

Constitutional Contradictions and Quasi-Legal Governance: Sex Work in Bangladesh Through a Feminist Legal Lens

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1. Introduction

Prostitution, often referred to as the “*world’s oldest profession*”¹ has long been a taboo across societies throughout the world. The boundaries of the sex industry have widened and changed dramatically over the last century, with diverse schools of thought emerging due to its interaction with evolving feminist movements and technological advancements. The predominantly female population engaged in the sex industry originates from diverse social backgrounds; however, they are often perceived as lacking agency and are portrayed as either poor, helpless young girls or adulteresses. Due to the overemphasis on the taboo nature of prostitution, broader discussions surrounding consent, economic participation, legal and social progress, and the perception of women’s sexual worth in feminist political and legal thought in the late twentieth and early twenty-first centuries have often been overlooked.²

Within feminist legal theory, debates on the sex industry are broadly divided between abolitionist and decriminalization perspectives. Abolitionism conceptualizes prostitution as a manifestation of structural gender inequality and gendered violence and argues that the sex trade should ultimately be abolished.³ In contrast, decriminalization approaches view prostitution through the lens of empowerment and autonomy, emphasizing the removal of criminal sanctions and the recognition of sex work as a form of labour.⁴ Decriminalization further seeks to avoid the emergence of a two-tiered system where those within the sex trade who do not comply with state regulation are driven underground.⁵ In such accounts, sex work is framed as employment that can be integrated into broader legal and labour frameworks, allowing sex workers to assert rights and improve working conditions.⁶

These schools of thought advance fundamentally competing perspectives. Many theorists and activists support the removal of discriminatory criminal statutes in line with decriminalization frameworks, emphasizing bodily autonomy and the right to choose one’s occupation. Others raise

¹ Salmon, C.A. (2008) 'The world's oldest profession: evolutionary insights into prostitution', in Duntley, J. and Shackelford, T.K. (eds.) *Evolutionary forensic psychology*. Oxford: Oxford University Press.

² Berg, H. (2014) 'Working for love, loving for work: discourses of labor in feminist sex-work activism', *Feminist Studies*, 40(3), pp. 693–721.

³ Levy, J. and Jakobsen, P. (2014) 'Sweden's abolitionist discourse and law: effects on the dynamics of Swedish sex work and on the lives of Swedish sex workers', *Criminology and Criminal Justice*, 14(5).

⁴ Mossman, E. (2007) *International approaches to decriminalising or legalising prostitution*. Wellington: Ministry of Justice.

⁵ Ibid.

⁶ Anita Bernstein, 'Working Sex Words' (2017) 24(2) *Mich J Gender & L* 221.

moral objections to the sex industry, arguing that it reinforces the sexual objectification of women and contributes to trafficking and abuse. Several Bangladeshi academics interviewed for this study highlighted that individuals often entered this profession following histories of abuse and social exclusion. While this debate continues across feminist scholarship, the question of women's participation in sex work remains unresolved: does it advance women's agency, or should it be understood as an exploitative and misogynistic practice that reflects structural inequality and limits social and legal progress?

Bangladesh presents a particularly compelling context through which to examine these debates. Sex work in Bangladesh is viewed ambivalently. It is often seen both as a product of poverty, warranting rehabilitation into socially acceptable roles, and as a societal "safety valve" that supposedly protects respectable women by accommodating perceived male sexual needs.⁷ Although sex work is not formally prohibited, it exists within a complex quasi-legal framework shaped by constitutional rights, administrative regulation, and policing practices. This produces an ambiguous legal and social status in which sex workers are neither fully recognised nor fully criminalised.

While existing scholarship has examined sex work in Bangladesh through public health, human rights, and development perspectives, less attention has been paid to how feminist legal theories illuminate the relationship between constitutional rights, quasi-legal regulation, and lived realities on the ground. This article addresses that gap by analysing the intersections between feminist legal theory and the regulation of sex work in Bangladesh. It focuses on constitutional rights, quasi-legal governance, and competing feminist positions, and examines abolitionist and non-abolitionist approaches within the Bangladeshi context. Rather than treating sex work governance as a question of formal legality alone, it emphasises how constitutional contradictions, statutory ambiguity, and enforcement practices together produce a fragmented and quasi-legal regulatory framework. It also situates these debates within broader global developments in sex work regulation as comparative reference points for understanding the specificity of the Bangladeshi case.

⁷ Huq, S. (2006) 'Sex workers' struggles in Bangladesh: learning for the women's movement', IDS Bulletin, 37(5), pp. 134–137.

2. Methodology and Research Design

2.1 Terminology and Language Sensitivity

The terminology used to describe the exchange of sexual services for compensation plays an important role in shaping legal, academic, and policy discourse. While some frameworks prefer the term “prostitution” to emphasise structural inequality, exploitation, or harm, this paper adopts the term “sex work” throughout.

This choice is made for analytical consistency and is intended to provide a broader and more inclusive descriptor of the diverse practices encompassed within the sex industry. The term “sex work” is used here as an umbrella concept that captures a range of experiences, including varying degrees of agency, constraint, and survival-based economic participation, without presuming a single interpretation of consent or coercion.

Where necessary, more specific descriptors such as “sex workers” or “individuals engaged in the sex trade” will be used to reflect contextual variation and avoid homogenising the experiences of those within the sector. This terminology is adopted as a descriptive rather than normative choice, recognising that language in this field remains contested across feminist, legal, and policy perspectives.

2.2 Methodology

This study adopts a qualitative research design grounded in feminist methodological principles, with an emphasis on capturing the lived experiences of individuals affected by the legal and social regulation of sex work in Bangladesh. The research is guided by an interpretivist approach, recognising that legal meanings and institutional practices are socially constructed and must be understood within their broader political, cultural, and economic contexts.

A central aim of the methodology is to foreground marginalised perspectives and address the limitations of traditional legal scholarship, which often prioritises formal doctrine over lived reality. In line with feminist epistemological approaches, this study treats experience as a key site of knowledge production, particularly in relation to groups whose voices are frequently excluded from legal and policy discourse.

