trafficking from consensual activity, harmonizes overlapping laws, incorporates digital realities, and aligns domestic legislation with constitutional values and international standards such as the Palermo Protocol and CEDAW.



Introduction

In India, gender and trafficking are so intertwined that neither can be examined meaningfully in isolation. While the common perception is that trafficking predominantly affects only women and children, the reality is far more complex and intersectional. Trafficking impacts people across vulnerable genders and sexual orientations within society, including women, transgender persons, intersex persons, gay men, and, more broadly, the entire LGBTQIA+ community, who face heightened and distinct risks of exploitation. It remains a serious and ongoing problem in India despite constitutional protections and multiple laws addressing it.

India functions as a source, transit, and destination country for trafficking for purposes such as sexual exploitation, forced labor, domestic servitude, forced marriage, and begging (U.S. Department of State, 2013). Official statistics and independent human rights reports have consistently indicated widespread underreporting, weak enforcement mechanisms, and low conviction rates, highlighting a significant gap between legal provisions and their practical implementation.

This report examines issues of trafficking and representation from a gender perspective within India's constitutional framework and statutory regime. It analyses principles of equality, dignity, autonomy, and protection against exploitation under the Constitution, with particular focus on the Immoral Traffic (Prevention) Act, 1956, the Bharatiya Nyaya Sanhita, 2023, the Indecent Representation of Women (Prohibition) Act, and other relevant legislations such as Information Technology Act and the the Protection of Children from Sexual Offences Act, 2012 (POCSO).



Gender versus Sexual Orientation

For this, certain aspects must be clarified first. Gender refers to the socially constructed roles, identities, and expectations associated with women, men, girls, and boys (World Health Organization, n.d.).

Sexual orientation, by contrast, denotes an individual's inherent and enduring emotional, romantic, or sexual attraction to others (Human Rights Campaign, n.d.). This distinction is relevant to the present analysis because Indian anti-trafficking and representation laws, including the Immoral Traffic (Prevention) Act, 1956, and the Indecent Representation of Women (Prohibition) Act, 1986, are largely framed around a binary and women-centric understanding of harm. Such an approach overlooks the specific vulnerabilities faced by sexual minorities, including transgender persons and gay men, who are also subject to trafficking, sexual exploitation, and abusive enforcement practices. Clarifying the conceptual difference between gender and sexual orientation, therefore, enables a more inclusive analysis of how existing legal frameworks inadequately recognise, protect, and represent individuals whose experiences of trafficking fall outside traditional, cisgender assumptions, resulting in significantly weaker legal and institutional safeguards for these communities compared to those available to women.

Trafficking is Not Sex Work

It is also important not to misunderstand trafficking as sex work. Sex work, per se, is not illegal in India; however, trafficking predominantly occurs when individuals are forced, deceived, or coerced into sex work without their free and informed consent. While consensual engagement in sex work is not illegal, related activities such as brothel keeping, soliciting, pimping, and human trafficking are heavily criminalized under the Immoral Traffic (Prevention) Act, 1956.





This legal framework creates a paradoxical situation where sex workers are denied comprehensive legal rights and protections, despite several Supreme Court rulings recognizing their dignity and profession, often pushing them into unsafe, informal, and exploitative conditions.

Moreover, the Constitution of India is explicit about preventing human trafficking and exploitation. The right against exploitation is primarily enshrined in Articles 23 and 24 of the Constitution, which are enforceable against both the State and private individuals. This study will also examine Article 23 in conjunction with Articles 14, 15, and 21 to assess the scope of the State's constitutional obligation to prevent exploitation. It will analyze how these provisions collectively ensure dignity, equality, and protection against coercive and exploitative practices.

Renewed Relevance of IRWA 1986 in the Digital Age

Another aspect is that indecent representation of women remains a critical legal concern in contemporary India, particularly in the age of digital media, social networking platforms, online advertising, and algorithm-driven content dissemination.



The objectification and sexualization of women through visual, textual, and audio representations not only perpetuate harmful gender stereotypes but also normalize exploitation and gender-based violence. The Indecent Representation of Women (Prohibition) Act, 1986, assumes renewed relevance in this context, raising important questions about dignity, consent, freedom of expression, and the adequacy of existing legal responses to evolving forms of representation.

The research seeks to identify gaps such as fragmented laws, criminalization of victims, gender bias, and inadequate survivor representation within the legal system. These gaps also extend to governance failures, including weak institutional coordination, inadequate rehabilitation and reintegration frameworks, lack of accountability among enforcement agencies, insufficient training of stakeholders, and poor implementation of welfare-oriented schemes. The study aims to highlight the need for a survivor-centric and gender-sensitive legal approach.



The research is limited to Indian law, with reference to international instruments, and involves doctrinal and judicial analysis. It examines trafficking laws, their gendered dimensions, survivor representation, and judicial and legislative gaps, with primary focus on the Immoral Traffic (Prevention) Act, 1956, and the Indecent Representation of Women (Prohibition) Act, 1986, in conjunction with other relevant constitutional and statutory provisions.

Methodology

This research will employ a doctrinal methodology, analyzing statutory provisions, judicial decisions, and authoritative national and international reports to provide a systematic understanding of existing legal principles and their application.

