



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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FROM RESCUE TO RIGHTS: CONSTITUTIONAL AND HUMAN-RIGHTS PROTECTION OF ADULT SEX WORKERS IN INDIA AFTER BUDHADEV KARMASKAR AND PRAJWALA

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ABSTRACT

*Indian law occupies an unstable middle ground on adult sex work. The sale of sexual services by an adult is not, by itself, a criminal offence; yet the Immoral Traffic (Prevention) Act, 1956 criminalises solicitation, brothel-keeping, living on another person's earnings, procuring, detention and sex work in specified locations. This surrounding web of offences frequently converts formal non-criminalisation into practical criminalisation. The resulting enforcement structure exposes sex workers—particularly women, transgender persons, migrants and persons without identity documents—to police violence, arbitrary rescue, detention in protective homes, disclosure of identity, denial of health care and separation from children. This paper examines whether the existing framework is compatible with equality, dignity, privacy, occupational freedom, access to justice and the constitutional prohibition of trafficking. It traces the movement of Supreme Court doctrine from paternalistic rescue and rehabilitation towards agency and enforceable rights, with particular attention to the directions in *Budhadev Karmaskar v. State of West Bengal* (2022) and the major clarification in *Prajwala v. Union of India* (2026). *Prajwala* distinguishes voluntary adult sex work from trafficking, gives primacy to a person's consent in rescue and reintegration decisions, recognises rehabilitation as a fundamental right of trafficking survivors, and states that sex workers possess rights even though the Constitution does not presently guarantee a freestanding right to sex work. The paper argues for calibrated decriminalisation of consensual adult sex work, preservation of stringent offences against trafficking and child sexual exploitation, non-carceral rehabilitation, police accountability, universal social protection and meaningful participation of sex-worker collectives in law and policy.*

Keywords: Sex workers; prostitution; trafficking; dignity; consent; decriminalisation; ITPA; Article 21; Budhadev Karmaskar; Prajwala.

I. INTRODUCTION

The legal position of sex workers in India cannot be captured by the simple statement that prostitution is either legal or illegal. Adult consensual sex work is not prohibited as an offence in itself, but almost every activity through which it is organised, advertised, collectively performed or conducted in public space is regulated through criminal law. The result is a regime of partial criminalisation. It allows the State to claim that it does not punish the adult who sells sexual services while simultaneously creating conditions in which that person can scarcely work without risking arrest, eviction, surveillance or forced removal. The contradiction is sharpened by the fact that the principal legislation defines “prostitution” as sexual exploitation or abuse for commercial purposes, thereby embedding an assumption of exploitation in the definition itself.¹

This paper uses the term “sex worker” for an adult who provides sexual services in exchange for money or another material benefit. The statutory word “prostitute” is used only where the language of legislation or a judgment must be described accurately. Terminology matters. A rights-based vocabulary identifies the person as a holder of constitutional rights rather than as an object of rescue, moral correction or public nuisance control. At the same time, the language of work must not be used to obscure trafficking, child sexual exploitation, debt bondage, coercion, deception or abuse of vulnerability. The central analytical task is therefore to separate consensual adult sex work from trafficking without ignoring the structural poverty, caste, gender inequality and migration insecurity that may constrain choice.

The constitutional question is not whether courts approve of commercial sex. It is whether the State may treat a disfavoured occupation as a basis for withholding equal protection, bodily integrity, privacy, health care, legal remedies or family life. Articles 14, 19 and 21 protect persons, not respectable professions; Article 23 simultaneously imposes a strong obligation to prevent trafficking and forced labour.² The Supreme Court’s 2022 directions in *Budhadev Karmaskar v. State of West Bengal* made this principle operational by directing police not to interfere with consenting adult sex workers, requiring equal treatment of complaints and sexual-assault survivors, protecting identity, rejecting condoms as evidence of an offence and

¹ The Immoral Traffic (Prevention) Act, 1956 (Act No. 104 of 1956).

