

# Between Law and Stigma: Towards a Human Rights Framework for Sex Work in China

Ruidie Zhang \*

University of Toronto, Toronto, Canada

\* Corresponding Author Email: [ruidie.zhang@mail.utoronto.ca](mailto:ruidie.zhang@mail.utoronto.ca)

**Abstract.** China's current legal framework—including the Law on the Protection of Rights and Interests of Women, the Law on Public Security Administration Punishments, and the Law on Administrative Punishments—adopts a punitive approach to sex work, systematically violating the fundamental human rights of sex workers. Specifically, sex workers face frequent violence from clients, criminals, and even law enforcement, yet are unable to seek legal protection due to the fear of penalties associated with prostitution. Police often exhibit discriminatory attitudes, engage in violent practices to coerce confessions, and use humiliating enforcement measures. These practices severely compromise sex workers' rights to personal safety, health protection, labour rights, freedom from arbitrary detention, and protection against discrimination. In contrast, countries such as the United States (Nevada), New Zealand and Canada have implemented more human rights-oriented models by legalizing or decriminalizing sex work, effectively reducing stigma, violence, and health risks. China could gradually adopt these international experiences, shifting towards a human rights-centered legal and policy framework.

**Keywords:** Sex workers; Human rights protection; Decriminalization; Legal governance; Police violence.

## 1. Introduction

In 2012, police handcuffed and paraded several female sex workers through the streets of Guangzhou during a "pornography crackdown" that triggered a public outcry but did not result in legal recourse [1]. This incident highlights the fact that sex workers in China are not only penalized for prostitution but also suffer from a long history of humiliating law enforcement, health deprivation, and lack of legal redress [2]. At a time when human rights protection is increasingly emphasized, the issue of neglecting the rights of sex workers can no longer be avoided. Using human rights as an analytical framework, this paper combines case studies, literature reviews and international comparisons to systematically scrutinize the limitations of China's governance model and propose a path for policy reform [3,4].

## 2. Analysis of the Five Major Human Rights Dilemmas Faced by Sex Workers

### 2.1. Lack of Prevention of Sexual and Police Violence

Sex workers in mainland China often face violence from clients, criminals, and even law enforcement officials. However, because prostitution is illegal in China, it is complicated for sex workers to obtain adequate legal protection through judicial channels [1]. When sex workers are subjected to crimes such as rape or extortion, they are often afraid to report the crime to the police. They believe reporting the crime itself may result in them being penalized for suspected prostitution, thus exempting the perpetrators from accountability [5]. In addition, the lack of attention and discriminatory attitudes of law enforcement toward sex workers' reporting further exacerbates the plight faced by sex workers [2]. Law enforcement officials may themselves be perpetrators of violence and abuse against sex workers, including random beatings, verbal abuse, and even extreme measures, such as tying up victims and displaying them in public [1]. This is particularly acute in the early stages of police custody when police tend to use violence to force suspects to confess to engaging in the sex trade.

Once the suspect is pressured to confess, the police no longer have to undertake the onerous task of investigating and collecting evidence, and forced confessions become the basis for administrative penalties. This phenomenon is because penalties for sex workers are usually decided and enforced directly by the public security authorities or their subordinates [6]. The above situation highlights the profound absence of sex workers from the legal protection system, further increasing their vulnerability to sexual violence.

## **2.2. Limitations on the fundamental Right to privacy and the Right to health**

Sex workers in China experience significant restrictions regarding their right to health. In practice, police officers frequently confiscate condoms as evidence of prostitution, despite official guidelines issued by the Chinese public security authorities as early as 1998 explicitly instructing against this practice ("Notice on Principles for Propaganda and Education Concerning AIDS Prevention") [1]. This enforcement behaviour remains prevalent, causing sex workers to avoid carrying condoms due to fear of punishment [7]. Such actions directly compromise sex workers' ability to protect themselves against HIV/AIDS and other sexually transmitted infections, clearly contradicting national public health policies aimed at promoting condom usage and disease prevention [8].

