

# Prostitution In India: Historical Roots, Political Regulation, And Human Rights Concerns

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## Abstract

Prostitution in India has been a complex and contested subject, shaped by historical practices, political regulation, and evolving human rights discourses. From the courtesans of ancient India and the devadasi system to the colonial regulation of brothels and the post-independence legal framework, prostitution has been entangled in debates over morality, law, and power. The state's regulatory approach, often driven by concerns of public order and morality, has frequently marginalized sex workers rather than safeguarding their rights. This paper examines the historical trajectory of prostitution in India, critically analyzes the politics of regulation, and evaluates the issue through a human rights lens, focusing on dignity, autonomy, and livelihood. Drawing on international human rights instruments and comparative models of governance, it explores the gaps in India's legal and policy framework. The study argues for a shift from a morality-driven, punitive approach to a rights-based framework that recognizes sex workers as agents entitled to protection, dignity, and equality.

**Keywords:** Prostitution; Human Rights; Political Regulation; India; Sex Work

## 1. Introduction

Prostitution has long been one of the most contested subjects in Indian society, occupying a paradoxical position between visibility and marginalization. While sex work has existed across cultures and civilizations, its historical trajectory in India reflects unique intersections of tradition, morality, law, and politics. From the celebrated courtesans of ancient India and the institutionalized *devadasi*<sup>1</sup> system to the stigmatized brothels of the colonial period, prostitution has shifted in meaning and status in response to changing socio-political contexts. Despite its persistence, the discourse surrounding prostitution continues to be dominated by moral

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<sup>1</sup> The devadasi system refers to a traditional practice in India where women, known as devadasis, were dedicated to temple service, often involving dance and music as part of religious rituals.

judgments and paternalistic state interventions rather than recognition of the rights and dignity of sex workers.

Political regulation of prostitution in India has historically been framed as a matter of public morality, law, and order, often ignoring the lived realities of those involved. The colonial state's use of the Contagious Diseases Acts and the post-independence legislation, particularly the Suppression of Immoral Traffic in Women and Girls Act (1956) and its successor, the Immoral Traffic Prevention Act (1986), reflect a continuity in prioritizing control over protection. These frameworks criminalize the conditions around sex work rather than acknowledging it as a form of livelihood, thereby exposing sex workers to systemic harassment, stigma, and exploitation.

Against this backdrop, a human rights perspective provides an alternative lens, focusing on the rights to dignity, bodily autonomy, livelihood, and freedom from violence. The growing recognition of sex workers' rights at both national and international levels underscores the need for a paradigm shift from morality-driven regulation to rights-based policy. This paper seeks to trace the historical roots of prostitution in India, analyze the politics of its regulation, and critically evaluate the human rights concerns that continue to shape the debate.

## **2. Historical Roots of Prostitution in India**

The history of prostitution in India demonstrates that sex work has not always been associated with stigma or marginality. Instead, its meaning and social standing have been deeply shaped by cultural practices, political structures, and religious institutions throughout different periods of Indian history.

### **2.1 Ancient Period**

In ancient India, prostitution existed in multiple forms, often integrated into the social and cultural fabric. Courtesans, or *ganikas*, occupied a recognized and sometimes respected place in society.<sup>2</sup> References in *Kautilya's Arthashastra* describe prostitution as a regulated profession, taxed by the state and subject to oversight, suggesting a pragmatic acknowledgment of sex work as part of the economy.<sup>3</sup> Courtesans were often skilled in music, dance, and conversation, serving as entertainers and companions to elites. Far from being marginalized, they were considered important contributors to urban cultural life. This early history reflects a nuanced understanding of prostitution, where sex work was entangled with art, aesthetics, and economic exchange.

### **2.2 The Devadasi Tradition**

The *devadasi* system, in which women were dedicated to temples for religious service, represents another significant dimension of prostitution's history in India.<sup>4</sup> Initially, *devadasis* were revered as spiritual and cultural custodians, performing music and dance as offerings to deities. Over time, however, the system

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<sup>2</sup> Monika Saxena, "Ganikas in Early India: Its Genesis and Dimensions," *Social Scientist* 34, no. 11/12 (2006): 2–17, <http://www.jstor.org/stable/27644180>.