² The Constitution of India, arts. 14, 19(1)(g), 21 and 23.

prohibiting separation of a child from a mother merely because she is a sex worker.³

The doctrinal landscape changed further on 29 May 2026. In *Prajwala v. Union of India*, the Supreme Court delivered an extensive judgment on trafficking for commercial sexual exploitation, rehabilitation and the legal status of voluntary adult sex workers. It criticised the conflation of trafficking with prostitution, described compulsory detention in protective homes as potentially carceral, required a threshold inquiry to identify voluntary adult sex workers, gave primacy to the wishes of adult survivors in detention and reintegration decisions, and called for explicit recognition and enforcement of sex workers' rights. The Court formulated the careful proposition that the rights of sex workers can exist without a constitutional right to sex work.⁴

The paper advances three arguments. First, the constitutional distinction between status and conduct requires that every sex worker retain the full protection of law, irrespective of the State's power to regulate particular commercial arrangements. Secondly, anti-trafficking law must focus on coercive acts, prohibited means and exploitative purpose rather than treating all third-party involvement or every shared workplace as trafficking. Thirdly, rescue cannot become a substitute form of confinement. A lawful response must be consent-sensitive, survivor-led and capable of protecting adults who wish to leave sex work as well as adults who do not seek exit.

II. SCOPE, METHOD AND THE NECESSARY DISTINCTION BETWEEN SEX WORK AND TRAFFICKING

The inquiry is confined principally to the rights of adult sex workers in India. Child sexual exploitation is categorically outside the domain of consensual sex work because a child cannot legally consent to commercial sexual exploitation. The paper also distinguishes trafficking survivors who require protection and rehabilitation from adults who state that they are working voluntarily. These categories may overlap over time: a person may have entered through deception and later choose to remain; another may initially consent to migration but be

³ *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated May 19, 2022 (Supreme Court of India), available at: https://main.sci.gov.in/supremecourt/2007/37388/37388_2007_5_20_35996_Order_19-May-2022.pdf (last visited on July 13, 2026).

⁴ *Prajwala v. Union of India*, 2026 INSC 609, paras. 407-456.

subjected to coercive working conditions; a third may wish to leave but lack a viable livelihood. The law must be capable of recognising this complexity rather than forcing every person into the binary of “innocent victim” or “willing offender.”

The international definition of trafficking provides a more disciplined framework. For an adult, trafficking ordinarily requires an action such as recruitment, transport, transfer, harbouring or receipt; the use of a specified means such as force, coercion, fraud, deception, abuse of power or abuse of vulnerability; and a purpose of exploitation. Consent becomes irrelevant where a prohibited means has been used. For a child, the action and exploitative purpose are sufficient; proof of the prohibited means is not required.⁵ Indian criminal law now addresses trafficking principally through sections 143 and 144 of the Bharatiya Nyaya Sanhita, 2023, in addition to the ITPA and child-protection statutes.⁶

This distinction has practical consequences. A raid cannot begin with the presumption that every adult found at the premises is trafficked, nor can a statement of consent automatically end an inquiry where threats, debt, confiscation of documents, violence or abuse of vulnerability are evident. The correct legal response is an individualised assessment. *Prajwala* expressly recognises that consent is contextual and subjective, that persons in prostitution are not a homogeneous group, and that an adult’s choices must receive great weight unless the expressed wishes are shown to be the product of threat, coercion or undue influence.⁷

Methodologically, the paper combines doctrinal analysis with limited public-health evidence because criminal-law design has measurable consequences for violence, condom negotiation and access to services.⁸ A major systematic review found that repressive policing and criminalisation were associated with increased risks of violence, HIV or sexually transmitted infections and condomless sex, while also restricting access to health and justice.⁹

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000, arts. 3, 5, 6 and 9.

⁶ The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), ss. 143-144.

⁷ Supra note 4 paras. 448-453.

⁸ The research is doctrinal and analytical. Primary materials include the Constitution of India, the Immoral Traffic (Prevention) Act, 1956, the Bharatiya Nyaya Sanhita, 2023, relevant Supreme Court judgments and official policy documents. The interdisciplinary portion relies on peer-reviewed public-health research and institutional reports specifically identified in the footnotes.

⁹ Lucy Platt, Pippa Grenfell, Rebecca Meiksin, et al., “Associations between Sex Work Laws and Sex Workers’ Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies” 15(12) PLOS Medicine e1002680 (2018), doi:10.1371/journal.pmed.1002680.