Primary data collection involved qualitative engagement with relevant stakeholders, including six sex workers, four feminist activists, a former Deputy Attorney General, a Parliamentary Secretary, police officers, four academics, and individuals working within relevant institutions that deal with sex work. Semi-structured interviews were used where feasible, as they allowed flexibility in capturing diverse perspectives while maintaining thematic consistency. Given the difficulty of accessing women's rights organisations, presumably because of the sensitivity of the issue, lived experiences were captured through interviews with brothel-based, floating, and hotel/home-based sex workers. Interviews took place at times and locations preferred by participants and were conducted face-to-face, online, by telephone, or through questionnaires. Some interviews were recorded with consent; however, a significant number of participants preferred that notes be taken without audio recording. The data were triangulated across interviews with academics, feminist activists, legal professionals, and law-enforcement professionals.

In addition to any primary material collected, the study draws on extensive documentary and textual analysis. This includes legal statutes, constitutional provisions, court decisions, policy documents, and reports produced by non-governmental and international organisations. This approach allows for triangulation between institutional frameworks and lived realities, strengthening the analytical depth of the research.

Ethical considerations are central to the research design. Due to the sensitivity of the topic, particular attention is given to confidentiality, informed consent, and the protection of individuals from potential harm or identification. The study prioritises anonymity and adopts a cautious approach to data handling and reporting through pseudonyms.

Overall, this methodological approach seeks to bridge the gap between formal legal structures and lived realities, enabling a nuanced understanding of how sex work is governed, experienced, and contested within the Bangladeshi context. This analysis was empirically enriched through qualitative field research involving interviews with sex workers (brothel-based, floating, home/hotel-based, and escort/sugar arrangements), anthropologists, feminist civil-society representatives, and legal experts, including a former Deputy Attorney General and a Parliamentary Secretary. The data collection process was marked by several significant logistical challenges, including restricted access to feminist organisations, substantial confidentiality risks for participants within the documentation system, and the emotional demands of direct engagement with the realities of the field.

3. Legal Context of Sex Work in Bangladesh

3.1 Constitutional Position

Although the debate on Bangladeshi sex work surfaced in the wake of the eviction of occupants of several brothels in the late 1990s, an abolitionist orientation is embedded in the Constitution of Bangladesh.⁸ Article 18(2) directs the state to adopt effective measures to prevent prostitution, creating a preventive constitutional mandate.⁹ However, this constitutional objective appears to be in tension with Article 40, which guarantees citizens the right to engage in any lawful occupation. Moreover, several provisions within the fundamental rights chapter (Articles 27–44), including equality before law, freedom of movement, freedom of occupation, and protection against arbitrary arrest, are directly relevant to the legal status and treatment of sex workers.¹⁰ The Constitution therefore contains an internal contradiction that lies at the heart of Bangladesh's quasi-legal framework governing prostitution.

This constitutional structure results in a situation where sex work is not explicitly prohibited, but is simultaneously discouraged through directive principles of state policy and marginalised through the broader interpretation of public morality and order.

This contradiction is significant because it establishes sex work as neither explicitly legal nor explicitly illegal within constitutional architecture. Instead, it produces a space in which rights-based claims and abolitionist state objectives coexist, generating uncertainty in both interpretation and enforcement. Whilst the Constitution discourages prostitution, a consensual contract between two adults entered into upon payment is not explicitly defined as an offence in statutory law, making it non-punishable and legally valid as a contract.

3.2 Legal Ambiguity and Statutory Framework

⁸ Sultana, H. (2017) 'Sex as "work": the Bangladeshi context', *New Zealand Journal of Asian Studies*, 19(1), pp. 93–110.

⁹ Constitution of the People's Republic of Bangladesh 1972, as amended.

¹⁰ *Ibid* Art 27-44.

The Bangladeshi legal framework is heavily influenced by colonial-era laws. Notably, the Suppression of Immoral Traffic Act (1933)¹¹ and the Oppression of Women and Children (Special Enactment) Act (1995, as amended 2000)¹² shaped the development of the current Human Trafficking and Migrant Smuggling Prevention and Suppression Act (2026).¹³ This Act, through Section 2(20)(a)–(b) and Section 11, irrespective of the person’s consent, criminalises employing any person in the sex trade, producing pornography, facilitating prostitution, and living off the earnings of sex work.

Importantly, Bangladeshi law does not directly criminalise “sex work” as an occupation; rather, it criminalises associated activities such as solicitation, brothel management, and profiting from sex work. This creates a legal structure of indirect criminalisation, where sex work is regulated through surrounding offences rather than explicit prohibition.

In addition to substantive laws governing prostitution and trafficking, the legal framework is also shaped by procedural laws inherited from the colonial period. The Code of Criminal Procedure, 1898, through Section 54, permits police to arrest individuals without a warrant under “suspicious” circumstances.¹⁴ In practice, this provision is the main tool disproportionately weaponised against sex workers, particularly street-based and floating sex workers, exposing them to arbitrary detention, extortion, and abuse by law enforcement.

This distinction between formal prohibition and discretionary enforcement is critical for understanding the gap between law on paper and law in practice, which is central to this study’s policy brief analysis. It also reflects a broader structural issue in which constitutional rights exist in theory but are not consistently enforceable in practice due to expansive police discretion and weak accountability mechanisms.

Further, Section 290 of the Penal Code, 1860 (public nuisance) is widely used to prosecute soliciting in public spaces.¹⁵ Offences under this provision are punishable by either a fine or one

¹¹ Suppression of Immoral Traffic Act 1933 (British India).

¹² Oppression of Women and Children (Special Enactment) Act 1995 (Bangladesh), as amended by the Women and Children Repression Prevention Act 2000.

¹³ Human Trafficking and Migrant Smuggling Prevention and Suppression Act 2026 (Bangladesh).

¹⁴ Code of Criminal Procedure 1898 (Bangladesh).