<sup>3</sup> Sukumari Bhattacharji, "Prostitution in Ancient India," *Social Scientist*, 1987, 32–61.

<sup>4</sup> Janaki Nair, "The Devadasi, Dharma and the State," *Economic and Political Weekly* 29, no. 50 (1994): 3157–67, <http://www.jstor.org/stable/4402128>.

became increasingly exploitative, with many *devadasis* forced into sexual relationships with patrons and elites under the guise of religious duty. By the late medieval and colonial periods, the system had become a site of both social prestige and systemic exploitation, raising critical questions about the intersection of religion, gender, and power.<sup>5</sup>

### 2.3 Medieval Period

During the medieval era, prostitution took on new dimensions in the courts of rulers and nobles. Historical accounts describe *tawaifs* (courtesans) in Mughal and regional courts who were highly educated, skilled in the arts, and influential in cultural and even political circles.<sup>6</sup> Like their ancient counterparts, they were not merely sex workers but also custodians of refined traditions of music and poetry. At the same time, ordinary prostitutes often lived in marginal conditions, revealing a social hierarchy within sex work itself. The medieval period, therefore, illustrates a duality: the glorified courtesan at the top and the stigmatized sex worker at the margins.

### 2.4 Colonial Period

The advent of British colonial rule marked a turning point in the regulation and perception of prostitution. The colonial state, concerned with the health of its soldiers, introduced the Contagious Diseases Acts in the nineteenth century, targeting prostitutes near military cantonments for mandatory medical examinations. While framed as a public health measure, these laws institutionalized the policing and stigmatization of prostitutes. Colonial authorities imposed Victorian moral codes, recasting prostitution as immoral and criminal rather than socially embedded. Simultaneously, brothels flourished in port cities and cantonments, serving both Indian elites and European soldiers.<sup>7</sup> This period cemented the legal and social marginalization of prostitution, the effects of which reverberate into the post-independence era.

Taken together, these historical layers reveal that prostitution in India has never been static; it has shifted from respected courtesanship and ritual practice to stigmatized labor under colonial morality. Each period illustrates how political authority, and social norms shaped the conditions of sex work, laying the foundation for the complex legal and human rights debates that continue today.

## 3. Political Regulation and Legal Frameworks

The political regulation of prostitution in India has historically been shaped more by concerns of morality, law and order, and public health than by recognition of sex workers' rights. The trajectory of legal interventions reflects a continuity of control, beginning with colonial regulation and extending into post-independence legislation.

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<sup>5</sup> Nair.

<sup>6</sup> J Prabhaskar, "Mediated Rights: Media, Women and Human Rights in India," *The Indian Journal of Political Science* 66, no. 1 (February 19, 2005): 53–74, <http://www.jstor.org/stable/41856112>.

<sup>7</sup> Philippa Levine, "'A Multitude of Unchaste Women': Prostitution in the British Empire," *Journal of Women's History* 15, no. 4 (December 2004): 159–63, <https://doi.org/10.1353/jowh.2004.0014>.

### 3.1 Colonial Regulation

British colonial governance introduced a new discourse on prostitution, marked by both utilitarian and moral concerns. The Contagious Diseases Acts sought to protect soldiers from venereal diseases by subjecting prostitutes in military cantonments to mandatory medical examinations. While presented as a health measure, these laws institutionalized surveillance, stigmatization, and coercion, treating prostitutes as a “necessary evil” for military efficiency. Simultaneously, Victorian moral codes cast prostitution as immoral, thereby intertwining medicalized control with moral policing.<sup>8</sup> The colonial state’s contradictory stance, tolerating prostitution for military needs while criminalizing it for civilian morality, laid the foundation for the legal ambiguities that persist in independent India.