The World Health Organization similarly reports modelling that decriminalisation could substantially reduce new HIV infections among sex workers over a ten-year period.¹⁰ Regional legal research by UNDP, UNFPA and UNAIDS has likewise linked punitive laws with underground working conditions, police abuse and weakened HIV responses.¹¹

III. INDIA'S STATUTORY ARCHITECTURE: FORMAL NON-CRIMINALISATION, PRACTICAL CRIMINALISATION

The ITPA does not contain a general offence stating that an adult commits a crime merely by selling sexual services. Its main offences target the organisation and commercialisation of prostitution: keeping or allowing premises to be used as a brothel; knowingly living on the earnings of another person's prostitution; procuring, inducing or taking a person for prostitution; detaining a person in premises; prostitution in or near specified public places; and soliciting. The Act also permits warrantless searches in specified circumstances, removal of persons from premises, inquiry into their age, character and antecedents, detention in protective homes, closure of premises and removal of a "prostitute" from an area.¹²

This structure produces practical criminalisation in at least four ways. First, the definition of a brothel is broad enough to cover premises used by more than one person for another's gain, making collective indoor work legally risky even where adults organise together for safety. Secondly, the offence of living on the earnings of another person can affect adult dependants and support relationships, although the statute contains limited exceptions. Thirdly, sections 7 and 8 directly expose sex workers to prosecution for location and solicitation. Fourthly, closure and removal provisions can displace workers from housing and neighbourhoods without creating realistic alternatives. The formal proposition that "sex work is not illegal" therefore gives an incomplete picture of lived legality.

The BNS creates a conceptually different trafficking offence. Section 143 requires specified actions, specified means and exploitation; section 144 punishes a person who

¹⁰ World Health Organization, Sex Workers (Global HIV, Hepatitis and STIs Programmes), available at: <https://www.who.int/teams/global-hiv-hepatitis-and-stis-programmes/populations/sex-workers> (last visited on July 13, 2026).

¹¹ United Nations Development Programme, United Nations Population Fund and Joint United Nations Programme on HIV/AIDS, Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work (UNDP, Bangkok, 2012).

¹² The Immoral Traffic (Prevention) Act, 1956, ss. 2(f), 3-8, 14-20.

knowingly engages a trafficked child or adult for sexual exploitation. These provisions are directed at trafficking and exploitation rather than consensual commercial sex as such.¹³ *Prajwala* identifies the resulting conflict: under section 143 BNS, trafficking requires action, means and exploitative purpose, while the ITPA frequently treats third-party involvement in prostitution as sufficient even without force, coercion or deception. Conduct that is not trafficking under the BNS may therefore remain punishable under the ITPA.¹⁴

The rescue machinery intensifies the problem. Sections 15 to 17 allow police removal and magistrate-led inquiry, followed in some circumstances by detention in a protective home for one to three years. A person who has not been convicted of an offence may consequently experience rescue as loss of liberty. *Prajwala* characterises fixed institutional detention as capable of mimicking a carceral stay and urges non-institutional alternatives tailored to individual needs.¹⁵ This is not an argument against safe accommodation; it is an argument against converting protection into compulsory custody without necessity, proportionality, periodic review and meaningful consent.

The statutory framework nevertheless contains important protective functions. It punishes procurers, exploiters, detainers and persons who profit from the prostitution of others; creates special procedures for searches and rescue; and operates alongside the Juvenile Justice and POCSO regimes for children. These protections should be strengthened, not diluted. The reform question is how to narrow criminal law around coercion, exploitation and public harm while removing provisions that punish, displace or incapacitate the very persons whom anti-trafficking law is intended to protect.

Sex workers who suffer sexual assault are entitled to the ordinary criminal-law process and immediate medical treatment. The 2022 *Budhadev Karmaskar* order applied the then section 357C of the Code of Criminal Procedure and insisted that sex workers receive facilities available to any survivor of sexual assault. The corresponding present provision is section 397 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which requires hospitals to provide

¹³ The Bharatiya Nyaya Sanhita, 2023, ss. 143-144. Section 143 criminalises trafficking; s. 144 criminalises exploitation of a trafficked person.

¹⁴ *Prajwala v. Union of India*, 2026 INSC 609, paras. 141-221, 429-435 and 455.

¹⁵ *Supra* note 4 paras. 401-406 and 455(b).

immediate treatment free of cost for specified sexual offences and to inform the police.¹⁶¹⁷

IV. THE CONSTITUTIONAL RIGHTS OF SEX WORKERS

1. Equality and equal protection. Article 14 prohibits the State from treating a person as less worthy of legal protection because of occupation or perceived morality. A sex worker who reports theft, extortion, assault, rape, unlawful confinement or police abuse is a complainant entitled to the same registration, investigation and protection as any other person. The 2022 directions therefore require police to take complaints seriously, particularly complaints of sexual violence.¹⁸ Equality in this context is substantive: formally available remedies are meaningless where prejudice at the police station makes them practically inaccessible.

