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Prostitution in India: Legal or Illegal?

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Abstract

The legal status of prostitution in India is often described in public debate with misleading simplicity. Prostitution by an adult in private is not, as such, made a general offence; however, brothel keeping, procuring, detaining, living on the earnings of prostitution, trafficking, solicitation in certain public contexts and exploitation of minors are criminalised. This paper examines the Indian legal position with reference to the Immoral Traffic (Prevention) Act, 1956, constitutional rights, judicial decisions and the changes introduced by the Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita framework around 2024. It argues that Indian law operates through a mixed abolitionist and protective model: it refuses to fully legalise prostitution as an industry but also recognises the dignity and basic rights of sex workers. The paper proposes decriminalisation of consensual adult sex work combined with strong anti-trafficking enforcement.

Keywords: Prostitution; sex work; trafficking; ITPA; Article 21; Budhadev Karmaskar; legalisation; decriminalisation; India

1. Introduction

The legal status of prostitution is one of the most misapprehended issue in Indian criminal law. "The common response in conversations is that prostitution is illegal". A more correct answer which is also narrower and more complex is that the voluntary adult exchange of sexual services in private is not itself punished by a single general offence, but the environment surrounding prostitution is very criminalised. Under the Immoral Traffic (Prevention) Act, 1956, activities such as managing a brothel, facilitating prostitution, trafficking a person to engage in prostitution, confining someone in a place where prostitution occurs, profiting from prostitution, and soliciting publicly in certain situations are all punishable offenses.¹ As such, the legislation does not give rise to a clean category of legality. It establishes a system to govern the operations of social justice entities.

The year 2024 marks a useful touchstone for reflection, with India undergoing a transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita, 2023 with significant ramifications for trafficking, organised crime and sexual offences.² The Supreme Court directions in *Budhadev Karmaskar* are already shifting the field of debate to dignity, identity documents, police conduct and to the rights of sex workers from rescue and morality.³ Is prostitution legal or illegal is not the key question. The more pertinent question is: what acts are deemed criminal, whose interests are safeguarded, and how does the law differentiate between consensual adult sex work and trafficking and sexual exploitation? If the distinction is not made, then anti-trafficking law may become a tool of harassment and with too loose a distinction, exploitation may hide behind choice. Indian law is stuck between these risks.

The paper asserts that the Indian position should be termed as partial decriminalisation rather than legalisation. In the true sense, prostitution is not seen as conventional employment, as sex workers are not

covered by any standard labour code that enables them wages, workplace safety, contracts and social security.⁴ However, the act of prostitution is not treated simply as a status offence, and the Supreme Court has held that sex workers have a right to dignity, as well as non-violence and equal protection of the law.⁵ The challenge for policy is to protect adult agency without undermining action against trafficking, child prostitution and coercion. There must be a different vocabulary at work. This takes fundamental understanding, empirical realism and thought enforcement. The law has to be strict against exploitation, not against poverty, caste marginality, gendered vulnerability and choices of survival.

2. Explanations of Prostitution, Sex Work and Trafficking

The ITPA defines prostitution in the context of persons being sexually exploited or abused for consideration.⁶ Even this definition reveals the statute's abolitionist heritage. The Act has not been drafted as a labour statute. The law, which is a criminal and a protective statute, has originated from India's international obligation under the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁷ The Act is described in the India Code as giving effect to the New York Convention and preventing immoral traffic in human beings. The Act views prostitution through the lens of exploitation and not work because of its origin. The statutory text seems uncomfortable with the term "sex work," despite its increasing usage among contemporary academics and collectives to invoke labour, agency and rights.

The concept of trafficking is different from that of prostitution. However, they are closely related in practice at some level. Human trafficking refers to the recruitment, transportation, transfer, receipt or harbouring of persons by means of an act which is without the consent of that person.⁸ Prostitution is the eventual goal in trafficking, but not all prostitution is trafficking. Talking about it is easy but implementing

¹ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), ss. 3-8.

² The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 1(2); Ministry of Home Affairs, Government of India, Notification S.O. 850(E), Gazette of India, Feb. 23, 2024.

³ *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated May 19, 2022.

⁴ Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton University Press, Princeton, 2011).

⁵ *Budhadev Karmaskar v. State of West Bengal*, (2011) 11 SCC 538; *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated May 19, 2022.

⁶ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 2(f).

⁷ *Id.*, Preamble; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271.

⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319; The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 143.

it is tough. A woman may enter into sex work in poverty and debt without any physical force. Is that consensual free? A minor may be shown as an adult through forged documents. Although a migrant woman may rely on a brothel manager for protection and shelter, the manager also exploits her. This requires a law which is able to avoid the extremes: the romantic view that all sex work a free choice, and the moralistic view that all sex work is slavery. A uncomfortable gray area caught up between the truth and fiction.

Laws affect the citizens governed by the legislation they instil. When we refer to every adult sex worker a victim, we take away her agency and put her at risk of forced rescue. Referring to all sex workers as entrepreneurs may ignore coercion, caste, violence, debt bondage and lack of alternatives. The individual needs to be the starting point of Indian constitutional law and not the label. The life guaranteed by Article 21 must be a life with dignity and not only a vegetative existence; Article 14 guarantees equality before the law; Article 19 provides for freedom with reasonable restrictions; Article 23 prohibits traffic in human beings and forced labour.⁹ The given provisions do not yield a straightforward conclusion to declare prostitution fully legal or fully illegal. A balanced response is required: the state must not derogate and abuse adults simply because they sell sexual services, exploitation forced and trafficking must be punished severely, children must get absolute protection.

3. The ITPA's Statutory Plan

The ITPA is the principal legislation. Section 3 of a certain act punishes keeping or managing a brothel or permitting premises to be used as a brothel. Section four provides penalties for those who live off the earnings of prostitution, subject to the statutory structure and presumptions of section 4. Section 5 punishes one who procures, induces or takes a person for prostitution. Section six covers imprisonment at establishments which sell sex services. Section 7 pertains to prostitution within or close to public premises while section 8 deals with seduction or solicitation for prostitution. Sections 17 and 18 allow for the intermediate custody and protective homes as well as the closure of a brothel and eviction from

premises.¹⁰ This architecture shows the statute's focus: it targets the organisation, public visibility and exploitation surrounding prostitution rather than a simple private act by an adult.

It has created a strange legal position. A lone adult female who sells sexual services in a private place does not do any offence by such an act.¹¹ As soon as there is a brothel, manager, solicitation in a specified public context, and dependence by another person on her earnings, and procurement or detention, he may be criminally liable. The law thus pushes prostitution into hiding. It does not eliminate the market; it increases legal risk to the conditions for a safer collective work. The most serious criticism against the ITPA is . The criminalisation of brothel keeping and involvement of a third party in a broad way, in effect, will isolate the sex worker in a sexual arrangement. This will impact the bargaining and negotiating power of sex workers. Further, sex workers will not be able to keep themselves safe in these arrangements. The law seeks to stop exploitation but sometimes the way it's drafted does the opposite. There's a built-in contradiction in the model that partly abolishes police.¹²

Section 8 has drawn particular controversy because solicitation offences often target sex workers, not those who exploit them.¹³ When police enforce laws in public spaces it can become a site of harassment, bribe extraction and displacement. A woman standing in a street is a public-order problem irrespective of whether a trafficker is being prosecuted. Its unevenness has prompted many reformers to advocate for repeal or narrow interpretation of solicitation offences. While public order is essential, it must not indirectly become a penalty for the status. The law should look at whether a person does wrong which harms the public directly or is exploitative. The general discomfort of the public does not serve as an adequate rationale for the policing of poor women out of sight.¹⁴ Words for Morality Courts and police need to be alert, because morality language can easily disguise class and caste prejudice and propaganda against subordinate outsiders or in-fighting among dominant insiders.

⁹ The Constitution of India, arts. 14, 19, 21 and 23.

¹⁰ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), ss. 3-8, 17 and 18.

¹¹ See *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated May 19, 2022.

¹² See Kotiswaran, *supra* note 4; Jean D'Cunha, "Prostitution in a Patriarchal Society: A Critical Review of the SIT Act", 22(45) Economic and Political Weekly 1919 (1987).

¹³ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 8.

¹⁴ Jean D'Cunha, "Prostitution Laws: Ideological Dimensions and Enforcement Practices", 27(17) Economic and Political Weekly WS-34 (1992).