### 3.2 Post-Independence Legal Frameworks

After independence, India’s approach to prostitution was shaped by international commitments, particularly the 1949 UN Convention for the Suppression of the Traffic in Persons, which India ratified.<sup>9</sup> In response, the government enacted the Suppression of Immoral Traffic in Women and Girls Act (SITA) of 1956. This law did not criminalize prostitution per se but targeted surrounding activities such as brothel-keeping, procuring, and soliciting in public. SITA was amended in 1986 and renamed the Immoral Traffic (Prevention) Act (ITPA). The ITPA expanded state powers by criminalizing clients in certain contexts, strengthening penalties for brothel-keeping, and introducing provisions for the “rehabilitation” of sex workers.<sup>10</sup>

Although framed as protective, these laws often reinforced marginalization. Sex workers faced constant harassment from law enforcement, as vague provisions blurred the line between voluntary sex work and trafficking. Public solicitation and brothel activities were penalized, leaving sex workers vulnerable while doing little to address exploitation or improve working conditions.

### 3.3 Judicial and Political Discourse

Judicial interventions up to 2017 reveal ambivalence. In cases like *Gaurav Jain v. Union of India* (1997), the Supreme Court emphasized rehabilitation and protection of children of sex workers but stopped short of recognizing sex work as legitimate labor.<sup>11</sup> Similarly, in *Budhadev Karmaskar v. State of West Bengal* (2011), the Court acknowledged sex workers’ right to dignity and ordered the formation of a panel to suggest rehabilitation measures.<sup>12</sup> Yet, judicial discourse remained framed within protectionist and paternalistic language, rather than embracing full decriminalization or labor rights.

Political debates in Parliament also mirrored this tension. While some policymakers advocated for stricter crackdowns in the name of morality and women’s protection, others argued for reforms to reduce harassment

<sup>8</sup> Philippa Levine, “Venereal Disease, Prostitution, and the Politics of Empire: The Case of British India,” *Journal of the History of Sexuality* 4, no. 4 (1994): 579–602, <http://www.jstor.org/stable/4617154>.

<sup>9</sup> U N Gupta, *The Human Rights: Conventions and Indian Law* (Atlantic Publishers & Dist, 2004).

<sup>10</sup> Rashmi Singh, “Trafficking of Women and Children in India with Special Reference to Commercial Sexual Exploitation: A Psycho-Social Study of Rescued Trafficked Victims” (JAMIA MILLIA ISLAMIA NEW DELHI, 2015).

<sup>11</sup> *Gaurav Jain vs Union of India & Ors* (1997)

<sup>12</sup> Prabha Kotiswaran, “Sword or Shield?,” *Interventions* 15, no. 4 (December 19, 2013): 530–48, <https://doi.org/10.1080/1369801X.2013.849423>.

and exploitation. Civil society groups, particularly sex workers' collectives, pushed for decriminalization and recognition of sex work as legitimate labor, but their voices struggled to gain legislative traction.

By 2017, India's legal and political framework on prostitution remained caught between abolitionist rhetoric and partial tolerance. While prostitution itself was not illegal, the activities essential for its practice were criminalized, leaving sex workers in a legal grey zone. This contradiction reflected the dominance of morality-driven governance over human rights discourse, ensuring that prostitution in India continued to be regulated through control rather than recognition.

#### **4. Prostitution and Human Rights Concerns**

Prostitution in India cannot be understood merely as a question of law or morality; it is fundamentally a matter of human rights. Sex workers often occupy a paradoxical position: tolerated as part of social reality yet denied recognition as legitimate workers and citizens with full rights. This tension reveals critical violations of dignity, autonomy, and security that demand examination.

##### **4.1 Right to Dignity and Livelihood**

The Indian Constitution enshrines the right to life and personal liberty under Article 21, which has been expansively interpreted to include the right to live with dignity.<sup>13</sup> Yet, sex workers frequently experience denial of this right. Their occupation is socially stigmatized, often viewed as immoral rather than as a form of labor. Criminalization of surrounding activities, such as brothel-keeping and solicitation, further pushes them into precarious working conditions, depriving them of the security and livelihood protection that other forms of work receive.