The Supreme Court had articulated the core idea three decades earlier in *State of Maharashtra v. Madhukar Narayan Mardikar*. Rejecting the notion that a woman's sexual history deprives her of credibility or privacy, the Court held that even a woman described in the judgment's outdated language as being of "easy virtue" is entitled to refuse sexual intercourse and to the protection of law.¹⁹ The enduring principle is that consent is transaction-specific. Agreement to sexual activity with one person, or on one occasion, is not general consent to violence or access by another.

2. Dignity and bodily integrity. Article 21 protects more than physical survival. After *Maneka Gandhi*, any procedure depriving liberty must be just, fair and reasonable.²⁰ *Francis Coralie Mullin* located within Article 21 the right to live with human dignity and the basic conditions through which human personality can develop.²¹ Sex workers do not acquire dignity by leaving sex work; dignity inheres in them as persons. It follows that beatings, forced medical procedures, degrading searches, public parading, confiscation of money or condoms and involuntary detention require the same constitutional scrutiny as they would in any other setting.

Dignity also requires the State to distinguish protection from paternalism. A programme offering housing, education, health care, debt relief, legal assistance and alternative livelihoods expands choice. A programme that detains an adult until she

¹⁶ Supra note 3 at recommendation (iii).

¹⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023), s. 397.

¹⁸ Supra note 3 at recommendations (ii), (iii) and (vi).

¹⁹ *State of Maharashtra v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57.

²⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²¹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

accepts a State-approved livelihood contracts choice. *Anuj Garg v. Hotel Association of India* is instructive because it rejected restrictions on women's employment justified as protection where their effect was to perpetuate stereotypes and exclusion.²² The same anti-stereotyping principle applies when sex workers are presumed incapable of making decisions merely because the decision is socially disapproved.

3. Privacy, autonomy and decisional freedom. The nine-judge bench in *Justice K.S. Puttaswamy (Retd.) v. Union of India* recognised privacy as intrinsic to liberty, dignity and the freedoms in Part III.²³ Privacy includes bodily autonomy, decisional choice and control over personal information. *Navtej Singh Johar v. Union of India* further rejected the use of majoritarian morality to criminalise consensual adult intimacy.²⁴ These decisions do not automatically establish an unrestricted right to operate a commercial sex business. They do establish a powerful presumption against State action that exposes identity, intrudes into consensual adult intimacy or substitutes official morality for personal agency without a constitutionally adequate justification. The identity dimension is especially important. Disclosure during raids can lead to eviction, loss of custody, violence from family members and lifelong digital stigma. The 2022 order accordingly directed the media not to publish or broadcast names or photographs that reveal the identity of sex workers during arrest, raid or rescue operations and required police to protect confidentiality.²⁵ Informational privacy should also govern welfare databases: proof of occupation should not be printed on publicly usable identity documents, and data collected by health or welfare programmes should not be shared with police except under clear law and necessity.
4. Occupational freedom and livelihood. Article 19(1)(g) protects the freedom to practise a profession or carry on an occupation, trade or business, subject to reasonable restrictions under Article 19(6). Whether sex work itself is constitutionally protected as an occupation has not been finally declared. The more modest and doctrinally secure claim is that regulation must be lawful, non-arbitrary and proportionate, and that the State cannot use an unresolved occupational question to extinguish independent rights to life, equality, health, property, privacy or access to justice. *Prajwala* captures this distinction by stating that sex workers' rights can exist even

²² *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

²³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

²⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²⁵ *Supra* note 3 at recommendation (vii).

without a recognised right to sex work.²⁶

5. Protection against trafficking and exploitation. Article 23 is not a ground for indiscriminate control of sex workers; it is a guarantee against trafficking and forced labour enforceable against the State and private persons. The State must investigate recruiters, transporters, brothel managers, clients or officials who use force, fraud, coercion, abuse of vulnerability or exploitation. It must also protect persons from reprisals and restore material conditions necessary for an autonomous life. In *Prajwala*, Articles 21 and 23 were read together to recognise an enforceable right to rehabilitation for survivors of trafficking for commercial sexual exploitation.²⁷
6. Gender identity and intersectionality. Not all sex workers are cisgender women. Transgender women, men and non-binary persons may enter sexual labour in conditions shaped by employment exclusion, homelessness and family rejection. *National Legal Services Authority v. Union of India* recognised self-identified gender and the equal dignity of transgender persons.²⁸ A rights framework must therefore avoid female-only assumptions in access to police protection, shelters, sexual and reproductive health, social security and legal aid. It must also account for caste, disability, migration, language, HIV status and motherhood, because vulnerability is compounded where several forms of exclusion intersect.