¹⁵ Penal Code 1860 (Bangladesh).

month's imprisonment. Together with Section 54 of the CrPC, this creates an operational toolkit for policing sex work without formally prosecuting prostitution itself.

The Dhaka Metropolitan Police Ordinance (Section 74) / Metropolitan Police Act (MPA, 1976),¹⁶ applicable in the six divisional cities of Bangladesh, also prohibits soliciting another person in public for the purpose of prostitution and therefore renders at least some forms of street-based sex work illegal.¹⁷ It may be noted that this prohibition applies equally to men and women.

The testimonies revealed that floating and hotel-based sex workers are regularly arrested by law enforcement under the combined application of Section 54 of the CrPC, the Anti-Human Trafficking Act, and the Narcotics Act. In relation to Section 13 of the Anti-Trafficking Act, these provisions are commonly misapplied to penalise or harass those engaged in voluntary, consensual sex work. This creates an evident administrative divide: while senior police leadership exhibits little interest in prosecuting sex work, local police officers are highly motivated to conduct hotel and spa raids due to immediate right-wing and local political pressures. These pressures include disagreements over arrangements and networks involving the police, political leaders, business owners, and sex workers.

3.3 Quasi-Legal Governance and Administrative Control

Another key dimension of regulation is the Vagrancy Act, 1943. Section 2(7) defines a “vagrant” as any person who remains in a public place and has no apparent means of subsistence or no fixed residence.¹⁸ Under Section 4, any police officer may arrest without warrant any person who appears to be a vagrant, and such individuals may be detained in Vagrant Homes by order of a magistrate.¹⁹

However, it has been reported that sex workers, irrespective of their means of subsistence or residence as stipulated in the Act, are often illegally confined in Vagrant Homes.²⁰ A 2015 report by the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) noted that sex workers do

¹⁶ Metropolitan Police Act 1976 (Bangladesh).

¹⁷ Human Rights Watch (2003) *Ravaging the vulnerable: abuses against persons at high risk of HIV infection in Bangladesh*. New York: Human Rights Watch. Available at: <https://www.hrw.org/report/2003/08/19/ravaging-vulnerable/abuses-against-persons-high-risk-hiv-infection-bangladesh> (Accessed: 7 June 2026).

¹⁸ Vagrancy Act 1943 (Bangladesh), s2(7).

¹⁹ Ibid s4.

²⁰ Islam, T. (1999) 'RIGHTS-BANGLADESH: From prostitution to destitution'. Inter Press Service. Available at: <https://www.ipsnews.net/1999/08/rights-bangladesh-from-prostitution-to-destitution/> (Accessed: 7 June 2026).

not fall under the legal definition of vagrancy.²¹ Nevertheless, enforcement practices frequently diverge from this legal position, with the Act continuing to be used as a tool of administrative control over sex workers.

This demonstrates how quasi-legal governance operates not only through formal statutes but also through discretionary administrative practices that extend beyond the written scope of the law. In practice, regulation is shaped by police discretion, local administrative decisions, and informal power structures surrounding brothel areas and urban spaces where sex work occurs.

3.4 Judicial Recognition and Affidavit-Based “Legalisation”

A further layer of complexity arises from judicial intervention. While the Constitution adopts a preventive policy against prostitution, adult women are legally permitted to operate as sex workers if they submit an affidavit declaring their occupation.²² In August 2000, the High Court Division of the Bangladesh Supreme Court ruled that the detention of over 100 sex workers arrested in brothel raids was unlawful and held that prostitution constituted a “legal occupation”.²³

However, this legal status derives from judicial interpretation rather than statutory reform. Adult women may register as sex workers through an affidavit before a magistrate, creating a situation in which sex work is partially recognised through court practice but not formally codified in legislation. This produces a structurally inconsistent framework in which sex work is simultaneously tolerated, regulated, and discouraged.

This affidavit requirement also generated bureaucratic barriers, particularly in obtaining police verification for brothels. Combined with administrative restrictions, this contributed to the decline of registered brothels from approximately 110 to 11. This illustrates a key case study in the gap between formal legal pronouncement and administrative reality. As a result, sex workers are positioned between partial legal recognition and systemic exclusion, leaving them vulnerable to harassment and limiting access to healthcare and legal protection.

²¹ Ministry of Women and Children Affairs (2015) The eighth periodic report of the Government of the People's Republic of Bangladesh submitted under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Dhaka: Government of Bangladesh.

²² Sattar, M.P. (2021) 'Sex, work and sex-work: the clandestine tale of a tabooed industry in Bangladesh', ADVANCE.

²³ BBC News (2000) 'Bangladesh says prostitution legal'. Available at: http://news.bbc.co.uk/2/hi/south_asia/677280.stm (Accessed: 5 June 2026).

According to the legal experts, the affidavit mechanism functions merely as a quasi-administrative evidentiary device rather than a statutory licensing system. According to former Deputy Attorney General Amit Kumar Das, it carries persuasive value in helping law enforcement distinguish consenting adults from trafficking victims, but it lacks legislative codification and cannot grant immunity from arbitrary prosecution. Field data show differing levels of legal awareness regarding this mechanism: brothel-based and floating workers are highly familiar with affidavits but consider them symbolic shields offering little real protection, while home/hotel-based workers appear to be unfamiliar with the system. Some do not identify their activities as sex work. Moreover, academic participants point out that affidavits cannot reliably prove ongoing informed consent because of systemic issues such as forgery, corruption in notarisation, and workers' illiteracy.

3.5 Moral Regulation and Political Contestation

The legal discourse around sex work in Bangladesh and its governance is strongly shaped by moral panic and often leans towards abolitionist reasoning. While brothel-based sex workers may engage in sex work primarily as a means of survival, those in emerging urban markets may enter the sex trade through different forms of economic agency. Nevertheless, the current legal framework neither consistently protects nor meaningfully acknowledges sex workers' agency in choosing the profession.