Furthermore, sex workers encounter substantial barriers to accessing healthcare services. In some regions, local authorities implement mandatory disease testing for sex workers and publicly disclose their personal information. These practices infringe upon sex workers' privacy rights and violate their human dignity, contravening both Article 38 of the Chinese Constitution--which protects citizens' dignity--and provisions within the Law of the People's Republic of China on the Protection of the Rights and Interests of Women (1992), designed to safeguard women's rights and dignity [1]. Collectively, these measures constitute severe human rights violations and significantly impede sex workers' ability to enjoy equal rights to health and healthcare services.

## **2.3. Lack of Fundamental Labour Rights and Social Welfare Guarantees**

Since sex work is not legally recognized in China, sex workers lack access to essential labour rights protections. Firstly, sex workers and their employers cannot sign legally valid labour contracts, resulting in informal and hidden labour relationships. Consequently, sex workers are unable to legally assert fundamental employment rights, such as fair wages and reasonable working hours [5]. When facing violations like wage withholding or forced overtime, they cannot seek recourse through official channels such as labour arbitration or courts, as any employment agreement involving prostitution is considered legally void.

Secondly, the absence of legal recognition means occupational safety is rarely guaranteed. Sex work often occurs in informal and unregulated settings, such as karaoke bars, hotels, massage parlours, hair salons, parks, or streets [1]. This clandestine and unregulated environment exposes sex workers to increased risks of violence and other occupational hazards, with employers having little incentive to provide safety measures or protective practices.

Furthermore, sex workers are excluded from China's social welfare and health insurance systems, denying them necessary support when facing occupational injuries or health problems [1]. Overall, the criminalization of sex work systematically deprives sex workers of fundamental labour rights, workplace safety, and welfare protections, severely compromising their fundamental rights to livelihood and labour dignity.

## **2.4. Institutional Deepening of Constraints by Traditional Culture and Political Institutions**

In China, the Public Security Administration Punishment Law explicitly criminalizes prostitution, intertwining legal restrictions with socio-cultural condemnation, thus reinforcing the societal stigmatization of sex workers [8]. Official discourse traditionally labels prostitution as a "social evil," perpetuating public perception of sex workers as morally corrupt individuals who threaten social order. This perception is frequently amplified by negative media portrayals, which further stigmatize

and marginalize this community [9]. The combined effects of legal stigmatization and societal prejudice result in diminished public empathy toward sex workers, fostering acquiescence or even support for oppressive regulatory practices. Consequently, sex workers face overt and covert barriers to accessing employment, education, and public services, exacerbating their social exclusion and vulnerability [10].

Such discriminatory environments not only violate sex workers' human dignity and fundamental rights but significantly curtail their opportunities to voice concerns or participate in public discourse. For instance, police have employed humiliating disciplinary practices such as public parades and exposure of identities to stigmatize sex workers. Although public criticism has occasionally pressured authorities to halt these practices, overall conditions for sex workers have not substantially improved due to ongoing legal penalties and entrenched social stigma [8].

Additionally, traditional Confucian moral concepts emphasizing chastity continue to profoundly influence contemporary Chinese society, perpetuating the moral stigma associated with the "slut-shaming" of sex workers [9]. Simultaneously, China's authoritarian political system under Communist Party (CPC) leadership restricts civil society development. Campaigns such as the "Anti-Pornography" initiative are implemented to construct a "socialist spiritual civilization", politically suppressing sex workers' associations and social expressions to enforce a particular moral order [8,11]. Under these dual pressures--traditional cultural stigmatization and state political suppression--sex workers endure ongoing social condemnation and significant legal and political rights deprivation, deeply entrenching their marginalization.

Finally, current laws addressing prostitution are poorly designed and inadequate for contemporary contexts. Existing legal frameworks have not evolved to keep pace with technological developments and diversified forms of sex work practice [12]. The laws also fail to distinguish clearly between voluntary prostitution and severe crimes such as human trafficking and forced sex work, leading to ambiguity in enforcement. Consequently, certain activities, such as internet-based sex work or escort services, remain in legal gray areas, undermining both the adequate protection of voluntary sex workers and efforts to combat genuine exploitation.