4. The issue of dignity and constitutional rights

Article 21 is the starting point of the constitutional scrutiny. The Supreme Court has held repeatedly that the life means more than animal existence. It includes dignity, livelihood, privacy and the conditions for human flourishing.¹⁵ The Court declared in *Budhadev Karmaskar* case that sex workers are human beings with a right to a dignified life.¹⁶ The Court later in the same matter issued directions regarding a police behaviour, identity documents, welfare access, non disclosure of identity in media.¹⁷ This marks a significant change. A sex worker is not just someone who needs to be rescued or someone who has sunk so low that they represent social degradation. They are a person with rights. Every police raid, rescue operation, prosecution and rehabilitation should be guided by this proposition.

Article 19(1)(g) is sometimes invoked in the arguments on sex work. This article gives a right to practise any profession.¹⁸ This is not a straightforward argument as the state can impose reasonable restrictions in the interest of public order, morality and health.¹⁹ Nevertheless, Article 19 proves to be useful in exposing a contradiction; while the state desires to treat adult sex workers as rights-less, it uses criminal law influence over their livelihood. The state also has to justify the restriction constitutionally and offer realistic alternatives where it claims to offer rehabilitation.

If rescue is forced without support, displacement will only be temporary. Legal morality must be linked to social responsibility. A framework where the state marks a person as degraded and then has no viable solution for them to be safe, to earn an income and to be autonomous is unconstitutional.

Article 23 is equally important as it prohibits traffic in human beings and forced labour.²⁰ This clause helps promote strong anti-trafficking enforcement with minor and coerced adults. This also helps to prevent the argument from limiting the debate to a free market one. Sex work is located within a social and economic context of gender inequality, poverty, caste, migration and violence. The Constitution must not ignore those circumstances.

However, Article 23 should not be construed to indicate that all adult sex workers are trafficked. Although convenient, presumption could run counter to dignity. As a result, a constitutional approach is dual; it protects the adult from harm unless coercion, exploitation or minority is shown and also sees trafficking as a serious constitutional wrong. While duality is messy, a clean rule would be false.

5. Judicial Approach: From Public Order to Human Rights

Prostitution being a public order or morality question was the early judicial approach. In the *State of Uttar Pradesh v. Kaushaliya* case, the Supreme Court deliberated upon provisions allowing the removal of prostitutes from certain areas and upheld the law as a regulatory measure within the constitutional framework of that time.²¹ The case is an reflection of an archaic vernacular in which sex workers were deemed miscreants on public order, health and morality. The police haven't stopped using that language. However, there have been changes in constitutional culture. Criminal law is increasingly being influenced by dignity, privacy and equality. Thus, a modern understanding of these powers must be more restricted and rights-sensitive. The exclusion of any section or category of a community from an area cannot be a disguised social banishment. It should be justified, follow appropriate processes, and be sensitive to livelihoods and residence.

The case of *Gaurav Jain v. Union of India* focused attention on the offspring of sex workers, and their right to education, rehabilitation and protection from stigma.²² This case recognizes that the harms of prostitution do not stop with the transaction. Because the mother earns a livelihood, the children escape scorn and derision, they may suffer exclusion. However, the discourse on rehabilitation needs caution. Children must be protected without automatically removing them from mothers or denigrating sex-worker families as unfit to care. The policy of welfare has sometimes gone too fast from protection to institutionalisation. An approach that aims to protect rights should provide education, nutrition, healthcare, safe housing and choice, not just

¹⁵ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545; *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹⁶ *Budhadev Karmaskar v. State of West Bengal*, (2011) 11 SCC 538.

¹⁷ *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated May 19, 2022.

¹⁸ The Constitution of India, art. 19(1)(g).

¹⁹ *Id.*, art. 19(6).

²⁰ *Id.*, art. 23.

²¹ *State of Uttar Pradesh v. Kaushaliya*, AIR 1964 SC 416.

²² *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

removal. Stigmas are social crimes, which may not always be a crime recognised by law. Law must not exacerbate it.

Budhadev Karmaskar is the most significant modern reference. The Supreme Court stated that sex workers should never be arrested, penalised, harassed or victimised in the event of a brothel raid. Adult sex work is not a crime *per se*.²³ The Court also emphasized on confidentiality, identity documents and access to welfare schemes. Tiwi dema have not made brothels or trafficking legal. They subtly act to prevent anti-trafficking enforcement from becoming anti-sex-worker violence. Police may investigate offences under ITPA, but adult sex workers should not be treated as criminals, merely for being one. The essence of the legal position lies in this distinction. Street-level enforcement is likely to lose it most, as it is the part..