Under the current political reality, radical groups have also become significant actors in shaping legal outcomes. A nationwide campaign led to the abolition of the Women Reform Commission in 2025, which had recommended the recognition of sex work as a legal profession.²⁴ This illustrates how legal governance in this field is not only judicial and legislative, but also highly responsive to moral and political mobilisation, which directly influences policy outcomes and reform trajectories.

This moral hostility and systemic vulnerability intensified following the political regime change on 5 August 2024. The desk research and interviewees consistently reported a sharp rise in extremist pressure, intimidation and misogynistic physical attacks, leaving floating sex workers vulnerable to eviction threats and extortion by youth gangs in their places of residence.

²⁴ Dhaka Tribune (2025) 'Writ challenges legality of Women Reform Commission's recommendations'. Available at: <https://www.dhakatribune.com/bangladesh/court/380310/writ-challenges-legality-of-women-reform> (Accessed: 10 June 2026).

Simultaneously, another form of digital abuse has emerged. Street journalists or vloggers record unauthorised videos of sex workers and broadcast them on social media to fuel cyberbullying and blackmail. This trend of public shaming is exacerbated by student groups conducting moralistic spa and hotel raids, either independently or alongside the police. Sensationalised and inflammatory online content has contributed to political backlash against both the feminist movement and the movement for sex workers' rights.

4. Feminist Legal Theory Framework

4.1 Abolitionist Feminism

Within feminist legal theory, debates on the sex industry are broadly divided between abolitionist and decriminalization perspectives. Abolitionism, often referred to as “partial decriminalization,” aims to abolish prostitution by targeting demand, while decriminalizing those selling sex in an ostensible effort to protect those within the sex trade, constructed as passive victims of gendered violence, from criminalization.²⁵ The abolitionist approach aligns with the perspective that sex work is not legitimate labour and instead represents structural inequality. It proceeds from an understanding of prostitution as gendered violence, which creates a very different framework from those that identify prostitution as either labour or a consequence of female immorality.²⁶ In this view, prostitution is closely linked to systems of male dominance, where the state is understood as reinforcing gender hierarchies through legal regulation of sexuality and economic vulnerability.

Existing theoretical frameworks further reflect this divide. Early abolitionist and prohibitionist approaches have drawn on moral and public health concerns, including the “immoral” framing of sex workers and clients, the spread of venereal disease, and the victimised portrayal of women engaged in prostitution.²⁷ Radical feminist theory further develops this position by arguing that prostitution is embedded in systems of sexual subordination. In this view, the state institutionalises male dominance through law, and prostitution is treated as a paradigmatic instance of women's

²⁵ n(3).

²⁶ Mesce, G. (2020) Sex work decriminalization and feminist theory. Senior thesis. University of South Carolina. Available at: https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=1368&context=senior_theses (Accessed: 15 June 2026).

²⁷ Gilfoyle, T.J. (1992) *City of Eros: New York City, prostitution, and the commercialization of sex, 1790–1920*. New York: W.W. Norton & Company.

bodies being treated as male property.²⁸ MacKinnon further argues that economic coercion vitiates consent in the same way as physical force does in rape.²⁹ It has also been argued that prostitution is constitutive of male supremacy and cannot be separated from gendered power relations.³⁰ Similarly, Butler posits prostitution as a manifestation of gender oppression and exploitation.³¹

4.2 Decriminalization and Sex Work as Labour

Decriminalization views prostitution through the lens of empowerment and autonomy. Decriminalization refers to the removal of all laws and regulations which criminalize and/or penalise various aspects of the sex industry, including its sale, purchase, advertisement, and the involvement of third parties (e.g. managers and brothel owners).³² This school of thought seeks to recognise the sale of sex as a form of employment like any other and to empower those within the industry to assert their rights and advocate for fair and equal treatment.³³

Decriminalization does not create prostitution-specific regulations but seeks to integrate it into preexisting legal and labour frameworks. It also seeks to avoid the emergence of a two-tiered system whereby those within the sex trade who do not comply with state regulation are driven underground.³⁴ In decriminalized regimes, there is typically a shift in power from the state and clients to sex workers themselves.³⁵

This approach is closely aligned with sex-work-as-labour perspectives, which emerged strongly from the 1970s onwards, with feminist and rights-based scholars arguing for the recognition of sex work as service work rather than deviance or victimhood.³⁶ The introduction of the terms “sex work” and “sex workers” reflects this shift towards recognising income-generating labour rather than moral categorisation. Within this framework, sex work is understood as involving skills and bodily services comparable to other forms of labour. Nussbaum argues that prostitution shares

²⁸ MacKinnon, C.A. (1989) *Toward a feminist theory of the state*. Cambridge, MA: Harvard University Press.

²⁹ Ibid.

³⁰ Dworkin, A. (1997) *Life and death*. New York: Free Press.

³¹ Butler, C.N. (2016) 'A critical race feminist perspective on prostitution and sex trafficking in America', *Yale Journal of Law and Feminism*, 27(1).

³² Global Network of Sex Work Projects (NSWP) (2024) *Decriminalisation vs. legalisation: understanding key differences in sex work legislation*. Available at: <https://www.nswp.org/resource/nswp-publications/decriminalisation-vs-legalisation-understanding-key-differences-sex-work> (Accessed: 15 June 2026).

³³ Ibid.

³⁴ n(4).

³⁵ n(6).

³⁶ Chapkis, W. (1997) *Live sex acts: women performing erotic labor*. London: Cassell.

structural similarities with other forms of bodily service work, including domestic labour and caregiving occupations, challenging its exceptional moral framing.³⁷

Together, these perspectives conceptualise decriminalization as both a legal framework and a broader rights-based approach that seeks to reduce stigma, expand labour protections, and recognise sex workers as rights-bearing workers within existing legal and social systems.