## **2.5. Lack of Procedural Justice and Freedom Guarantees**

In China, prostitution-related offences are primarily addressed through administrative penalties, whereby police can directly impose detention of up to 15 days under the Public Security Administration Punishment Law without judicial oversight [8]. The absence of judicial supervision in these summary punishments often results in arbitrary detention and potential abuses of discretion by law enforcement authorities [1]. Moreover, from the 1990s until its formal abolition in 2019, China operated a "custody and education" system under which police could hold individuals involved in prostitution for six months to two years without judicial intervention. Although it was labelled as "educational reform," this system effectively constituted extrajudicial detention and violated fundamental due process rights, leading to widespread criticism for its arbitrary infringement on personal freedom [13]. Despite the official repeal of this system, sex workers continue to face risks of arbitrary short-term detention without sufficient avenues for legal redress or support. Consequently, such practices undermine sex workers' fundamental rights to liberty and present significant challenges to judicial fairness and human rights protection.

## **3. The Logic of Sex Worker Governance in the Chinese Legal System**

The repression of rights faced by sex workers in China is not accidental but instead rooted in a logic of governance that legal texts, policy paths and law enforcement practices have long shaped. The five major human rights dilemmas analyzed in section 2--including the lack of guarantees for personal safety, restricted health rights, lack of labour rights, insufficient procedural justice, and social discrimination--stem primarily from the repressive and depersonalizing attitudes toward sex work in the legal and governance structures themselves. This section analyzes the institutional roots of the

logic of governance of sex workers in mainland China from three levels: legal texts, history, and the reality of law enforcement.

### **3.1. Historical Overview: Institutional Repression and the Legacy of "Institutionalized Education"**

Since reform and opening up, China has adopted a "fight but not ban" approach to the sex industry. Since the mid-1980s, the public security authorities have launched several unique campaigns against pornography and illegal activities, which have identified prostitution as a significant threat to the socialist moral order [14]. The system of "institutionalized education" implemented since 1991 has allowed the police to subject sex workers to mandatory labour reform for up to two years without judicial trial or defence procedures. The "shelter education" system implemented since 1991, which allows police to subject sex workers to mandatory labour reform for up to two years without judicial trial or defence procedures, has been widely criticized as violating the principles of personal freedom and due process [1]. Although the "institutionalized education" system was formally abolished in 2019, its practical pathways, combative logic, and stigmatizing law enforcement remain in place in some places [8].

### **3.2. Organization of the Legal Texts: Predominantly Punitive and Lacking a Rights Perspective**

In the current legal system, sex work is legally regarded as a violation of the Law. It is regulated primarily by the Public Security Administration Punishment Law and the Administrative Punishment Law. According to Article 66 of the Public Security Administration Punishment Law, "Anyone who engages in prostitution or patronizes prostitutes shall be sentenced to detention for not less than ten days and not more than fifteen days, and may be fined not more than five thousand yuan." Public security organs are authorized to carry out detentions and penalties without going through the judicial process [15]. In addition, the Administrative Punishments Law authorizes administrative organs to directly decide on punishments in cases where the violation is "obviously minor." However, sex work is often tacitly regarded as a "socially ugly phenomenon that should be combated," and often does not enjoy the interpretive space of minor violations in practice. In practice, sex work often does not enjoy the interpretative space of a minor offence [16]. As for the Law on the Protection of Women's Rights and Interests, although recent revisions have emphasized the "elimination of gender-based violence and discrimination," there is no explicit protection for the labour rights, health rights, and human dignity of female sex workers, which leaves them in a legal blind spot in the human rights framework [9].