The Indian EXPRESS

Human trafficking survivors press for new legislation for better victim rehab

ThePrint

IT Act toothless against deepfakes? NCW seeks review of laggard laws as women face more AI-driven abuse



THE TIMES OF INDIA

Goa shipping company director held at Mumbai airport in human trafficking racket case

The Guardian

'The chilling effect': how fear of 'nudify' apps and AI deepfakes is keeping Indian women off the internet

THE HINDU

Women abused, shamed, and silenced online by technology-facilitated gender-based violence, says report

The New York Times

Musk's Chatbot Flooded X With Millions of Sexualized Images in Days, New Estimates Show



Chapter 1

The Trafficking Challenge:

From Morality-Driven Paternalistic Framework to Rights-Based Architecture

Human trafficking is interlinked with sexual exploitation. It is a grave violation of human dignity and bodily autonomy, which adversely affects women, children, and segments of other marginalized communities, such as the LGBTQIA+ community, in India. Despite various constitutional safeguards provided under Articles 14, 15, 19, and 21, the lived reality of trafficked persons continues to reveal systemic failures in legal protection, recognition, and enforcement.

The Immoral Traffic (Prevention) Act of 1956 (ITPA) is the most significant legislation addressing human trafficking for sexual exploitation. Its stated objective is to address the domestic concerns relating to prostitution and exploitation, and to fulfil India's international obligation under the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, to which India is a signatory.

This chapter critically examines the legal framework governing trafficking and sexual exploitation in India, with a primary focus on the ITPA. It places the Act within the broader constitutional, statutory, and judicial landscape, while assessing its compatibility with principles of gender justice, autonomy, dignity, and human rights.

The chapter argues that while the ITPA is intended to protect victims, its moralistic orientation and flawed structural design often result in the criminalization and re-victimization of those it seeks to protect, thereby undermining the guarantee of constitutional rights.



The Immoral Traffic (Prevention) Act, 1956, has historical roots in the Suppression of Immoral Traffic in Women and Girls Act (SITA) passed in light of India's obligation under the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949. This Act was amended in 1986 and renamed the ITPA, although its underlying philosophy largely remained unchanged.



Flawed Structural Design

Within the framework of anti-protectionism and anti-abolitionism, the immorality of prostitution has been constructed as inherently exploitative. However, the Act itself focuses on the perceived immorality of sexual commerce. It fails to distinguish adequately between trafficking for forced prostitution and consensual sex work, often resulting in carceral protectionism of the sex workers.

Further, the Act also reflects colonial-era concerns for public morals and femininity, where women are constructed as passive victims in need of rescue and reform by the state.



Feminist scholars have critiqued this approach for reinforcing patriarchal notions of morality, while neglecting structural factors such as poverty, caste hierarchies, and gender discrimination, which significantly contribute to vulnerability (Kotiswaran, 2011).

ITPA criminalizes several activities related to prostitution but does not criminalize the act of prostitution itself. Its key provisions include Sections 3, which criminalizes the maintenance or management of a brothel; Section 4, which criminalizes living on the earnings of prostitution; Section 5, which criminalizes the act of procuring, enticing, or taking any person with the intention of committing prostitution; and Section 8, which criminalizes solicitations in public places. These provisions, when read together, reveal that although the ITPA does not criminalize prostitution per se, its enforcement framework effectively penalizes the everyday conditions necessary for sex workers to exist, thereby disproportionately targeting sex workers rather than traffickers or exploiters. Apart from that, the ITPA prioritizes moral regulation over victim-centric protection, blurring the line between consensual sex work and trafficking, and failing to dismantle exploitative systems effectively.

Definitional and Rights-Based Deficiencies

A significant lacuna in the ITPA lies in the absence of a comprehensive and survivor-centric definition for trafficking. Unlike the Palermo Protocol, a protocol to the UN Convention against Transnational Organized Crime that defines human trafficking and obligates states to prevent trafficking, protect victims, and prosecute traffickers, the Act fails to incorporate elements such as coercion, deception, abuse of power, or vulnerability. As a result, the Act fails to ensure a clear distinction between trafficking and consensual adult sex work.

The Act further fails to engage with questions of consent, agency, and autonomy, especially with respect to adult women.



The concept of consent is often rendered legally irrelevant, reinforcing paternalistic assumptions that all persons in prostitution are victims who lack agency or free will. This position stands in conflict with constitutional jurisprudence on personal liberty, decisional autonomy, and bodily integrity under Article 21 (*K.S. Puttaswamy v. Union of India, 2017*).

Moreover, the ITPA does not protect the rights of transgender persons and sexual minorities, who are more vulnerable to trafficking, violence, and exploitation. This omission persists despite constitutional recognition of the transgender community's rights in the *National Legal Services Authority v. Union of India (2014)*. In the absence of specific statutory protection, trafficking cases related to such minorities are dealt with under the Bharatiya Nyaya Sanhita on a general basis.



Operational Distortions in Anti-Trafficking Enforcement

The ITPA 1956 grants wide and discretionary powers to police officers to conduct searches, rescues, and raids with little regard for proper procedural safeguards, which include strict adherence to due process requirements such as prior judicial authorization, the presence of independent witnesses, protection against arbitrary detention, informed consent during rescues, and access to legal representation and rehabilitation mechanisms.