##### **4.2 Autonomy and Consent**

A central human rights concern is the failure to distinguish between consensual sex work and trafficking. Legal and policy frameworks often conflate the two, leading to interventions that criminalize voluntary sex workers in the name of protecting victims. This erases the agency of those who choose sex work, whether due to economic necessity or personal decision, and denies them the autonomy guaranteed under international human rights law. The absence of recognition of sex work as work leaves women especially vulnerable to exploitation.<sup>14</sup>

##### **4.3 Violence, Harassment, and Stigma**

Sex workers face systemic violence not only from clients but also from law enforcement agencies and society at large. Police raids, arbitrary arrests, and extortion are common, facilitated by vague legal provisions that grant wide discretionary power. Social stigma further compounds their marginalization, restricting access to housing, education for their children, and alternative employment opportunities.<sup>15</sup> The intersection of caste

<sup>13</sup> Durga Das Basu, *Introduction to the Constitution of India*, LexisNexis, 22nd ed. (New Delhi: LexisNexis, 2015).

<sup>14</sup> Jo Doezeema, "Now You See Her, Now You Don't: Sex Workers at the UN Trafficking Protocol Negotiation," *Social & Legal Studies* 14, no. 1 (2005): 61–89.

<sup>15</sup> Kathleen N Deering et al., "A Systematic Review of the Correlates of Violence against Sex Workers," *American Journal of Public Health* 104, no. 5 (2014): e42–54.



and class deepens these vulnerabilities, with women from marginalized communities disproportionately represented in sex work and facing layered discrimination.

#### 4.4 Health and Safety

Health concerns constitute another critical dimension. Sex workers often operate without adequate access to healthcare services, making them vulnerable to sexually transmitted infections, including HIV/AIDS.<sup>16</sup> While targeted health interventions have improved awareness, stigma and fear of disclosure continue to prevent many from seeking care.<sup>17</sup> The lack of occupational safety standards further exposes them to physical and psychological harm.

The human rights concerns surrounding prostitution in India demonstrate that the issue extends beyond questions of legality or morality. Denial of dignity, livelihood, and autonomy, coupled with exposure to systemic violence and health risks, reflects the profound vulnerability of sex workers. Any policy framework that fails to address these concerns risks perpetuating exploitation rather than offering protection.

### 5. State, Morality, and Politics

The regulation of prostitution in India has been deeply shaped by the politics of morality. The state has historically positioned itself as the guardian of social values, framing prostitution as a social evil to be controlled rather than as labor to be regulated or rights to be protected.<sup>18</sup> This moral framing has reinforced paternalistic policies and justified restrictive legislation.

#### 5.1 The Politics of Morality

State interventions often reflect dominant cultural and religious attitudes that equate sex work with immorality. Prostitution is rarely addressed as an economic activity but instead as a moral problem undermining family and societal order. This perspective legitimizes laws that criminalize solicitation, brothel-keeping, and other aspects of sex work, while simultaneously ignoring the socio-economic realities that drive individuals into prostitution.<sup>19</sup> The politics of morality thus displaces structural causes such as poverty, gender inequality, and caste hierarchies.

#### 5.2 Feminist Debates

The feminist discourse on prostitution in India is divided between two main perspectives. The abolitionist approach views prostitution as inherently exploitative, equating it with violence against women and advocating for its eradication.<sup>20</sup> On the other hand, the sex workers' rights approach emphasizes agency,

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<sup>16</sup> Monica Rao Biradavolu et al., "Can Sex Workers Regulate Police? Learning from an HIV Prevention Project for Sex Workers in Southern India," *Social Science & Medicine* 68, no. 8 (2009): 1541–47.

<sup>17</sup> Sushena Reza-Paul et al., "Sex Worker-Led Structural Interventions in India: A Case Study on Addressing Violence in HIV Prevention through the: Ashodaya Samithi: Collective in Mysore," *Indian Journal of Medical Research* 135, no. 1 (2012): 98–106.

<sup>18</sup> Lucinda Joy Peach, "'Sex Slaves' or 'Sex Workers'? Cross-Cultural and Comparative Religious Perspectives on Sexuality, Subjectivity, and Moral Identity in Anti-Sex Trafficking Discourse," *Culture and Religion* 6, no. 1 (2005): 107–34.

<sup>19</sup> Edward L Rubin, "Sex, Politics, and Morality," *Wm. & Mary L. Rev.* 47 (2005): 1.