### **3.3. Current Law Enforcement Practices and Practical Impacts: Regularization and Rights Violations**

To this day, the governance of sex work continues to be dominated by high-frequency "anti-pornography operations" and specialized raids. According to Asia Catalyst (2015), public security systems in many places maintain a "planned and targeted" mission to combat sex work and use whether or not sex workers are investigated and punished as a criterion for evaluating law enforcement performance. This institutional arrangement encourages grassroots public security forces to be high-handed in enforcing the Law and expanding their powers of interpretation, resulting in "penalties to support enforcement." In addition, there is a general lack of transparency in the law enforcement process, with reports, detentions and punishments often occurring without the involvement of lawyers or external oversight [2]. As sex workers are often at the bottom of the social ladder, with no stable housing or identity protection, the actual enforcement of the Law by the police involves arbitrary searches, extortion and even violence. Such repressive practices in the name of governance are an important institutional source of the "procedural justice deficit" and "police brutality" described in chapter two.

In summary, China's current legal governance of sex work presents a structural model of "textual prohibition - institutional legacy - practical suppression." In this model, sex workers are excluded from the logic of human rights, the rule of Law, and civic participation. They are dealt with only as "moral issues" and "objects of law and order," which creates persistent institutional barriers to sex workers' claims of rights.

#### **4. Comparison of International Experience**

As analyzed in the previous two sections, the current logic of governance of sex work in China reflects a combination of high-handedness and institutional exclusion, which not only exacerbates the human rights predicament of sex workers, but also makes it challenging to achieve the policy goals of public health and violence prevention. In contrast, some Western countries have adopted more inclusive and rights-oriented policy paths regarding human rights protection concepts, legal structures, and law enforcement approaches, which are worthy of China's reference. The following is a comparative analysis of the systems in the United States (Nevada), Canada and New Zealand, revealing the differences in institutional effects and human rights protection under different modes of legal governance.

##### **4.1. United States: High-risk Law Enforcement Led by Criminalization**

Most states in the United States continue to adopt a comprehensive criminalization of sex work governance model that treats individuals who buy and sell sexual services as criminal subjects. This institutional arrangement closes sex workers to arrest, stigmatization, and judicial punishment while denying them access to legal protection and making them highly vulnerable to becoming victims of violent sexual assault [17]. The state discloses condoms as evidence of prostitution, an enforcement practice that has been widely criticized in New York, Los Angeles, and elsewhere as a violation of public health principles and serious STD and HIV prevention and control [18]. The similarities between this approach to enforcement and China suggest that the essence of governance of "evidenced health" is not unique to China; instead, it suggests that the essence of "evidence-based health" governance is not unique to China but rather a systemic side effect of enforcement-based governance.

Although the United States as a whole tends to impose sexual governance on the sex industry, some states, such as Nevada, have adopted an alternative model of limited legalization, demonstrating a combination of punitive logic and local economic interests [19]. In Las Vegas, for example, tourism, gaming, and adult entertainment industries combine to support the local economy, with legal brothels generating tens of millions of dollars in revenue annually. Parts of Nevada allow brothels to operate legally under strict conditions of registration, regular health inspections, and segregation of premises [19]. Although the model does not fully empower sexual athletes, it has been effective in reducing violence and enhancing occupational safety compared to strict repression [18]. This governance model reflects local policy differentiation under the liberal philosophy of the United States. However, it also suffers from law enforcement violations, including police collusion with the illegal sex industry, bribery, and sexual extortion, which undermines the rights of sex workers associated with such sex workers [18]. In other words, despite its apparent effectiveness in protecting the rights and interests of sex work, this governance model still suffers from regulatory gaps and institutional paradoxes.

##### **4.2. Canada: "Nordic model" Reforms and Controversies**

Canada has experienced significant transformations in its governance of sex work. In 2013, the Supreme Court of Canada, in Law's landmark case *Bedford v. Canada*, ruled unconstitutional several sections of the existing Criminal Code prohibiting the operation of premises for sex work, soliciting clients, and collaborating with third parties. The Court reasoned that these provisions compromised sex workers' ability to ensure their safety, thus violating their Right to security of the person as guaranteed by the Canadian Charter of Rights and Freedoms [20].

However, in 2014, the federal government introduced the Protection of Communities and Exploited Persons Act (PCEPA), adopting the so-called "Nordic Model." This legislative framework decriminalizes the sale of sexual services but criminalizes their purchase while simultaneously "imposing" strict limitations on advertising and the management of sex work establishments [18].