The Magistrates are further empowered under Sections 16 and 17 to order the detention of the rescued individuals in protective and corrective homes, where “correction” and “rehabilitation” are imposed as compulsory and institutional measures, with little regard for the ‘preferential consent and liberty’ or ‘personal choice’ of the victims. Involuntary detention in protective homes constitutes a serious deprivation of personal liberty under Article 21 and has been widely criticized as unconstitutional. While the judiciary emphasized rehabilitation in the *Gaurav Jain vs. Union of India (1997)* case, it failed to interrogate the coercive and punitive nature of compulsory rehabilitation, which often resembles incarceration.

In *Budhadev Karmaskar v. State of West Bengal (2011)*, the judiciary has also acknowledged the inherent tension between the legislative intent of trafficking prevention and the enforcement practices that end up criminalizing sex workers rather than dismantling trafficking networks. Arbitrary raids, moral policing, and broad discretionary powers exercised without accountability frequently characterize the enforcement of ITPA. The police raids are often conducted based on vague intelligence or sources and result in the detention of consenting adults, while trafficking perpetrators evade prosecution. The empirical evidence suggests selective and discriminatory policing with a disproportionate focus on street-based sex workers rather than organized trafficking networks (Jaising, 2016).

Further, institutional coordination between the police, child welfare committees, and rehabilitation authorities remains weak. Surveillance practices are poorly regulated, leading to infringement of privacy and dignity. The lack of sensitization of enforcement agents exacerbates the stigma and mistrust, undermining effective prevention and prosecution. Judicial oversight is often minimal, with magistrates routinely authorizing institutional detention without meaningful inquiry into consent or less restrictive alternatives.



The ITPA is also frequently misused to harass and control consenting adults under the guise of rescue and rehabilitation. Sections 7 and 8 of the Act are deployed to criminalize the act of soliciting in public places, especially targeting marginalized women and transgender persons.

The negative effects of the framework and implementation of the ITPA regime disproportionately affect survivors and sex workers. The autonomy and dignity of survivors are violated through paternalistic intervention that disregards their agency and lived realities. Sex workers experience criminalization, exclusion, and lack of economic security, further increasing their vulnerability. Women from marginalized communities, such as Dalit and Adivasi women, are adversely affected because of intersecting forms of discrimination. Transgender persons are subjected to violence and exclusion with minimal recourse to justice. The resulting mistrust in the criminal justice system hampers reporting and community engagement, thus weakening efforts against trafficking and gender injustice.



Multiplicity of Statutes, Judicial Oscillations, Enforcement Incoherence

Another aspect is that the ITPA also has some overlap with the trafficking provisions under the Bharatiya Nyaya Sanhita, 2023, which adopts broader definitions of force, exploitation, and abuse of vulnerability. Statutes such as the Protection of Children from Sexual Offences Act, 2012 (POCSO) adopts a more survivor-centric and rights-based approach to child trafficking.



The coexistence of multiple overlapping regimes has resulted in inconsistencies in definitions, enforcement standards, and confusion in the treatment of victims.

The judiciary's interpretation of the ITPA has also oscillated between a rights-based and a moralistic approach. In the case of *Budhadev Karmaskar vs. The State of West Bengal (2011)*, the Supreme Court recognized the dignity and right to livelihood of sex workers. The High Courts have also begun questioning the arbitrary arrests and improper application of the Act. The Bombay High Court in the case of *Kajol Mukesh Singh vs. State of Maharashtra (2021)* reiterated that forced arrest and detention in rehabilitation homes cannot be carried out against adult consensual sex workers. The judiciary's evolving dialogue thus reflects the tension between protection and autonomy in India's anti-trafficking framework.