V. JUDICIAL EVOLUTION: FROM MORAL REHABILITATION TO AGENCY

The earlier judicial response was dominated by rescue and rehabilitation. In *Vishal Jeet v. Union of India*, the Supreme Court addressed child prostitution and the exploitation of girls, directing governments to establish advisory committees and programmes for care, protection, treatment, development and rehabilitation.²⁹ Its intervention was indispensable in recognising trafficking and child sexual exploitation as matters of constitutional concern. Yet the vocabulary of eradication and rescue left limited space for distinguishing adult consensual sex work from exploitation.

Gaurav Jain v. Union of India shifted attention to the children of sex workers. The Court

²⁶ Supra note 4 para. 455(c).

²⁷ Supra note 4 paras. 439-447.

²⁸ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

²⁹ *Vishal Jeet v. Union of India*, (1990) 3 SCC 318.

rejected segregation and emphasised education, development and social integration of children who were stigmatised because of their mothers' occupation.³⁰ The judgment helped establish that children cannot inherit civil disability from a parent's status. However, parts of its language reflected the period's paternalism by portraying women in prostitution principally as persons to be rehabilitated into socially approved roles. The rights-based lesson is valuable even where terminology must be critically discarded.

The *Budhadev Karmaskar* proceedings began as a criminal appeal arising from the brutal killing of a sex worker. In 2011 the Court expanded the matter to consider rehabilitation, trafficking prevention and the conditions necessary for sex workers to live with dignity.³¹ A 2012 modification was conceptually important: the committee's third term of reference was reframed from rehabilitation alone to creating conditions conducive to sex workers living with dignity in accordance with Article 21.³² This opened the door to recognising that a rights response cannot be conditional on exit.

During the COVID-19 crisis, the same proceedings exposed how exclusion from identity documents and ration systems could turn stigma into hunger. The Court directed identification and supply of dry ration without insisting on conventional proof, and pursued voter identity and Aadhaar access through community organisations while protecting confidentiality.³³ These orders treated food and civil identity not as rewards for rehabilitation but as entitlements attached to personhood.

The order of 19 May 2022 is the decisive rights charter. Exercising Article 142 powers pending legislation, the Court accepted recommendations requiring equal police protection, non-interference where an adult participates with consent, immediate treatment after sexual assault, restraint during raids, release of adults detained against their wishes in protective homes, police sensitisation, protection of identity, rejection of condoms as evidence, participation of sex workers in policy, legal-awareness programmes and protection of family

³⁰ Gaurav Jain v. Union of India, (1997) 8 SCC 114.

³¹ Budhadev Karmaskar v. State of West Bengal, Criminal Appeal No. 135 of 2010, orders dated February 14, 2011 and July 19, 2011 (Supreme Court of India), available at: <https://api.sci.gov.in/jonew/judis/39492.pdf> (last visited on July 13, 2026).

³² Budhadev Karmaskar v. State of West Bengal, Criminal Appeal No. 135 of 2010, order dated July 26, 2012 (Supreme Court of India), available at: <https://api.sci.gov.in/jonew/judis/39492.pdf> (last visited on July 13, 2026).

³³ Budhadev Karmaskar v. State of West Bengal, Criminal Appeal No. 135 of 2010, orders dated January 10, 2022 and February 28, 2022 (Supreme Court of India), concerning dry ration and identity documents for sex workers.

relationships.³⁴ The Court's statement that voluntary sex work is not illegal did not invalidate the ITPA. It directed enforcement agencies to stop treating the worker as the offender merely because an offence concerning the premises or organiser is suspected.