This policy shift remains highly contested concerning human rights protection. On one hand, the Canadian government justifies these measures as a way to reduce human trafficking and sexual exploitation by shrinking the sex trade market. On the other hand, numerous scholars and advocacy groups argue that, in practice, the new laws have driven sex work further underground, creating more unsafe working environments and intensifying sex workers' distrust toward law enforcement, thus deterring them from reporting crimes [18].

Although Canada has opposition to a punitive legal approach toward a model emphasizing the protection of vulnerable populations, it has yet to achieve genuine decriminalization or formal occupational recognition for sex workers. Fundamentally, this challenge arises from ongoing tensions and contradictions between safeguarding human rights and maintaining regulatory forms of social control.

### **4.3. New Zealand: Positive Transformation after Full Decriminalization**

Unlike the United States and Canada, New Zealand was one of the first countries in the world to fully decriminalize sex work since the passage of the Prostitution Reform Act in 2003. The Law decriminalized the adult consensual sex trade. It brought the sex industry into the regular labour regulatory framework, where sex workers can sign labour contracts, enjoy occupational health and safety protections, and participate in collective organizations [21].

As a result of the reforms, New Zealand has made significant progress in several areas. Studies have found that violence reporting rates have increased, and sex workers are more likely to seek help from the police; public health interventions have become more effective in controlling HIV and STIs; and labour conditions have improved, with sex workers more able to refuse dangerous clients and unsafe behaviours [22]. This system reflects a policy philosophy that views sex workers as workers and citizens rather than 'moral objects.' It reflects the New Zealand political system's high regard for human rights, freedoms and social inclusion and is now an internationally recognized example of human rights-oriented governance.

In summary, while the criminalization model in the United States has exacerbated law enforcement violence and stigma, and the Nordic model in Canada has had limited success in rights protection, New Zealand's comprehensive decriminalization reforms demonstrate a viable pathway for the design of sex work regimes to safeguard human rights, public safety, and labour rights. In contrast to China's highly moralized and policed logic of governance for sex work, the experiences of the three countries show that only by treating sex work as legitimate labour and incorporating it into the rights protection system can violence be genuinely reduced, health interventions be made more effective, and the dignity of the individual be respected.

## **5. Legal Reform Proposals**

To address the structural human rights dilemmas and legal repression faced by sex workers in China, legal reform should focus on five core directions: decriminalization, protection of the Right to health, empowerment of labour rights, accountability for law enforcement, and reconstruction of an anti-discrimination culture. First, the experience of New Zealand's Prostitution Reform Act should be drawn upon to remove administrative and criminal penalties for consensual sex transactions, grant legal status to sex workers, and focus resources on combating serious abuses such as human trafficking and sexual exploitation [3]. Second, condoms should be explicitly prohibited as evidence for law enforcement, and a program similar to the U.S. "mobile health van" should be introduced to provide anonymous testing and sexual health services. At the same time, AIDS prevention and sex education should be incorporated into the national education system [23]. In terms of labour rights,

the status of sex workers should be recognized, and they should be allowed to set up industrial organizations and apply the Labor Law to effectively regulate employment relationships, occupational safety and sexual harassment [21]. In addition, in response to the current problems of police violence and abuse of power, an independent complaint mechanism and law enforcement oversight body should be established to ensure that law enforcement is legal and fair [24]. Finally, reforms must be accompanied by de-stigmatizing education to correct the public's misconception of sex workers as a "moral issue" and to promote social awareness based on human rights and equality [4]. Only through the transformation of both the legal system and cultural attitudes can human rights protections for sex workers be genuinely realized.

## 6. Conclusion

In summary, China's current treatment of sex work as a moral issue rather than a rights issue has resulted in a systematic lack of rights for sex workers in the areas of health, safety, labour and legal protection. Comparing the governance models of New Zealand, Canada and the United States, it is clear that effective and sustainable governance can only be achieved by removing stigmas and incorporating a human rights framework. Future reforms should not only focus on legislative texts. However, they should also promote empirical research and local pilots to explore paths to decriminalization and community intervention mechanisms, such as in some rural or urban areas. Under an authoritarian system, it is unlikely that China will achieve full legalization in one step. However, progressive reforms that promote civil society participation, information transparency, and grassroots practices will inject new human rights-oriented possibilities into the governance of sex work.