6. 2024 Legal Context: BNS, BNSS and Trafficking

The 2023 Bharatiya Nyaya Sanhita, which comes into effect in 2024, supersedes the IPC and redefines multiple offences.²⁴ Sections 143 and 144 of BNS deals with trafficking and exploitation of the trafficked persons.²⁵ They replace the earlier IPC provisions related to trafficking and expand it. The government materials also relate the BNSS victim compensation mechanism to the rehabilitation of victims.²⁶ Trafficking for sexual exploitation is amongst the most prominent concerns of the ITPA, making these provisions relevant to prostitution. The BNS framework should be read in conjunction with the ITPA and not instead of it. A trafficker can be prosecuted as per the provisions of BNS. Further, ITPA liability may arise for premises-related offences or procurement.

The 2024 Scenario reveals the necessity for coordination between criminal law and welfare law. Trafficking victims often require protection from retaliation and need shelter, medical care, legal aid, relocation and compensation.²⁷ Adult sex workers need different support than trafficked adults, including essential identity documents (like IDs and licenses), Health services, Social security, Protection from

violence and Freedom from police harassment. One rescue model cannot fit both. The legal system must employ screening methods that are trauma-informed and evidence-based. Are you here on your own will? It's not a meaningful test of consent to ask in a police raid before brothel staff or local criminals. Being silent does not mean agreement. A proper procedure leads to good law. Anti-trafficking raids that do not follow procedures may rescue nobody, arrest the wrong persons, and leave actual exploiters free.

Data from the government shows ongoing enforcement of the ITPA. According to NCRB data, the Ministry of Women and Child Development stated that in 2019, there were 1,639 cases under the ITPA, in 2020 there were 1,294, in 2021 there were 1,678, in 2022 there were 1,497 and in 2023 there were 2,166.²⁸ This must be read with caution. An increase may indicate more trafficking, a rise in police action, or changes in registration practices. It fails to disclose the number of adult sex workers respectfully treated, number of minors identified or how many convictions resulted. The information in this sector has a moral bias and lacking administrative structure. The ITPA is still a living criminal-law instrument, the numbers show. Thus, the doctrinal response to legality must be matched by enforcement reality: it is not technically illegal to have private sex work by adults; but in practice the conditions surrounding it are heavily policed.

7. Is it legal to practice prostitution?

The correct answer is that prostitution in India is not legal but at the same time, it is also not entirely illegal. Illegal status is because sex work is not legally registered as a normal occupation. There is no licensing system that gives sex work lawful business status and no labour protection legislation.²⁹ It is not entirely unlawful as the selling of sex by an adult vendor will not be punished simply for the private act of prostitution. The criminal law aims at targeting prostitution in a limited form, brothels, solicitation, trafficking, detention, commercial exploitation and minors. The answer may seem unenticing as it doesn't

²³ Budhadev Karmaskar v. State of West Bengal, Criminal Appeal No. 135 of 2010, order dated May 19, 2022.

²⁴ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 1(2) and 358; Ministry of Home Affairs, Government of India, Notification S.O. 850(E), Gazette of India, Feb. 23, 2024.

²⁵ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 143 and 144.

²⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss. 396-398.

²⁷ *Id.*, s. 396.

²⁸ Ministry of Women and Child Development, Government of India, "Government attaches highest importance to matter of preventing and countering crimes against women and children including crimes of human trafficking" (Press Information Bureau, Feb. 11, 2026), available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2226341> (last visited on June 12, 2026).

²⁹ See Kotiswaran, *supra* note 4.

have a tagline. Yet getting it legally right requires an ungainly sentence at times. Describing sex work as 'legal' conceals the stigma and police powers that impact sex workers. Conversely, describing sex work as 'illegal' conceals the rights that some adult sex workers do have. It is preconditioned and positive, with degree of fragmentation and morality.

Consequences attach this middle thing. To begin with, a client may incur liability under certain circumstances. This is especially so where it involves a trafficked person or a minor, or where the law penalizes exploitation of trafficking victims.³⁰ Secondly, landlords and managers certainly face a risk if the premises are for brothels. The dependants and family members of sex workers may also be at risk of allegations under section 4. The courts must avoid punishing genuinely dependent persons like children and elderly parents. Fourthly, despite the act itself not being illegal, sex workers suffer from indirect criminalisation due to police raids, public-order laws and stigma. Fifthly, a minor cannot consent to prostitution.³¹ Any child involvement must be considered sexual exploitation. Child protection must be immediate. One mechanism for slowing his infamous photo propagation is a clear solution cease-and-desist letters from rights-holders. Such letters have become a critical part of internet governance.