Learning from Global Best Practices

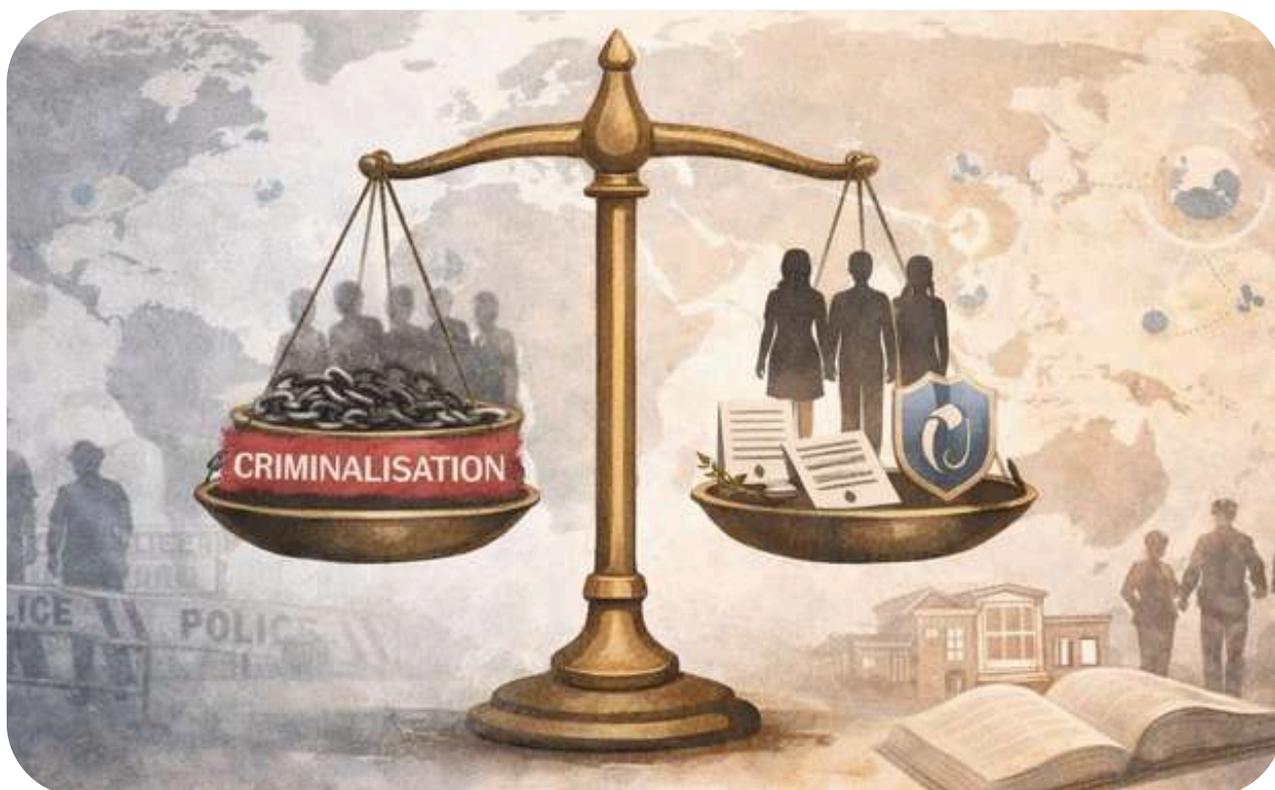
There is a pressing need to reform India's anti-trafficking framework by adopting a comprehensive, survivor-centric, and rights-based approach that distinguishes clearly between trafficking and consensual sex work. Global legal frameworks such as the Palermo Protocol, New Zealand's Prostitution Reform Act, 2003, Germany's Prostitution Act, 2002, and the Council of Europe Convention on Trafficking, 2005, demonstrate that a clear distinction between trafficking and consensual sex work, non-criminalization of victims, strong procedural safeguards, and the regulation of exploiters are more effective than morality-based criminalization.

These models highlight the urgent need to reform the ITPA towards a rights-based, victim-centric approach focused on dismantling exploitation rather than penalizing sex workers.



Hence, legal reform must decriminalize victims, recognize agency and consent, and adopt a gender-inclusive framework aligned with constitutional values and international standards. Administrative measures such as police sensitization, judicial training, effective monitoring of rehabilitation homes, and improved inter-agency coordination are essential.

And most importantly, a shift from moralistic control to rights-based protection is necessary to ensure that the law serves as an instrument of gender justice rather than perpetuating control and exclusion.



Chapter 2

The Indecent

Representation Challenge:

Dignity, Morality, Free Expression & Gender Justice

The question of gender representation lies at the intersection of constitutional rights and liberties, social morality, freedom of expression, and gender equity. In India, the judicial and legislative approach towards the offensive depiction of women has traditionally been anchored in the Indecent Representation of Women (Prohibition) Act, 1986 (IRWA). It is the primary statutory framework that addresses the issue of indecent representation of women. It was introduced against the backdrop of the increasing commoditization of women's bodies in print and pictorial advertising. The IRWA sought to restrict the representations of women that undermine their dignity and reinforce harmful stereotypes. However, the evolving nature of the media landscape from print to broadcasting and now to digital and algorithm-driven platforms has made the regulatory framework largely outdated and not well-equipped to address contemporary forms of representation.

This chapter critically evaluates the IRWA, while intersecting it with other related legislations governing cybercrime and related offences. It is further contended that, in a pluralistic and digital society, the existing legal framework struggles to strike a balance between the goal of preserving dignity and the right to free speech. (Menon, 2019; Bhatia, 2021).



The IRWA was enacted as a response to pressure from women’s organizations following the rise of sexist advertisements and publications during the 1970s and 1980s (NCW, 1996). The Statement of Objects and Reasons of the Act clearly reflects the legislative intent to restrict representations of women ‘in a manner that is derogatory, denigrating, or likely to corrupt public morality’. Section 2(c) under the Act defines “indecent representation of women” as the depiction of the figure, shape, or body of a woman in an indecent, derogatory, denigrating, or potentially depraving, corrupting, or injurious way. Section 3 and Section 4 of the Act prohibit such representation either in an advertisement, publication, writing, painting, figures, or any other form of dissemination. The Act also provides for penal provisions under Section 6 of the Act.

Paternalistic Foundations and Structural Gaps

The Act reflects a protective and paternalistic legislative approach, prioritizing moral regulation over expressive freedom. Although framed as a measure to safeguard the dignity of women, feminist scholars argue that the Act reinforces the portrayal of women as passive subjects requiring State protection rather than autonomous individuals capable of self-representation and agency (Agnes, 2011; Kapur, 2014).

The IRWA also suffers from several structural gaps. It does not incorporate a contextual or harm-based test, making no distinction between consensual, self-representative, or empowering portrayals and genuinely exploitative depictions. It lacks procedural safeguards to prevent frivolous complaints, such as mandatory preliminary scrutiny before registration of offences. The law also adopts a punitive, criminal-law-centric approach under Section 6, without providing graded or civil remedies, corrective directions, or content classification mechanisms.