## References

- [1] Human Rights Watch (HRW), "Swept Away": Abuses against sex workers in China, Human Rights Watch, New York, NY. (2013).
- [2] M.L. Boittin, New perspectives from the oldest profession: Abuse and the legal consciousness of sex workers in China, *Law Soc. Rev.*, 47 (2013) 245-278.
- [3] F. Crichton, Decriminalising sex work in New Zealand: Its history and impact, *Open Democracy*. (2015).
- [4] UNAIDS, The Gap Report, Joint United Nations Programme on HIV/AIDS, Geneva, Switzerland. (2014).
- [5] M.R. Decker et al, Human rights violations against sex workers: Burden and effect on HIV, *The Lancet*. 385 (2015) 186-199.
- [6] Human Rights Watch (HRW), *Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China*. (2008).
- [7] Asia Catalyst, "My Life Is Too Dark to See the Light": A survey of the living conditions of transgender female sex workers in Beijing and Shanghai, Asia Catalyst, New York, NY. (2015).
- [8] T. Shen, J. Csete, HIV, Sex work, and law enforcement in China, *Health Human Rights*. 19 (2017) 133-146.
- [9] L. Cao, S. Stack, Exploring terra incognita: Family values and prostitution acceptance in China, *J. Criminal Justice*. 38 (2010) 531-537.
- [10] Asia Catalyst, *The Condom Quandary: A study of the impact of law enforcement practices on effective HIV prevention among male, female, and transgender sex workers in China*, Asia Catalyst, New York, NY. (2017).
- [11] T. Zheng, The plight of sex workers in China: From criminalisation and abuse to activism, *China Journal*. 4 (2019) 86-91.
- [12] S. Pan, Who is the ban on prostitution for? *Phoenix New Media*. (2016).
- [13] J.D. Tucker, X. Ren, Sex worker incarceration in the People's Republic of China, *Sex. Transm. Infect.* 84 (2008) 34-35.
- [14] S. Pan, The realistic response to China's prostitution problem, *Sixth Tone*. (2017).
- [15] Standing Committee of the National People's Congress, *Law of the PRC on Public Security Administration Punishments*, NPC Standing Committee, Beijing, China. (2012).
- [16] Y. Zhou, China's legal sanctions on prostitution and their effects, *Beijing Law Rev.* 2 (2011) 33-54.
- [17] J. Levy, P. Jakobsson, Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers, *Criminal Justice*. 14 (2014) 593-607.

- [18] L. Platt, P. Grenfell, R. Meiksin, J. Elmes, S.G. Sherman, T. Sanders, et al., Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies, *PLOS Med.* 15 (2018) e1002680.
- [19] B.G. Brents, K. Hausbeck, Violence and legalized brothel prostitution in Nevada: Examining safety, risk, and prostitution policy, *J. Interpers. Violence.* 20 (2005) 270-295.
- [20] L. Sampson, "The obscenities of this country": Canada v. Bedford and the reform of Canadian prostitution laws, *Duke J. Gender Law Policy.* 22 (2014) 137-172.
- [21] G.M. Abel, A decade of decriminalization: Sex work "down under" but not underground, *Criminology & Criminal Justice.* 14,5 (2014) 580-592
- [22] L. Armstrong, G. Abel, Sex work and the New Zealand model: Decriminalisation and social change, Bristol Univ. Press, Bristol, UK. (2020).
- [23] UNAIDS, UNAIDS guidance note on HIV and sex work--2012 update, Joint United Nations Programme on HIV/AIDS, Geneva, Switzerland. (2012).
- [24] Amnesty International, Amnesty International policy on state obligations to respect, protect and fulfil the human rights of sex workers, Amnesty International, London. (2016).