4.3 Critical Debate and Theoretical Tensions

These schools of thought advance fundamentally competing perspectives on bodily autonomy, consent, and structural inequality. Many theorists and activists supporting decriminalization emphasise the right to bodily autonomy and the removal of discriminatory criminal statutes. In contrast, abolitionist approaches raise moral and political objections to the sex industry, arguing that it reinforces the sexual objectification of women and contributes to trafficking and abuse. Within this broader debate, questions remain unresolved about whether sex work represents agency and economic choice or whether it reflects constrained decision-making under conditions of inequality.

Debates within regulationist and decriminalization perspectives also highlight concerns about moral panic and misclassification. Beloso cites pro-legalization and pro-decriminalization feminists such as Ronald Weitzer and Gayle Rubin, who argue that the legal framing of sex work as inherently violent has contributed to moral panic shaping political and legal discourse on the topic.³⁸ This moral framing may also lead to the conflation of trafficking victims with individuals engaged in consensual commercial sex, potentially undermining protections for those who voluntarily enter sex work.³⁹ However, Vanwesenbeeck argues that empirical evidence suggests that improved legal protections and access to healthcare services can reduce exploitation, coercion, and trafficking-related harms by criminal networks and intermediaries.⁴⁰

4.4 Analytical Framing and Relevance to Bangladesh

³⁷ Nussbaum, M.C. (1998) 'Whether from reason or prejudice: taking money for bodily services', *Journal of Legal Studies*, 27(S2), pp. 693–724.

³⁸ Beloso, B.M. (2012) 'Sex, work, and the feminist erasure of class', *Signs: Journal of Women in Culture and Society*, 38(1), pp. 47–70.

³⁹ Ibid.

⁴⁰ Vanwesenbeeck, I. (2017) 'Sex work criminalization is barking up the wrong tree', *Archives of Sexual Behavior*, 46(6), pp. 1631–1640.

Feminist debates on prostitution remain deeply divided between abolitionist and decriminalization-oriented perspectives. Feminist legal scholarship continues to grapple with whether sex work should be interpreted primarily as exploitation embedded in structural inequality or as labour shaped by constrained but nonetheless meaningful forms of agency. Within this unresolved tension, the present study examines how these competing frameworks interact with the Bangladeshi legal and constitutional context, where sex work is neither fully criminalised nor fully recognised, but instead governed through a fragmented and quasi-legal regulatory structure.

5. Findings: Quasi-Legal Governance and Feminist Fracture in Bangladesh

This section brings together the theoretical and legal strands developed in the previous sections to examine how sex work is actually governed in Bangladesh. Rather than operating through a coherent legal category, sex work is shaped by overlapping constitutional principles, criminal provisions, administrative discretion, and competing feminist interpretations. The result is not a unified regulatory regime but a fragmented system in which legality is continuously negotiated in practice.

5.1 Sex Work as Lived Ambiguity

Although sex work in Bangladesh is often discussed through the narrower lens of prostitution in legal and policy discourse, in practice it encompasses a wider spectrum of survival-based and income-generating activities.⁴¹ This distinction is significant because it reveals a disconnect between formal legal categorisations and lived realities. Within this space, sex workers do not experience their occupation as a stable legal or illegal category, but as a shifting condition shaped by enforcement, location, and socioeconomic vulnerability.

The concept of consent and choice further complicates this landscape. While legal and moral frameworks often attempt to distinguish between voluntary sex work and coercion, in practice these boundaries are difficult to maintain in contexts of poverty, migration, and economic precarity. As a result, sex work in Bangladesh exists along a continuum that includes survival-

⁴¹ Weitzer, R. (2010) *Sex for sale: prostitution, pornography, and the sex industry*. 2nd edn. New York: Routledge.

based engagement as well as forms of urban economic participation, making rigid legal classifications difficult to apply consistently.

Rakhi⁴² described sex work as a profession entered primarily because of financial necessity. She emphasized that it is fundamentally a "give and take" arrangement governed by mutually agreed conditions with clients. She is the main financial provider for her family. Although she is married, she indicated that the relationship and broader family circumstances contributed to her economic responsibilities.

"... I start doing this because one meeting give more money than one month salon work."- Mili⁴³

Samia (Pseudonym), hotel/home-based sex worker/student, explained that she first came to Dhaka for her studies. While still studying, she learned that she could earn money through "paid dating" and gradually entered sex work. She viewed it as a way to support herself financially while continuing her education.

First, I worked in garments but salary was not enough, hard work throughout the day and sometime factory closes without any notice. A friend introduced me this work and brought me to Sangsad (Parliament) Area.- Moina⁴⁴

Empirical data from the interviews confirm that economic necessity and financial survival are the primary motivators for turning to the sex industry as a form of earning money, with women using the profession as a calculated strategy to support families or fund higher education and meet basic needs in urban areas like Dhaka. In Dr. Nabi⁴⁵'s opinion, abolitionist feminism correctly states that many women enter sex work because of social systems that coerce them into sex work, including poverty, trafficking, violence, and patriarchal inequality. Dr. Shewly⁴⁶ conceptualizes this entry as a 'constrained choice', whereby women, often migrating away from intense physical strain and workplace harassment in garment factories, choose alternatives within or adjacent to the sex industry because of their superior remuneration, despite the overarching structural inequalities that constrain their choices.

⁴² Rakhi (Pseudonym), a participant who is hotel/home-based sex worker

⁴³ Mili, (Pseudonym), Home-based sex worker

⁴⁴ Moina (Pseudonym), Freelance sex worker

⁴⁵ Professor Dr Rakiba Nabi, Department of Law, University of Chittagong

⁴⁶ Dr. Hosna J. Shewly, Fellow, University of Amsterdam

“I was born inside brothel. My mother also was a sex worker. Later I continue same work because no education and no other opportunity”. -Rima⁴⁷

Sex work in Bangladesh is highly hierarchical; while home/hotel-based and escort/sugar arrangements operate through verbal or app-based agreements with minimal exposure to physical violence, brothel-based and floating sex workers suffer extreme physical violence from police, clients, pimps, and, more recently, youth gangs, with some participants documenting visible fresh knife wounds. As a result, the nature of lived ambiguity is heavily influenced by the specific geographic and spatial tier of the trade.