<sup>20</sup> Subir K Kole, "From 'Veshyas' to 'Entertainment Workers': Evolving Discourses of Bodies, Rights, and Prostitution in India," *Asian Politics & Policy* 1, no. 2 (2009): 255–81.

arguing that sex work should be recognized as legitimate labor deserving of legal protection.<sup>21</sup> Both positions have influenced state policy, but the dominance of abolitionist arguments has reinforced moralistic regulation rather than labor rights.

### 5.3 Politics and Public Opinion

Political debates on prostitution often serve as a stage for moral posturing rather than substantive reform. Legislators tend to frame the issue in terms of morality, women's protection, and social order, thereby avoiding difficult conversations about labor rights and economic justice. Public opinion, shaped by stigma and entrenched social norms, further supports a regulatory approach that prioritizes morality over human rights.

The politics of morality has entrenched a cycle where prostitution is simultaneously tolerated and condemned, regulated but not recognized. This approach allows the state to assert moral authority while leaving sex workers in a legal and social grey zone, excluded from the protection of rights and vulnerable to exploitation.

## 6. International Perspectives and Human Rights Instruments

The regulation of prostitution has been a contested issue globally, with states adopting diverse approaches shaped by cultural, political, and legal traditions. International human rights instruments provide important benchmarks for assessing the extent to which national laws protect or undermine the rights of sex workers.

### 6.1 International Human Rights Framework

The Universal Declaration of Human Rights (UDHR, 1948) affirms the rights to dignity, livelihood, and security of person, all of which are directly relevant to sex workers.<sup>22</sup> The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) further emphasize rights to work, health, and freedom from degrading treatment. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) obliges states to protect women from exploitation, though interpretations have varied between abolitionist and rights-based readings. The Palermo Protocol (2000) distinguishes trafficking from voluntary sex work, but in practice many states, including India, often conflate the two.<sup>23</sup>

### 6.2 Comparative Models of Regulation

Globally, there are three dominant models of prostitution policy exist:

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<sup>21</sup> Janie A Chuang, "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy," *University of Pennsylvania Law Review* 158, no. 6 (2010): 1655–1728.

<sup>22</sup> Johannes Morsink, *The Universal Declaration of Human Rights* (University of Pennsylvania Press, 1999), <http://www.jstor.org/stable/j.ctt3fhrpm>.

<sup>23</sup> Rhacel Salazar Parreñas, Maria Cecilia Hwang, and Heather Ruth Lee, "What Is Human Trafficking? A Review Essay," *Signs: Journal of Women in Culture and Society* 37, no. 4 (2012): 1015–29.

- **Legalization:** Countries such as the Netherlands and Germany regulate prostitution as legitimate labor, requiring registration, taxation, and health checks.<sup>24</sup> This model provides formal recognition but has been criticized for creating hierarchies between legal and illegal workers.
- **Decriminalization:** New Zealand and parts of Australia have adopted decriminalization, removing punitive laws and treating sex work as an occupation governed by general labor rights.<sup>25</sup> This model is widely supported by sex workers' rights groups as it minimizes stigma and enhances safety.
- **Abolitionist/Nordic Model:** Sweden and other Nordic countries criminalize the purchase of sex while decriminalizing the seller, aiming to reduce demand. While framed as protective, critics argue it pushes sex work underground and increases vulnerability.<sup>26</sup>

India's legal framework reflects elements of abolitionist thinking, prioritizing suppression of prostitution-related activities while tolerating the practice itself. A comparison with international models suggests that punitive approaches exacerbate vulnerability, while decriminalization offers greater potential for safeguarding rights and reducing stigma.

International human rights instruments emphasize dignity, autonomy, and protection from exploitation, yet India's laws remain focused on control and morality. Learning from comparative models highlights the need for a shift toward a rights-based approach that reconciles legal frameworks with international human rights standards.

## 7. Contemporary Debates and Reform Proposals

The debates on prostitution in India have long reflected the tension between moral regulation and human rights recognition. While the legal framework has remained largely unchanged since the Immoral Traffic (Prevention) Act of 1986, social movements, parliamentary discussions, and academic scholarship have continued to challenge its adequacy.