Prajwala in 2026 both complements and complicates *Budhadev Karmaskar*. Its primary concern is trafficking for commercial sexual exploitation and the enforceable right of survivors to rehabilitation. Yet the Court expressly acknowledges that the ITPA conflates trafficking with prostitution and that this conflation harms voluntary adults. It adopts two controlling principles for the Victim Protection Plan: non-interference after a threshold inquiry identifies a voluntary adult sex worker, and primacy of the adult's consent in decisions about detention and reintegration, subject to demonstrated threats to safety or consent produced by coercion or undue influence.³⁵

The judgment also performs an important self-correction. It warns that descriptions such as "fallen women" and judicial doubts about sex workers' fitness for family life legitimise stigma. It calls for recognition of rights, legal protection, reconsideration of sections 7, 8 and 20 ITPA, alternatives to detention-based rehabilitation, specific accountability for police abuse and renewed consideration of comprehensive trafficking legislation.³⁶ The trajectory is therefore not a straight move from prohibition to legalisation. It is a move from status-based paternalism towards differentiated regulation, survivor agency and enforceable constitutional guarantees.

VI. PERSISTENT RIGHTS DEFICITS

1. Policing and evidentiary practices. The surrounding offences in the ITPA give police wide discretion over premises, movement and solicitation. Where accountability is weak, discretion can facilitate extortion, sexual violence, seizure of earnings and threats of disclosure. Condom possession has sometimes been treated as proof of prostitution, creating a direct conflict between criminal enforcement and public health. The 2022 order's instruction that condoms must not be treated as evidence is therefore not incidental; it removes a perverse incentive against carrying a basic means

³⁴ Supra note 3 at recommendations (i)-(xii).

³⁵ Supra note 4 paras. 448-453.

³⁶ Supra note 4 paras. 407-426 and 455.

of disease prevention.³⁷

Prajwala goes further by recommending reconsideration of specific offences for police officers who sexually abuse persons in their charge and a presumption of wrongful confinement where production before a magistrate is unjustifiably delayed.³⁸

Effective implementation requires written raid protocols, body-worn or independently preserved records where compatible with confidentiality, immediate access to counsel, medical examination only with informed consent except where law clearly provides otherwise, and an independent complaints mechanism that does not return the complainant to the same police unit.

2. Rescue, protective homes and liberty. Rescue is necessary where a child is sexually exploited or an adult is held through force, fraud, coercion, threat or abuse of vulnerability. The defect lies in presuming that removal proves trafficking and that institutional detention is rehabilitation. Adults have been kept in protective homes despite expressing a wish to leave. The Supreme Court's 2022 directions required States to survey protective homes and review cases of adult women detained against their will; the September 2022 order reiterated that exercise.³⁹ The 2026 Victim Protection Plan now requires a threshold consent inquiry and makes the adult's wishes central.
3. Health and reproductive autonomy. Sex workers require ordinary primary care, HIV and STI prevention and treatment, mental-health services, contraception, safe abortion within law, maternal care and treatment after violence. Access must be confidential and non-judgmental. Compulsory HIV testing, forced sterilisation or medical examination for evidentiary fishing would violate bodily autonomy. Public-health programmes are most effective where community organisations are partners rather than informants for law enforcement. The evidence against punitive environments supports this institutional separation.^{40,41}
4. Identity, food, housing and financial inclusion. A person without proof of residence may be unable to obtain ration, voter identification, bank services, housing or health

³⁷ Supra note 3 at recommendation (viii).

³⁸ Supra note 4 paras. 414-416 and 455(d).

³⁹ *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, order dated September 2, 2022 (Supreme Court of India), available at: https://api.sci.gov.in/supremecourt/2007/37388/37388_2007_13_1_37890_Order_02-Sep-2022.pdf (last visited on July 13, 2026).

⁴⁰ Supra note 9.

⁴¹ Supra note 10.

insurance. Sex workers living in rented rooms or mobile settings are especially vulnerable to document-based exclusion. The COVID-era orders demonstrated that community-based verification can deliver entitlements without publishing occupation or address details that endanger privacy. The National Human Rights Commission has recommended extending all worker entitlements to sex workers and using NACO and community-based networks for stigma-free outreach.⁴²