“I never go to police or government office because I don't want any record. Police raid hotel sometimes then everything changes. Not all, but there are some hotels' authority also ask extra money because they know our situation as we can't go to police. I don't know much about legal rights. Sometimes client threaten saying he will force if I refuse”. - Mili⁴⁸

5.2 Governance Through Discretion Rather Than Law

A central finding of this research is that sex work in Bangladesh is governed less by formal statute and more by discretionary enforcement practices. This finding was supported by the interview participants. While constitutional and legal frameworks formally establish rights and obligations, the lived reality of sex workers is primarily shaped by policing practices, administrative interventions, and informal regulation.

Rakhi⁴⁹ focused less on direct interactions with police or courts and more on the informal systems surrounding sex work. She explained that brokers play a significant role in arranging work but often fail to maintain professional standards and may treat workers unfairly.

“anti-trafficking laws are sometimes applied in ways that fail to distinguish between trafficking victims and consenting adult sex workers. This creates confusion and may expose voluntary sex workers to unnecessary legal risks”.- Hena⁵⁰

⁴⁷ Rima, (Pseudonym), Brothel-based sex worker

⁴⁸ Mili (Pseudonym), Hotel/Home-based Freelance Sex Worker

⁴⁹ n (42)

⁵⁰ Hena, Brothel Based Sex Worker

Collected data confirm that street-based and mobile sex workers are particularly exposed to this discretionary governance. Their visibility in public space makes them more susceptible to arrest, displacement, and harassment, while brothel-based sex work is more likely to be regulated through periodic raids and administrative pressure. In addition, modern arrangements involving online platforms or freelance sex workers are neither regulated nor a focus of policing. This creates uneven enforcement patterns that are not fully explained by legal status alone.

Empirical accounts and human rights documentation suggest that enforcement practices often extend beyond formal legal boundaries, particularly through arrest and detention practices that rely on suspicion and public nuisance framing.⁵¹ In such contexts, policing functions not only as law enforcement but also as a mechanism of spatial and social control.

“For this case, sometimes they take it personally. As police, they have two responsibilities- prevent the offences and protect the law and order, and secondly, investigate the offences. I feel the huge training is required to change the mentality/ behavior of ground level police. Legally, there is not scope to show over enthusiasm or take it personally”. – Amit Das Gupta⁵²

This dependence on discretion leaves sex workers exposed to constant altercations, threats from different actors, and raids. Participants in this research expressed frustration at the failure of the system and law enforcement to distinguish voluntary sex work from human trafficking, exposing consenting individuals to unwarranted legal intervention.

“Bangladesh's legal framework remains internally inconsistent... The landmark 2000 High Court judgment – Bangladesh Society for the Enforcement of Human Rights (BSEHR) and Ors v. Government of Bangladesh and Ors - recognized that prostitution that sex workers had a protected right to livelihood and held that adult women could voluntarily engage in sex work. The Supreme Court determined that while the operation of unlicensed brothels and the sale of minors are punishable offenses, there is no existing statutory law that expressly prohibits prostitution itself for consenting adults. This represented an

⁵¹ n(17).

⁵² Amit Das Gupta, Advocate, Former Deputy Attorney General

important constitutional affirmation of autonomy. However, practical implementation remains weak”.- Professor Dr Rakiba Nabi⁵³

At the same time, online freelancers and escort-service providers operate entirely outside police attention and NGO or civil-society support mechanisms. Police officials acknowledge that affected sex workers rarely seek legal remedies against extortion or violence because of the public nature of court documentation, which creates vulnerability to social stigma and further institutional trauma.

5.3 Administrative Categorisation and Social Exclusion

Beyond policing, administrative categorisations such as vagrancy and mobility status contribute to the regulation of sex workers. Reports indicate that sex workers are frequently subjected to detention in vagrant institutions despite not necessarily meeting formal legal definitions of vagrancy.⁵⁴ This suggests a gap between legal classification and administrative application, where categories are expanded in practice to include socially marginalised populations.

Such practices reflect a broader governance logic in which legal categories are applied flexibly in response to perceived moral or social deviance. Even where official policy documents acknowledge that sex workers do not fall within certain legal definitions, enforcement practices continue to reproduce exclusionary outcomes.⁵⁵

This divergence between formal recognition and practical treatment produces a condition of legal uncertainty, where sex workers are neither fully included within legal protection frameworks nor fully excluded from regulatory control.

One participant’s experience of a vagrant centre illustrates the potential weaponisation of administrative custody. Hena, who was placed in a government vagrant centre, was subsequently sent to work in a household, where she was raped. After escaping, she was forced into floating sex work. This highlights a profound institutional failure in which rehabilitation opens a gateway to further structural violence rather than providing social protection.

⁵³ n (45)

⁵⁴ n(20).

⁵⁵ n(21).

5.4 Fragmentation Between Recognition and Exclusion

Judicial interventions have occasionally recognised sex work as a lawful occupation in limited contexts, particularly through decisions affirming that adult sex workers cannot be detained solely on the basis of their profession.⁵⁶ However, such recognition has not translated into comprehensive statutory reform. Instead, it has produced a fragmented legal environment in which recognition exists at the level of judicial reasoning but is constrained by administrative and procedural barriers.

The affidavit-based system of recognition illustrates this tension. While it provides a formal mechanism through which sex workers may declare their occupation, it does not eliminate broader structural barriers such as stigma, police interference, or restrictions on brothel operation.⁵⁷ As a result, sex workers occupy a contradictory position in which they are partially visible to the law but remain structurally excluded from its protections.

This fragmentation is reflected in the decline of formal brothel systems and the increasing reliance on informal or dispersed forms of sex work, indicating a shift in governance rather than elimination of the practice.

This fragmentation reveals a deeper organisational gap in efforts to safeguard sex workers. Newly emerging hotel/home-based sex workers report receiving no support from NGOs. This lack of inclusion means that some of the most vulnerable actors in the sex-work landscape lack a collective voice, leaving them exposed to legal risks without adequate safeguards.