It is also crucial to understand the difference between legalisation and decriminalisation.³² Legalization generally means the state permits sex work under strict regulations, licensing, zoning and health requirements. The removal of criminal penalties related to adult sex work that is consensual and non-coercive but retaining the law against coercion, child exploitation, trafficking, and violence. Numerous sex-worker rights organizations favor the decriminalization approach,³³ as the licensing option might lead to a two-tier system, which would render some workers illegal. India has not entirely taken either model. It models protection and criminality with sporadic recognition of rights. The question of reform is whether India should move towards decriminalisation of consensual adult sex work and

stronger anti-trafficking enforcement. The answer to the question is yes, with safeguards. Legal changes ought to curb police brutality without unleashing a free-for-all.

8. Feminist Policy and Debate.

Feminist views about prostitution are highly divided. The emphasis of abolitionist feminists is on the patriarchal violence, commodification, and lack of consent being poor.

Feminists of sex-worker rights focus on agency, labour, bodily autonomy and harms of criminalisation.³⁴ Both positions recognize real harms. The most robust aspect of the abolitionist critique is its description of what traffickers do, but also what people do to one another. The critique which is based on rights has a strong standing when it describes instances of adult sex workers becoming unsafe. Indian laws cannot just import either position. The response should address the social realities of India which include caste, migration, informal employment, family dependency, housing insecurity, and inadequate social security. A woman who is poor shouldn't have to prove feminist purity to seek legal protection.

Public-health policy adds a new dimension. When sex work is criminalised, it forces the work underground. This makes it more difficult to negotiate condom use, access HIV clinics and report violence.³⁵ Exploitive businesses may use health language to justify exerting control over others. A public-health model based on rights needs to provide confidential testing, treatment, counseling and occupational safety without using these services for surveillance. Cops must not lurk outside clinics to spot sex workers. Likewise, health workers should not moralise. People have a right to health. The COVID-19 operators showed the vulnerability of the informal workers, including sex workers whose source of income is revoked, food grants are not available to them and are not documented. Focusing primarily on the illegality or immorality of sex work without considering the economic conditions of sex workers is a failure of the state. Access to welfare must not be predicated on

³⁰ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 143 and 144; The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012).

³¹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), ss. 2(d), 3 and 4; The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 99.

³² Global Commission on HIV and the Law, HIV and the Law: Risks, Rights & Health 43-48 (UNDP, New York, 2012).

³³ Amnesty International, Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers, POL 30/4062/2016 (2016).

³⁴ See Kotiswaran, *supra* note 4; D'Cunha, *supra* note 12.

³⁵ WHO, UNFPA, UNAIDS and NSWP, Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries (WHO, Geneva, 2012).

exiting sex work immediately; otherwise the most vulnerable will eschew welfare.³⁶

Technology has also changed prostitution and trafficking. Recruiters may reach out through messaging services, social media, false job ads or escort sites.³⁷ Payments can be online, but control can take place through threats of being online. The ITPA, which was drafted in an earlier physical-premises world, does not cover cyber or on-line exploitation directly. A woman may not be confined to a conventional brothel but may be enslaved through debt, documents and digital surveillance. Thus, in reforming anti-trafficking law we must connect cyber law, financial intel and platform accountability.³⁸ However, those same digital tools may allow independent adult sex workers to screen clients and lessen their reliance on violent middlemen. A flat-out prohibition on dialogue via the Internet may again increase risk. We must not conflate facilitating trafficking with the communication between consenting adults to ensure safety. It's hard to make that distinction but not making it causes greater injustice.

9. Suggestions for change

India must first decriminalise consensual adult sex work while retaining strong offences against trafficking, child sexual exploitation, coercion, violence, confinement and organised exploitation.³⁹ The repeal or at least the substantial narrowing of solicitation provisions which primarily target sex workers. The law should target coercive and exploitative third parties rather than the adult selling sexual services. The intention of this reform is not to make prostitution a morally acceptable act. A list of morality does not describe criminal law. It's a coercive instrument, which must only be used where there is harm sufficient to justify punishment. People who sell sex as adults should be able to call the police to report violence, theft, non-payment, assault and coercion without fear of arrest. When the police is a place of safety, that is where safety begins.