Further, the Act does not reflect the present-day realities of digital platforms, intermediaries, and algorithm-driven dissemination, leading to uncertainty and selective enforcement.

Vague Definitions, Arbitrary Enforcement

IRWA's provisions are problematic due to their vague wording. Terms like "indecent," "derogatory," and "corrupting public morality" are undefined, giving excessive discretion to authorities and enabling arbitrary enforcement. The blanket prohibitions under Sections 3 and 4 fail to distinguish between exploitative content and legitimate artistic, educational, or journalistic expression, resulting in a chilling effect on free speech under Article 19(1)(a). The penal provision in Section 6, which criminalizes such representation with imprisonment and fines, has led to moral policing and over-criminalization rather than the protection of women's dignity.



This vagueness raises serious concerns under Article 19(1)(a) of the Constitution of India, which guarantees freedom of speech and expression, subject only to reasonable restrictions under Article 19(2). In the past, the Act has been misused against fashion magazines like Vogue India, films, and posters depicting female sexuality, advertisements, as well as consensual online content, often targeting material that was provocative but not exploitative, reflecting moral policing rather than real harm to women.



Fragmentation of India's Gender Representation Architecture

It is also pertinent to note that the IRWA does not operate in isolation. The provisions of the Bharatiya Nyaya Sanhita, 2023 (BNS), especially those about obscenity (Sections 294-296) and offences intended to outrage women's modesty (Sections 74-79), extend and reinforce norms previously codified in Sections 292-294 of the Indian Penal Code.

Furthermore, the Information Technology Act, 2000, through Sections 67, 67A, and 67B, criminalizes the publication and transmission of obscene and sexually explicit material in electronic form, thereby expanding the scope of regulation into digital spaces.

This regulatory landscape is further complicated by the media-specific regulations. The Cable Television Networks (Regulation) Act, 1995, the Advertising Standards Council of India Code, and self-regulatory broadcasting guidelines, impose specific standards on content relating to decency and the portrayal of gender, particularly women. In the digital domain, intermediaries and publishers of the content are subject to due diligence obligations under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Collectively, these regimes have resulted in a fragmented and overlapping system of regulation, wherein the same content may attract liability under multiple statutes, creating uncertainty for creators and platforms alike.

Growing Obsolescence of Gender Representation Laws in the Digital Era

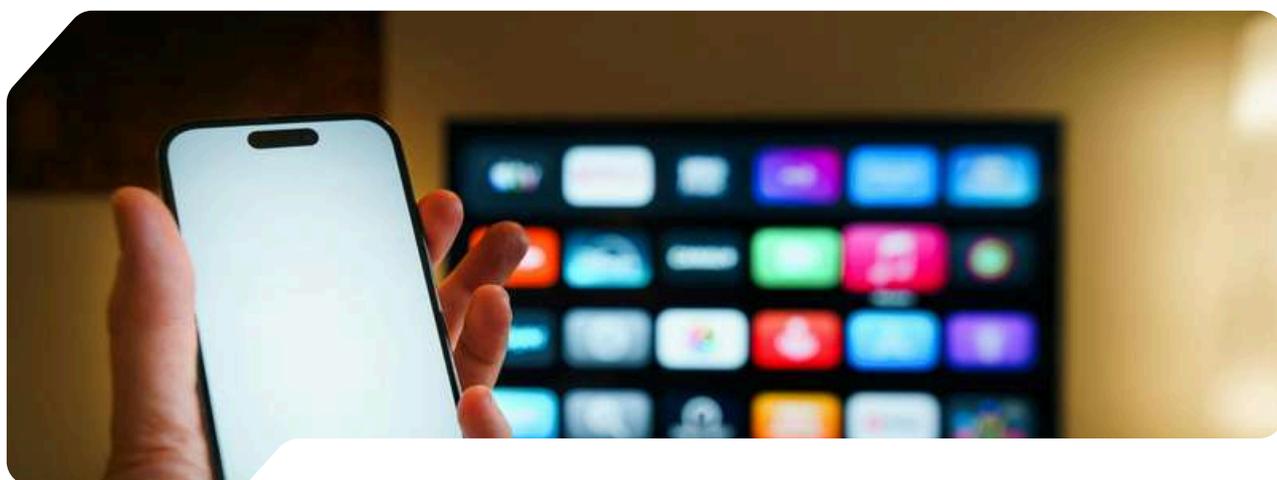
The IRWA's gaps are increasingly exploited by content publishers, particularly in online spaces and through the increasing use of artificial intelligence technologies.



Social media personalities, advertisers, and publishers utilize indicative pictures, highly sexualized female representations, deepfakes, and algorithmically amplified content, where they objectify women without explicit images, thereby bypassing the IRWA's scope of prohibition. With the IRWA lacking clear criteria on issues of intent, consent, or harm, publishers often label such content as artistic, humorous, or generated by their users to evade responsibility. Furthermore, the current legislation inadequately addresses issues of intermediary responsibility, content moderation, and the rapidly spreading nature of online content through algorithmic enhancement, making proactive regulation difficult.