5. Children and family life. A child must never be presumed trafficked merely because a parent is a sex worker. The 2022 directions state that no child should be separated from the mother solely on that ground and that, where a minor is found living in a brothel or with sex workers, trafficking cannot be presumed without appropriate inquiry.⁴³ Child protection must assess actual neglect, abuse or danger under the same legal standards applicable to other families. Education records and welfare services should be designed to prevent disclosure and inherited stigma.
6. Digital privacy, platform governance and cyber-enabled abuse. An increasing part of adult sex work is mediated through phones, messaging services, social media and online advertising. Digital contact can reduce exposure to street violence and allow workers to screen clients, but it also creates new risks: doxxing, non-consensual circulation of intimate images, impersonation, blackmail, financial fraud, location tracking and permanent disclosure of a person's occupation. A rights-based response must distinguish an adult's consensual communication from trafficking, child sexual exploitation and coercive facilitation. Blanket blocking or surveillance of accounts associated with sex work can erase evidence, push workers towards less safe channels and expose them to extortion. Platforms and police should instead provide rapid mechanisms for reporting non-consensual content, preserve evidence with strict confidentiality, protect complainants from occupational disclosure and investigate coercion without treating the complainant's own messages or advertisements as proof of criminality. The Supreme Court in *Prajwala* recognised the growth of cyber-enabled trafficking and directed stronger coordination and advisories; those measures must be implemented with privacy, proportionality and due-process safeguards so that anti-trafficking enforcement does not become indiscriminate digital policing of

⁴² National Human Rights Commission, Advisory on Human Rights of Informal Workers during COVID-19 11 (Oct. 2020), recommendations 4.22-4.25, available at: https://nhrc.nic.in/assets/uploads/covid1/1721805688_436941f7370965eba4a7.pdf (last visited on July 13, 2026).

⁴³ Supra note 3 at recommendation (xii).

adults.⁴⁴

7. Legal aid and participation. Rights on paper are ineffective without lawyers, interpreters and trusted community intermediaries. The 2022 order directs legal-services authorities to conduct workshops explaining what is legal, what is prohibited, police duties and methods of obtaining remedies. It also requires governments to involve sex workers or their representatives in decisions affecting them.⁴⁵ NALSA's scheme concerning victims of trafficking and commercial sexual exploitation supplies an institutional basis for legal services, but its implementation should clearly differentiate voluntary adult sex workers from trafficking survivors and should include community paralegals.⁴⁶

VII. A RIGHTS-CENTRED REFORM AGENDA

First, Parliament should enact a clear separation between consensual adult sex work and trafficking. The offence of trafficking should remain stringent and should focus on recruitment or control through force, threat, coercion, deception, abuse of power or vulnerability for exploitation. Every form of commercial sexual activity involving a child must remain prohibited. For adults, law-enforcement attention should be directed towards violence, confinement, fraud, extortion, debt bondage, confiscation of documents and exploitative control rather than towards the fact of consensual sexual exchange. This approach accords with the Palermo structure and the BNS while preserving stronger protection where vulnerability is abused.^{47,48}

Secondly, sections 7, 8 and 20 ITPA require urgent reconsideration. Section 8 enables status-based policing through solicitation offences; section 7 displaces street-based workers from broad zones around public places; section 20 permits removal from a locality. At minimum, the provisions should never apply to a trafficked person or child, as *Prajwala* recommends.⁴⁹ A stronger reform would repeal penalties that directly punish adult sex workers for consensual conduct and use ordinary, narrowly drawn laws to address obstruction, harassment or public nuisance irrespective of the person's status.

⁴⁴ Supra note 4 paras. 421-426 and 455(g).

⁴⁵ Supra note 3 at recommendations (ix) and (x).

⁴⁶ National Legal Services Authority, NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015, available at: <https://nalsa.gov.in> (last visited on July 13, 2026).

⁴⁷ Supra note 5 art. 3.

⁴⁸ Supra note 13.

⁴⁹ Supra note 4 para. 455(a).

Thirdly, the concepts of brothel-keeping and living on earnings should be narrowed so that they target exploitation rather than safe collaboration. Two or more adults who share premises, security, transport or administrative costs should not automatically expose themselves or supportive family members to prosecution. Criminal liability should depend on coercive control, exploitation, profiteering from another's vulnerability or knowing participation in trafficking. This would permit collective safety arrangements while preserving offences against pimps, detainers and exploitative managers.