5.5 Feminist Disagreement as Institutional Reality

The feminist theoretical divide between abolitionist and decriminalization perspectives is not only an academic debate but also shapes how sex work is politically and institutionally interpreted in Bangladesh. Sex work is simultaneously framed as a product of poverty requiring rehabilitation and as a contested form of labour linked to autonomy and survival.⁵⁸

This dual framing produces competing policy logics: one oriented towards elimination and moral regulation, and the other oriented towards recognition and rights-based protection. However, in

⁵⁶ n(23).

⁵⁷ n(22).

⁵⁸ n(7).

practice neither framework is fully implemented. Instead, governance operates through an unstable combination of tolerance, restriction, and periodic enforcement.

“I believe that a rights-based, postcolonial feminist approach, recognizing agency without ignoring structural inequality, is the best way to go handling sex work framework”.- Prof. Nabi⁵⁹

Recent political developments, including resistance to reform proposals such as those advanced by the Women Reform Commission, further illustrate the contested nature of sex work governance in Bangladesh.⁶⁰ These developments highlight how feminist legal debates are not confined to theory but are actively shaped by broader political and moral contestation. They also reflect a rise in conservatism and political extremism. With a heavy emphasis on traditional gender roles and the politicisation of religion, the current political climate is becoming increasingly hostile to the feminist movement. The lack of nuanced religious interpretation and the failure of politics to evolve in response to contemporary needs constitute significant obstacles to the feminist movement in Bangladesh today.

“The feminist movement in Bangladesh is likely to remain divided but increasingly influenced by human rights discourse. Historically, Bangladeshi feminist organizations have differed in their positions. Some advocate abolition based on concerns about exploitation and trafficking, while others support legal recognition, labour rights, and harm reduction. The traditional and conservative social and religious structures also influence the feminist movement.”- Prof. Nabi⁶¹

Data collected through this research show that the feminist movement in Bangladesh is severely fragmented and constrained by shrinking global funding, resulting in short-term project interventions. While organisations such as the Sex Workers Network openly view sex work through a labour and human-rights framework, other NGOs maintain a conflicting, abolitionist approach. Some workers also expressed deep dissatisfaction with conventional feminist organisations, saying that they felt judged and pressured to adopt alternative livelihoods. Academics expressed concern that civic space and social movements are ultimately neutralised by

⁵⁹ n (45)

⁶⁰ n(24).

⁶¹ n (45)

extremist ideologies and influences that absorb state ideological control. This is causing visible reluctance among civil-society organisations to advocate openly for sex workers' rights.

5.6 Synthesis: Quasi-Legal Governance

Taken together, the findings demonstrate that sex work in Bangladesh operates within a quasi-legal governance regime. This regime is characterised by the coexistence of constitutional rights, fragmented statutory regulation, discretionary enforcement, and competing feminist interpretations. Rather than producing legal clarity, these overlapping frameworks generate systemic ambiguity.

The central implication is that sex work in Bangladesh is not governed through a single legal logic, but through a dynamic interplay between formal law and informal enforcement. This produces a system in which legality is continuously negotiated, and where lived experiences of sex workers are shaped more by enforcement practices than by statutory definitions.

Within this context, feminist legal theories do not simply interpret sex work differently; they also reveal different aspects of a fragmented governance system that does not align fully with either abolitionist or decriminalization models. This misalignment forms the core analytical contribution of the study and sets the foundation for the subsequent policy brief.

6. Discussion and Policy Implications: Law, Feminist Theory, & Reform in Bangladesh

6.1 Theoretical Implications: Limits of Abolitionism and Decriminalization

This section synthesises the preceding analysis by linking the feminist theoretical frameworks, the constitutional and statutory legal structure, and the lived realities of sex workers in Bangladesh. It also translates these findings into policy-relevant implications. The central argument is that sex work in Bangladesh is governed through a fragmented and quasi-legal system that cannot be adequately explained through either abolitionist or decriminalization frameworks alone. Instead, governance operates through a combination of constitutional contradiction, selective enforcement, and administrative discretion, producing a persistent gap between formal legality and lived reality.

The findings challenge the explanatory adequacy of dominant feminist legal frameworks when applied to Bangladesh. Abolitionist perspectives, which conceptualise sex work primarily as structural violence and exploitation, partially align with the presence of coercion, poverty, and vulnerability in the Bangladeshi context. However, this framework does not fully account for the differentiated realities of sex work, particularly the presence of survival-based agency, urban economic participation, and varying degrees of choice within the sector.

Conversely, decriminalization and labour-oriented frameworks emphasise autonomy, rights, and integration into labour law systems. While these approaches better capture the agency of some sex workers, they do not adequately reflect the realities of coercive enforcement, policing practices, and administrative exclusion. In Bangladesh, legal recognition without institutional protection produces a situation in which formal rights exist but are not effectively operationalised.

The result is a structural mismatch between feminist legal theory and governance reality. Rather than existing as competing explanatory models, abolitionism and decriminalization instead reveal different partial truths about a system that is itself inconsistent and fragmented.

6.2 Quasi-Legal Governance as a Structural Condition

A key finding of this study is that sex work in Bangladesh operates within a quasi-legal governance regime. This regime is characterised by the coexistence of constitutional rights, criminal prohibitions, judicial interventions, and discretionary enforcement practices that do not converge into a single coherent regulatory system.

In this structure, legality is not fixed but negotiated through enforcement. Sex workers experience law primarily through policing practices, administrative categorisations, and spatial control mechanisms rather than through formal adjudication or statutory protection. As a result, the distinction between legality and illegality becomes fluid and context-dependent.

This form of governance produces what may be described as “regulated ambiguity,” where sex work is neither fully prohibited nor fully recognised. Instead, it is managed through a combination of tolerance, periodic enforcement, and administrative exclusion. This ambiguity is not accidental but structurally produced through contradictions embedded within the constitutional and legal framework, particularly the tension between protective constitutional provisions and preventive state objectives.