The emergence of social media, streaming platforms, influencer culture, and targeted advertising has fundamentally changed how gender images are portrayed and circulated. Social media networks, in contrast to traditional media, rely on user-generated content, algorithms, and cross-border circulation of information. These features pose significant challenges to territorially bounded laws, such as the IRWA.

Algorithms prioritizing engagement often amplify sensationalized or sexualized content, thereby normalizing objectification (Noble, 2018). In addition, when such material is hosted on overseas servers and shared anonymously, accountability becomes far more difficult (Bhatia, 2021).



As a result, the traditional producer-distributor-consumer distinction that underpins the IRWA's framework has become increasingly obsolete (Bhatia, 2021).

Section 79 of the Information Technology Act offers intermediaries a conditional safe harbor, subject to due diligence requirements. The Intermediary Rules, 2021, mandate grievance redressal mechanisms and the timely takedown of unlawful content. However, these frameworks effectively delegate substantial regulatory authority to private platforms, granting them wide discretion to define and enforce standards for "harmful" or "indecent" content.

This creates a tension between the platform's self-regulation and the state's oversight. While proactive content moderation prevents harm, it also risks over-censorship and the suppression of legitimate feminist or artistic expression (Kaye, 2019). The absence of transparent mechanisms of accountability further exacerbates the concern about arbitrariness and bias in platform governance.

Enforcement Fragmentation Facilitating Moral Censorship

The enforcement of the IRWA has been uneven and inconsistent due to institutional and judicial fragmentation. Multiple authorities are involved in dealing with the IRWA-related content, such as cyber cells, the Central Board of Film Certification, the Ministry of Information & Broadcasting, the Advertising Standards Council of India, and online platform regulators.

These exercise overlapping jurisdiction as the same content comes under different regulatory assessments within the scope of criminal laws, broadcasting provisions, advertising regulations, or online platform guidelines.



Even the courts interact with these entities through writ petitions, content deletion notices, and parallel criminal proceedings without any standardized scrutiny within the judicial structure.

In the absence of a dedicated regulatory body for assessing the content involving gender representations, enforcement often responds to public outcry or moral panic rather than objective standards (Menon, 2019).

These inconsistencies undermine the protective role of the law while facilitating moral censorship. Women and gender minorities remain vulnerable to damaging stereotypes, while lawmakers are left confused as to what expression might be permissible under the new censorship guidelines. Marginalised voices, particularly queer and non-conforming identities, are disproportionately impacted by ambiguous decency norms, rooted in heteronormative values (Narain, 2018).



Gender-Biasness in IRWA

While the IRWA focuses exclusively on the representation of women, men are also subjected to harmful and stereotypical portrayals in online and media spaces, including hyper-masculine, sexually aggressive, or body-shaming representations.



However, there is no specific legislation in India that regulates the indecent representation of men in a manner comparable to the IRWA. Such portrayals are addressed only indirectly through general provisions under the IT Act, defamation law, obscenity standards, or platform-specific community guidelines. This creates a regulatory gap, leaving harmful representations of men and certain gender minorities inadequately addressed, and highlights the need for a more inclusive, harm-based framework beyond a women-centric model.

Evolving Landscape: Judicial Contributions, Global Legal Frameworks

The interpretation of IRWA and its associated provisions has been greatly aided by Indian courts. The Supreme Court adopted a community standards test for judging obscenity in the *Ranjit D. Udeshi v. State of Maharashtra (1965)* case, and it continues to be a key component of judicial reasoning.

In recent times, however, courts have adopted a rights-based and contextual approach, recognizing the significance of artistic expression and changing social norms. In *Aveek Sarkar v. State of West Bengal (2014)*, the Supreme Court held that nudity per se is not obscene and emphasized the importance of context, purpose, and message. Nonetheless, judicial reasoning continues to oscillate between progressive constitutionalism and paternalistic moral reasoning.

Comparatively, international legal frameworks have moved towards contextual harm assessment and platform accountability to regulate gender representation. In the United Kingdom, for instance, the Equality Act of 2010 and advertising regulations prioritize harm over moral offence. In the United States, while free speech protections under the First Amendment are strong, civil laws and platform policies address harmful content, including sexualized or degrading portrayals of women.



The European courts, particularly the European Court of Human Rights, have struck a balance between the dignity of individuals and their freedom of expression in the case of *Handyside v. United Kingdom* (1976). The growing trends worldwide acknowledge the role of online platforms as key gatekeepers, while warning against overreliance on state censorship (UN Special Rapporteur on Freedom of Expression, 2018).

Hence, the analysis underscores the urgent need for reform and statutory definitions under the IRWA must be clarified and updated to reflect contemporary understandings of gender, sexuality, and harm. Harmonization between criminal, cyber, and media laws is essential to reduce overlap and uncertainty. Furthermore, gender-neutral drafting would ensure inclusivity and alignment with the principles of constitutional equality.



Key Findings

A doctrinal and judicial analysis was carried out with respect to the legal control over trafficking, gender, and representation under Indian law, with a major focus on the Immoral Traffic (Prevention) Act, 1956 (ITPA), and the Indecent Representation of Women (Prohibition) Act, 1986 (IRWA), along with other relevant constitutional provisions. The analysis found critical flaws and normative inconsistencies within the Indian legal system concerning the protection of dignity and autonomy for trafficking victims, sex workers, and persons belonging to gender minorities.