Fourthly, rescue and rehabilitation must be non-carceral. Every adult should receive an independent, confidential assessment soon after removal, access to counsel, a clear explanation of rights and a prompt opportunity to challenge detention. Safe housing must ordinarily be voluntary; any exceptional restriction should be based on demonstrable and immediate risk, be the least restrictive measure, carry short statutory time limits and undergo periodic judicial review. Rehabilitation should offer a menu of options—cash support, housing, health care, education, migration assistance, debt relief, compensation, skills and employment—without making benefits conditional on denunciation of sex work or cooperation with prosecution. The Victim Protection Plan in *Prajwala* supplies a binding minimum framework and should be translated into State rules, budgets and measurable standards.⁵⁰

Fifthly, police accountability must be made enforceable. Every State should issue standing orders incorporating the *Budhadev Karmaskar* and *Prajwala* principles; train police, magistrates, prosecutors and medical personnel; prohibit seizure or use of condoms as evidence; preserve anonymity; record reasons for removal; and publish de-identified compliance data. Sexual abuse, extortion, custodial violence and deliberate delay in production before a magistrate require independent investigation and disciplinary as well as criminal consequences. Community organisations should participate in monitoring but should not be compelled to share health-programme data with police.

Sixthly, social protection should be universal rather than occupation-policed. Ration, Aadhaar, voter registration, housing, bank accounts, insurance, pensions, disability support, maternal benefits and education for children must be available through ordinary eligibility criteria. The State may offer exit opportunities, but the constitutional legitimacy of those

⁵⁰ *Prajwala v. Union of India*, 2026 INSC 609, para. 362 (Victim Protection Plan) and paras. 447-458.

programmes depends on voluntariness and adequate quality. Recognising sex workers as informal workers for welfare purposes does not require the State to endorse every commercial arrangement; it recognises that exclusion from basic entitlements increases vulnerability to trafficking and violence.

Seventhly, law and policy must be made with sex workers, not merely for them. The experience of women's collectives, transgender organisations, trafficking survivors, public-health workers and child-protection experts should shape legislative drafting, raid protocols, shelter standards and rehabilitation packages. Representation must be diverse enough to avoid treating one organisation as the voice of a heterogeneous population. The human-rights approach places the affected person at the centre and treats protection, participation and remedy as mutually reinforcing.⁵¹

Finally, implementation should be subject to judicially visible monitoring. *Prajwala* required States and Union Territories to notify recognised welfare institutions, prepare lists of social-welfare workers, designate police and government nodal officers and report compliance.⁵² Similar monitoring is needed for the 2022 directions: numbers of complaints registered, unlawful arrests prevented, adults released from protective homes, identity documents issued, legal-awareness programmes held and disciplinary action taken for violations. Data must be aggregated and anonymised so that transparency does not become exposure.

VIII. CONCLUSION

The rights of sex workers present a test of constitutional fidelity precisely because the occupation is morally contested. A rights order is meaningful only when it protects persons who lack social approval. Indian law already contains the foundations of such protection: equality before law, dignity and personal liberty, privacy, occupational freedom subject to reasonable regulation, protection against trafficking, access to justice and the State's obligation to secure health and material conditions for an autonomous life.

The existing ITPA framework remains internally contradictory. It does not criminalise

⁵¹ Office of the United Nations High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, U.N. Doc. E/2002/68/Add.1 (May 20, 2002), Guideline 1.

⁵² Supra note 4 paras. 456-458.

every act of adult sex work, yet its offences and rescue powers often expose workers to arrest, displacement, stigma and detention. Trafficking law and sex-work regulation are therefore entangled in a manner that can punish both voluntary adults and the victims whom the law seeks to protect.

Budhadev Karmaskar transformed constitutional dignity into practical directions for policing, health care, identity, family life, confidentiality and participation. *Prajwala* supplies the latest and most sophisticated doctrinal account: it recognises an enforceable right to rehabilitation for trafficking survivors, rejects a one-size-fits-all rescue model, gives primacy to adult consent and insists that voluntary sex workers retain enforceable rights even in the absence of a declared right to sex work. Together, the decisions require movement from moral correction to lawful regulation and from compulsory rescue to informed choice.

The appropriate reform is calibrated decriminalisation. India should retain and strengthen offences against trafficking, child sexual exploitation, violence, coercion and exploitative control, while removing offences and practices that directly punish consensual adult workers or make safe collective work impossible. Social security, health care, housing, identity and legal protection must not depend on exit. The constitutional objective is neither romanticisation nor condemnation of sex work; it is to ensure that no person becomes rightless because of the work she or he performs, and that every person subjected to exploitation has a genuine, supported path to safety and self-determined rehabilitation.

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