6.3 Rights Gap and Institutional Fragmentation

Although constitutional provisions guarantee equality before law, freedom of occupation, and protection from arbitrary arrest, these rights do not translate into consistent protection for sex workers in practice. The findings demonstrate a persistent “rights gap” between formal legal guarantees and their implementation.

Judicial recognition of sex work as a lawful occupation in limited contexts has not resulted in comprehensive legal reform or administrative alignment. Instead, sex workers remain subject to discretionary enforcement practices and procedural barriers that limit the practical effect of such recognition. This fragmentation is further reinforced by administrative practices such as affidavit-based recognition, which provide formal visibility without substantive protection.

The overall effect is institutional fragmentation, where different arms of the state operate with divergent logics. Courts may recognise limited rights, while law enforcement agencies continue to regulate through punitive or exclusionary practices, and administrative systems impose structural barriers to formalisation.

6.4 Policy Implications: Towards Coherence and Rights Protection

The findings of this study suggest that current governance approaches are insufficiently coherent to ensure legal protection, rights realisation, or effective regulation. Any policy response must therefore address not only the legal status of sex work but also the institutional mechanisms through which it is governed in practice.

First, there is a need to reduce reliance on discretionary enforcement mechanisms that produce arbitrary and inconsistent outcomes. Practices that enable arrest, detention, or displacement on vague grounds such as suspicion or public nuisance contribute directly to legal uncertainty and vulnerability. Strengthening procedural safeguards and narrowing discretionary powers would reduce this structural ambiguity.

Second, administrative categorisations that indirectly target sex workers, such as vagrancy-based enforcement, require clarification and limitation in order to prevent their expansion beyond intended legal scope. The gap between formal legal definitions and enforcement practice contributes significantly to institutional harm.

Third, judicial recognition of sex work as a lawful occupation requires institutional follow-through to ensure that rights-based rulings are translated into enforceable protections. Without such alignment, legal recognition remains symbolic rather than practical.

Finally, policy reform must account for the heterogeneity of sex work itself. The findings indicate that sex work in Bangladesh is not a uniform category but includes survival-based, informal, and more autonomous forms of economic activity. A uniform regulatory approach risks failing to protect those most vulnerable within this spectrum.

The former Deputy Attorney General, Amit Das Gupta, and Parliamentary Secretary Barrister Golam Sorwar Bhuiyan submit that the single most urgent reform is the enactment of comprehensive legislation explicitly defining the legal status of consensual adult sex work. Barrister Golam Sorwar Bhuiyan proposed that a rights-consistent framework should divide the industry into three legally distinct categories:

1. human trafficking and forced exploitation,
2. child sexual exploitation,
3. consensual adult sex work.

Strict criminal penalties should be preserved for the first two categories, while consensual adult sex work should be treated separately. To safeguard sex workers from arbitrary police action or judicial harassment, concrete safeguards against the abuse of Section 54 must be codified, including a requirement to document in writing the reasonable suspicion on which any action is based. In addition, an oversight mechanism involving magistrates and the National Human Rights Commission should be established, together with disciplinary or criminal liability for unlawful police action. From an academic perspective, Dr. Shameema⁶² proposes complete decriminalisation except in situations involving trafficking or forced sex work. Dr. Shewly proposes a phased solution: registering and licensing existing workers who intend to remain in the profession, while concurrently expanding gender rights and social safety nets to prevent new entries driven by the need for survival.

6.5 Conclusion: Reframing the Governance Question

⁶² Dr. Shamema Nasrin, Associate Professor, Department of Anthropology, Comilla University

This study demonstrates that the central issue in Bangladesh is not simply whether sex work should be criminalised or decriminalised, but how governance itself is structured across fragmented legal and institutional domains. The persistence of quasi-legal governance suggests that reform cannot be limited to statutory change alone, but must address the broader interaction between law, enforcement, and administrative practice.

Within this context, feminist legal theory provides essential but partial insights. Abolitionist and decriminalization frameworks each illuminate aspects of sex work governance, but neither fully captures the hybrid and contradictory system that exists in practice. The Bangladeshi case therefore highlights the need for a more context-sensitive analytical approach that accounts for legal fragmentation, institutional discretion, and the gap between formal rights and lived realities.

This synthesis provides the foundation for understanding sex work not as a fixed legal category, but as a site of ongoing governance conflict between law, morality, and socio-economic necessity. It is within this tension that both the lived experiences of sex workers and the limitations of existing legal frameworks become most visible.

7. Conclusion

This paper has examined sex work in Bangladesh through the combined lens of feminist legal theory and the country's fragmented legal and administrative framework. It has argued that the governance of sex work cannot be understood through a single legal or theoretical model, but instead operates through a quasi-legal system shaped by constitutional contradiction, selective enforcement, and administrative discretion.

The analysis demonstrated that abolitionist and decriminalization frameworks each capture partial dimensions of the Bangladeshi context, but neither fully accounts for the lived realities of sex workers or the institutional structure that governs their lives. While constitutional provisions suggest both protective and preventive logics, and statutory laws produce indirect forms of criminalisation, enforcement practices ultimately determine how legality is experienced in practice. This creates a persistent gap between formal legal rights and their practical realisation.

By focusing on this gap, the paper has shown that sex work in Bangladesh is governed less through coherent legal categorisation and more through a system of regulatory ambiguity. Sex workers are positioned within overlapping regimes of recognition and exclusion, where limited judicial acknowledgement exists alongside strong administrative and policing pressures.

The study contributes to feminist legal scholarship by highlighting the limitations of applying singular theoretical frameworks to contexts characterised by legal fragmentation and institutional inconsistency. It also underscores the importance of understanding law not only as written doctrine, but as an evolving set of practices that shape lived experience.

Ultimately, the Bangladeshi case illustrates that sex work governance is not simply a question of criminalisation or decriminalisation, but of how legal authority is distributed and exercised across institutions. This insight has implications both for future legal reform and for broader debates on gender, labour, and state power.

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