1. **Disconnect between Constitutional Guarantees and Statutory Implementation**

One of the most significant findings of this research is the persistent gap between constitutional guarantees and their statutory and institutional implementation. The Indian Constitution provides a comprehensive framework ensuring equality, non-discrimination, liberty, dignity, and freedom from exploitation under Articles 14, 15, 21, and 23, respectively. Judicial interpretations in cases such as *Maneka Gandhi v. Union of India* (1978) and *K.S. Puttaswamy v. Union of India* (2017) have further expanded the scope of freedom, liberty, and decisional autonomy under Article 21 of the Indian Constitution.

In contrast, the IRWA and ITPA continue to operate at a pre-constitutional and morality-driven level. The ITPA, in particular, undermines Article 21 by enabling invasive state action, such as police raids and compulsory detention in shelter homes. Although framed as a law for the prevention of trafficking, its structure criminalizes activities associated with sex work, thereby indirectly criminalizing sex workers.



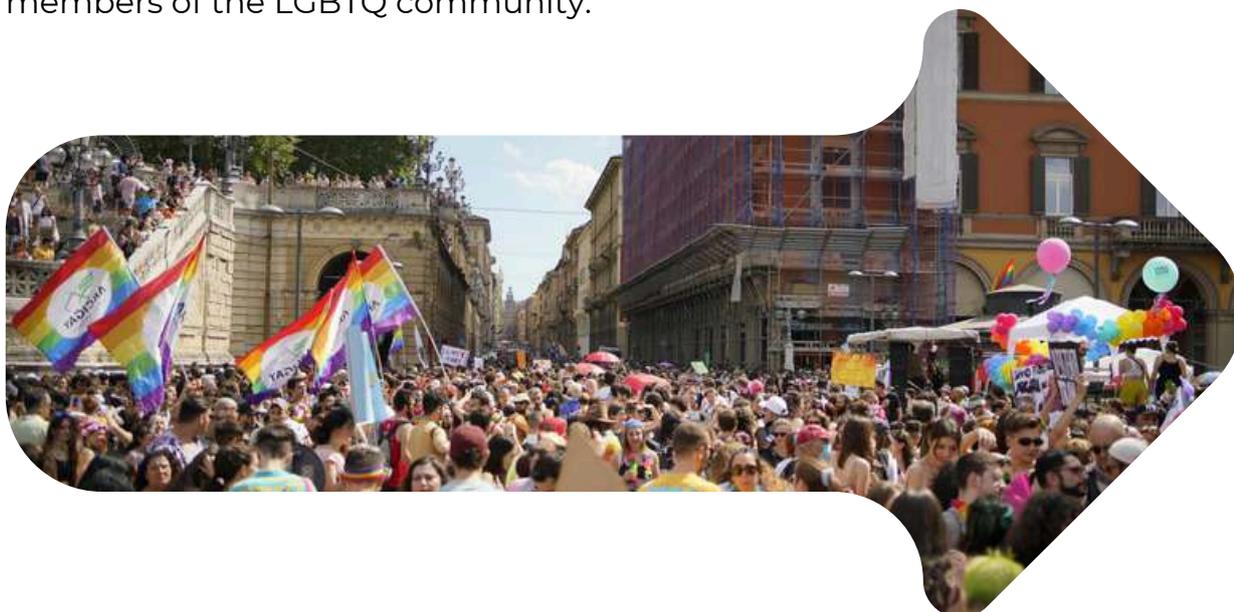
This failure has serious consequences. While organized trafficking networks often evade the scrutiny of law, disproportionate targeting falls on street-based sex workers, women from marginalized castes, migrant communities, and transgender persons. The absence of survivor-centric definitions further weakens trust in the legal system and undermines effective anti-trafficking response mechanisms.

Despite the Supreme Court's recognition of the dignity of sex workers in the case of *Budhadev Karmaskar v. State of West Bengal* (2011), there has been no corresponding alteration in enforcement practices.

Similarly, the ambiguity surrounding restrictions on expression under the IRWA gives rise to "chilling effects" that cannot be reconciled with the guarantee under Article 19(1)(a). Consequently, constitutional values remain largely rhetorical rather than being effectively operationalized in practice.

2. Gender and the Exclusion of LGBTQIA+ Individuals

Despite the gendered and intersectional nature of trafficking, India's legal framework remains predominantly cisgender and heteronormative. The ITPA fails to recognize the vulnerabilities of transgender people, gays, and other members of the LGBTQ community.



The transgender individuals are disproportionately targeted during anti-trafficking raids, face arbitrary arrest, violence, and social exclusion (ILGA World, November 2023).

IRWA, too, does not address the challenge of derogatory or denigrating representations of the LGBTQIA+ community in the media. The absence of the use of gender-inclusive terminology in statutory provisions further renders these communities legally invisible, reinforcing their marginalization.

3. **Fragmentation and Overlap in the Legal Framework**

Another stark finding is the fragmented nature of India's regulatory regime. Issues of trafficking and exploitation are regulated by a multitude of overlapping statutes, such as the ITPA, Bharatiya Nyaya Sanhita, POCSO Act, Information Technology Act, and various state and media regulations, often without adequate harmonization. The rise of self-regulatory frameworks, leaving content moderation to digital intermediaries, further fragments and complicates India's gender representation legal architecture.