Furthermore, there has to be sufficient funding for enforcement. Screening entails conducting under safe conditions by trained personnel. It must be certain that the person is a minor. Victims of crimes should be provided with access to legal aid, compensation, shelter, medical care and long-term livelihood support.⁴⁰ The prosecutions should focus on the traffickers, transporters, brothel-keepers, document forgers, violent clients, their organized networks and corrupt officials. Where our exploitation pays, we should resort to asset tracing and financial investigation. It is not enough to just raid premises and produce women before magistrate. If women are returned to their previous economic vulnerability without protection, this may strengthen traffickers. The government must take action against employers exploiting young victims not post stats.

While it may sound obvious, applying enforcement has been performative far too often.

The rights of sex workers, through administrative law, must be guaranteed even before parliament makes a comprehensive law. Essential services such as identity documents, ration cards, health services, bank accounts, housing projects, children's education, and police violence protection must be made available without moral certification.⁴¹ The directions made by the Supreme Court in *Budhadev* can be translated into police manuals and training modules as well as the rules regarding accountability. Media ought not to reveal names or images which unmask identity.⁴² Children of sex workers must not be denied school admission or victimized through institutional apathy. Protective homes must not be prisons. A woman cannot be made to stay in a shelter without a lawful order based on evidence and due process for temporary restriction for safety reasons. To bring about rescue without freedom is an ugly kind of benevolence.

In conclusion, India wants better data. At present statistics provides number of registered cases under ITPA, not the quality of intervention.⁴³ It is

³⁶ *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, orders dated Sept. 29, 2020, Dec. 14, 2021 and May 19, 2022.

³⁷ United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2022* (United Nations, Vienna, 2022).

³⁸ The Information Technology Act, 2000 (Act 21 of 2000), ss. 66E, 67, 67A and 67B; The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 111, 143 and 144.

³⁹ Amnesty International, *supra* note 33; Global Commission on HIV and the Law, *supra* note 32.

⁴⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss. 396 and 397; The Legal Services Authorities Act, 1987 (Act 39 of 1987), s. 12.

⁴¹ *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, orders dated Dec. 14, 2021, Jan. 10, 2022, Feb. 28, 2022 and May 19, 2022.

⁴² *Id.*, order dated May 19, 2022.

⁴³ See Ministry of Women and Child Development, *supra* note 28.

important for policymakers to have information on the age of victims, evidence of coercion, conviction rates, duration of protective custody, access to compensation, health outcomes, repeat victimisation, and privacy safeguards. It is necessary for research to include voices from sex workers and survivors of trafficking. Any law that is made without the people being affected by the law tends to be either paternalistic or abstract. A reform process which is consultative must include sex-worker collectives, anti-trafficking organisations, child-rights experts, public-health professionals, police, prosecutors and constitutional experts. Full agreement will not result from it. However, disagreement is better than a law that acts as if the issue is simple.

10. Conclusion

Is prostitution permissible or forbidden as per law in India? Answer this carefully. If done by an adult in private, prostitution is not, in itself, a general crime, but surrounding activities get heavily criminalised through ITPA and trafficking provisions.⁴⁴ Thus, India follows neither full prohibition nor full legalisation. This model combines the abolitionist skepticism of commercial sexual exploitation with a judicial acknowledgment of sex workers' dignity and fundamental rights. The 2024 legal framework, represented by the BNS and BNSS, bolsters the trafficking and victim-compensation framework but does not clarify the fundamental ambiguity. The distinction between adult consensual sex work and exploitation is ambiguous. This continues to generate police discretion, social stigma and legal uncertainty, unless reform clarifies it.

A just legal system must be strict against trafficking, child prostitution and coercion. It should be equally clear that adult sex workers are not beyond the purview of the Constitution. Every person possesses the right to live with dignity and to be treated equally irrespective of caste, creed and gender.⁴⁵ Decriminalising consensual adult sex work, along with

robust anti-trafficking enforcement and access to welfare, has the best constitutional defence. It alone doesn't resolve poverty or patriarchy issues. Reforms to the criminal law cannot. However, it may hinder accumulation of state violence and social vulnerability. In this regard, the law on prostitution in India should be less about morality and more about rights, safety and honest governance.

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⁴⁴ See The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), ss. 3-8; Budhadev Karmaskar v. State of West Bengal, Criminal Appeal No. 135 of 2010, order dated May 19, 2022.

⁴⁵ The Constitution of India, arts. 14 and 21; Budhadev Karmaskar v. State of West Bengal, (2011) 11 SCC 538.