### 7.1 Parliamentary and Policy Debates

In parliamentary discussions, legislators have often framed prostitution as a threat to morality and social order, advocating stricter measures to combat trafficking and brothel-related activities. Proposals for amendments to strengthen punitive provisions have been debated intermittently, reflecting a dominant abolitionist approach.<sup>27</sup> At the same time, some policymakers and committees have acknowledged the need to distinguish between voluntary sex work and trafficking, recognizing that punitive policies disproportionately harm women who choose sex work as a livelihood. However, such reformist voices have remained on the margins.

<sup>24</sup> Maryann Seals, "Worker Rights and Health Protection for Prostitutes: A Comparison of the Netherlands, Germany, and Nevada," *Health Care for Women International* 36, no. 7 (2015): 784–96.

<sup>25</sup> Gillian Abel, "Decriminalisation: A Harm Minimisation and Human Rights Approach to Regulating Sex Work" (University of Otago, 2010).

<sup>26</sup> Jay Levy, *Criminalising the Purchase of Sex: Lessons from Sweden* (Routledge, 2014).

<sup>27</sup> Kalpana Kannabiran, "Judiciary, Social Reform and Debate on 'Religious Prostitution' in Colonial India," *Economic and Political Weekly* 30, no. 43 (1995): WS59–69, <http://www.jstor.org/stable/4403368>.



## 7.2 Civil Society and Sex Workers' Movements

Civil society organizations and sex workers' collectives have been central to the demand for reform. Networks such as the Durbar Mahila Samanwaya Committee (DMSC) in Kolkata and the National Network of Sex Workers (NNSW) have advocated for the decriminalization of sex work, arguing that only recognition of sex work as legitimate labor can ensure safety, health, and dignity. These movements have challenged the paternalistic logic of rehabilitation schemes, which often push sex workers into precarious low-paying jobs without addressing structural inequalities of caste, class, and gender.<sup>28</sup> Their activism has contributed to greater visibility of sex workers' rights in public discourse, even if legislative change has been slow.

## 7.3 Judicial Perspectives

Judicial interventions have also influenced the debate. While courts have occasionally affirmed the dignity of sex workers, they have primarily emphasized rehabilitation and protection, reinforcing a protective rather than rights-based framework. This has left unresolved the central question of whether sex work can be legally recognized as labor.

## 7.4 Reform Proposals

Scholars and activists have put forward proposals for decriminalization and labor rights protections, drawing inspiration from international models. Recommendations often emphasize occupational safety, access to healthcare, freedom from police harassment, and inclusion of sex workers in policymaking. These proposals highlight a growing recognition that legal and policy reform must shift from moral regulation toward human rights protection.

The contemporary debates reveal a policy impasse: while the state continues to frame prostitution through a moral and abolitionist lens, sex workers and their advocates press for rights-based reforms. This unresolved tension underscores the need for a fundamental rethinking of prostitution policy in India.

## 8. Conclusion

The history of prostitution in India reveals a complex trajectory, shaped by cultural traditions, colonial interventions, and post-independence legislation. From respected courtesans and ritual practices to stigmatized brothels and criminalized labor, prostitution has continually been reframed by shifting political and moral discourses. What remains constant, however, is the marginalization of sex workers, who have been regulated and controlled but rarely recognized as rights-bearing citizens.

The legal framework, particularly the Immoral Traffic (Prevention) Act, reflects the dominance of abolitionist thinking that criminalizes surrounding activities while tolerating prostitution in principle. This contradictory stance has perpetuated a climate of harassment, stigma, and vulnerability. Judicial interventions, while affirming dignity in principle, have largely emphasized rehabilitation rather than recognition of sex work as legitimate labor. Civil society and sex workers' collectives, by contrast, have consistently highlighted the need for decriminalization, protection of livelihood, and inclusion in policymaking.

<sup>28</sup> Kotiswaran, "Sword or Shield?"

The analysis demonstrates that prostitution in India is not merely a question of law or morality but fundamentally a human rights issue. Denial of dignity, autonomy, and security perpetuates systemic exploitation. International human rights instruments and comparative models show that punitive frameworks exacerbate vulnerability, while rights-based approaches offer pathways to dignity and protection.

For India, the way forward requires rethinking prostitution beyond morality-driven control. A shift toward a rights-based framework, grounded in dignity, livelihood, and equality, holds the potential to reconcile legal policy with constitutional guarantees and international human rights standards.