4. **Regulation of Gender Representation: Vagueness and Overreach**

The IRWA suffers from excessive vagueness, particularly due to undefined terms such as "indecent," "derogatory," and "denigrating." This allows enforcement to be shaped by subjective moral judgments rather than objective legal standards, raising serious concerns, particularly in the context of Article 19(1)(a).

5. **Digital Media and Platforms: Challenges of Governance**

The transition to digital and algorithm-based media presents new regulatory challenges. The IRWA's framework, designed for print and advertising media, is not well-suited to user-generated and platform-mediated content. The rise of



The rise of AI-generated content and deepfakes further challenges the traditional producer-distributor-consumer architecture of the IRWA. Even as the IT Act and Intermediary Rules mandate “due diligence” obligations on platforms, a substantial discretionary power is delegated to private platforms, making enforcement non-uniform and delayed.

6. Inconsistent Judicial Approaches

Judicial intervention in this domain has been both corrective and inconsistent. Progressive decisions such as *Aveek Sarkar v. State of West Bengal (2014)* and *Kajol Mukesh Singh v. State of Maharashtra (2021)* demonstrate a growing judicial sensitivity to context, autonomy, and consent. However, earlier jurisprudence reflects a more paternalistic and morality-driven approach.

The courts have not yet evolved a coherent doctrinal framework that reconciles the imperative of protecting individuals from exploitation with the constitutional guarantees of dignity, personal liberty, and freedom of expression. As a result, judicial responses remain fragmented, leaving unresolved tensions between moral regulation and rights-based constitutional principles.

7. Systemic Governance and Enforcement Failures

In addition to problems with doctrine, significant governance gaps have been identified. These include inadequate police sensitization, the scarcity of survivor representation in governance, inadequate monitoring of rehabilitation homes, and coordination between various agencies. Furthermore, rehabilitation is punitive rather than corrective, and welfare programs often have poor implementation. The aggregate result of these failures is the erosion of trust among survivors in legal systems, perpetuating cycles of vulnerability and marginalization.



Regarding enforcement efforts in India, state variation is drastic. While some states have reported police campaigns and rescue operations with the help of NGOs, the country faces challenges such as underreporting, low rates of conviction, and uneven enforcement of laws.

There are also considerable gaps in data and reporting; IPOs such as the NCRB reports do not provide data in a cohesive and gender disaggregated form, particularly for the transgender and non-binary community of survivors being trafficked.

Internationally, the Global Report on Trafficking in Persons by the UNODC offers global and regional trends, with CEDAW General Recommendation No.38 (2020) urging States to exercise gender and intersectionality sensitive anti-trafficking efforts to prevent trafficking, protect victims, and ensure access to justice, in particular within the context of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Committee, 2020; NCRB, 2022; UNODC, 2022).



Conclusion

This report examines the legal regulation of trafficking, gender, and representation under Indian law through a constitutional, statutory, and judicial lens, with particular focus on the Immoral Traffic (Prevention) Act, 1956, and the Indecent Representation of Women (Prohibition) Act, 1986. The analysis demonstrates that despite India's robust constitutional guarantees of equality, dignity, liberty, and protection against exploitation, the statutory and institutional responses to trafficking and gendered harm remain fragmented, moralistic, and inadequately aligned with contemporary understandings of autonomy, consent, and gender justice.

The ITPA, in particular, fails to distinguish clearly between trafficking and consensual adult sex work, resulting in the indirect criminalisation of sex workers and the re-victimisation of those it purports to protect. Compulsory rescue, detention, and rehabilitation under the Act undermine decisional autonomy and personal liberty, often replicating carceral harms rather than providing meaningful protection or empowerment.

The report further finds that India's legal framework inadequately recognises the intersectional and gender diverse nature of trafficking. Transgender individuals, queer individuals, and other sexual minorities remain largely invisible within statutory language and policy design, despite judicial recognition of gender identity and mounting evidence of discriminatory enforcement practices. This exclusion not only violates constitutional equality but also weakens anti-trafficking efforts by alienating vulnerable communities from the legal system.



Similarly, the regulation of gender representation under the IRWA suffers from excessive vagueness, overcriminalization, and outdated assumptions about harm. In an era dominated by digital media, platform governance, and algorithmic dissemination, the Act's reliance on undefined notions of "indecent" enables arbitrary enforcement, moral censorship, and chilling effects on freedom of speech, without effectively addressing structural gender inequality or exploitation.

Taken together, the findings underscore the urgent need for comprehensive legal reform. India's approach must shift from morality-driven control to a rights-based, survivor-centric framework that incorporates gender-inclusive and harm-based standards and harmonises overlapping legal regimes. Aligning domestic law with constitutional principles and international standards is essential to ensure that the law functions as an instrument of protection, dignity, and substantive gender justice, rather than perpetuating exclusion and control.



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5. Indecent Representation of Women (Prohibition) Act, 1986.
6. Information Technology Act, 2000.
7. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
8. Protection of Children from Sexual Offences Act, 2012.

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4. Kajol Mukesh Singh v. State of Maharashtra, 2021 SCC OnLine Bom 247.
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