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## **SEX WORK, DIGNITY, AND THE LAW :THE TRANSFORMATIVE ROLE OF THE BUDHADEV KARMASKAR JUDGMENT**

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### **ABSTRACT**

The Supreme Court's ruling in *Budhadev Karmaskar v. State of West Bengal (2011)* was a turning point in Indian legal history. While it arose from the conviction of a man for murdering a sex worker, the Court went beyond the immediate facts and addressed the larger question of the rights and dignity of sex workers. For the first time, the Court clearly stated that sex workers, like all other citizens, are entitled to the protection of Article 21 of the Constitution, which includes the right to life, livelihood, health, privacy, and dignity. Using its powers under Article 142, the Court also formed a panel of experts and directed steps to prevent police harassment, secure access to healthcare and welfare benefits, and ensure that the children of sex workers are not stigmatised or unnecessarily separated from their mothers.

However, when examined in the context of the Immoral Traffic (Prevention) Act, 1986 (ITPA), the judgment reveals a strong conflict between constitutional rights and statutory restrictions. The ITPA, which began as the Suppression of Immoral Traffic in Women and Girls Act, 1956 and was amended in 1986, takes a largely punitive approach. Although aimed at curbing trafficking, the Act criminalises many aspects of sex work—such as running brothels (S. 3), living on earnings of sex work (S. 4), and soliciting in public (S. 8). These provisions make it nearly impossible for sex workers to practice their livelihood without breaking the law. Further, the “rescue and rehabilitation” provisions (Ss. 16–17) often result in detention without consent, undermining the very autonomy the Court sought to recognise.

The *Budhadev Karmaskar* case can therefore be understood as an effort to balance the constitutional promise of dignity with a law that continues to treat sex work through the lens of morality and criminalisation. While the Court's directions soften the harshness of the ITPA, they cannot substitute legislative change. This highlights the urgent need for reform to

remove contradictions between Article 21's broad protections and the restrictive provisions of the Act.

This article critically explores the *Budhadev Karmaskar* judgment in relation to the ITPA, 1986. It reviews the historical development of India's laws on sex work, evaluates the constitutional values reinforced by the Court, and analyses the gap between judicial protection and legislative control. It also compares India's position with global approaches—contrasting the restrictive “Nordic model” with New Zealand's decriminalisation framework. Ultimately, it argues that although the judgment is progressive, its impact will remain limited unless the ITPA is reformed to decriminalise consensual adult sex work and bring sex workers fully within the fold of constitutional rights and social protections.

### **Key words:**

Immoral Traffic (Prevention) Act, Sex Work in India, Budhadev Karmaskar Judgment, Constitutional Rights of Sex Workers, Decriminalisation of Sex Work.

## INTRODUCTION

Sex work has always had an uncertain place in Indian law, caught between personal freedom on one hand and state control over morality on the other.<sup>1</sup> Even though the Constitution guarantees fundamental rights to all citizens, sex workers often face discrimination, criminalisation, and social stigma.<sup>2</sup> In India, debates around sex work have usually been shaped not only by morality but also by concerns of criminal law, public health, and human rights. Against this background, the Supreme Court's judgment in *Budhadev Karmaskar v. State of West Bengal*<sup>3</sup> is significant, as it shifted the focus from treating sex work as immoral to recognising it within the framework of constitutional rights.

The case itself arose from the murder of a sex worker, where the accused challenged his conviction under Section 302 of the Indian Penal Code<sup>4</sup>. Instead of limiting itself to the criminal appeal, the Supreme Court took a wider view and considered the living conditions of sex workers in India. It recognised that they are denied even basic rights and affirmed that they too are entitled to dignity under Article 21 of the Constitution<sup>5</sup>. Using its special powers under Article 142<sup>6</sup>, the Court went further and issued directions to protect sex workers from police harassment, to ensure better access to healthcare and welfare benefits, and to safeguard the rights of their children. This marked a major shift from earlier judicial approaches that mostly viewed sex work through the lens of crime and social immorality.

At the same time, the progressive outlook of the Court does not fit well with the existing law under the Immoral Traffic (Prevention) Act, 1986<sup>7</sup> (ITPA). The Act was first enacted in 1956 as the Suppression of Immoral Traffic in Women and Girls Act (SITA)<sup>8</sup> to fulfil India's obligations under international treaties and later amended and renamed in 1986.<sup>9</sup> Although its stated purpose is to stop trafficking and exploitation, its provisions criminalise important aspects of sex work such as brothel-keeping, soliciting, and living on the earnings of

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<sup>1</sup> Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton University Press, 2011) 45.

<sup>2</sup> National Human Rights Commission, *Study on Human Rights of Sex Workers in India* (2018).

<sup>3</sup> *Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCC 283.

<sup>4</sup> Indian Penal Code, No. 45 of 1860, s 302.

<sup>5</sup> India Const. art. 21

<sup>6</sup> India Const. art. 142

<sup>7</sup> Immoral Traffic (Prevention) Act, No. 104 of 1956 (India) (as amended in 1986).

<sup>8</sup> Suppression of Immoral Traffic in Women and Girls Act, No. 104 of 1956 (India).

<sup>9</sup> UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950.

prostitution. These restrictions make it almost impossible for sex workers to carry on their occupation without violating the law. Further, the “rescue and rehabilitation” provisions often result in forced detention in protective homes, denying sex workers autonomy over their own lives.

This contradiction between the ITPA’s punitive approach and the rights-based approach of the *Budhadev Karmaskar*<sup>10</sup> judgment shows a deeper conflict in Indian law. It raises the important question of whether sex work should continue to be governed by moralistic legislation or should instead be treated as a matter of human rights and labour regulation. The judgment is important not just because it recognised the dignity of sex workers, but also because it revealed the weaknesses of the existing legal framework. It questioned whether current laws are consistent with the constitutional guarantees of equality, freedom, and dignity, and it highlighted the role of the judiciary in advancing social reform when the legislature remains bound by outdated, morality-driven views.

This article engages with these issues by examining the *Budhadev Karmaskar*<sup>11</sup> judgment in light of the ITPA, 1986. It looks at the historical development of laws relating to sex work in India, the constitutional principles applied by the Court, and the conflicts between judicial directions and legislative provisions. It also draws lessons from international approaches, such as the Nordic model and the decriminalisation framework of New Zealand. The central aim is to explore whether India’s legal framework can be made consistent with constitutional principles or whether a more fundamental legislative reform is required. In doing so, it can be argued that while *Budhadev Karmaskar*<sup>12</sup> is a landmark and progressive decision, its true impact will remain limited unless it is supported by statutory reform of the ITPA. Ultimately, it raises a broader question for Indian law: whether the legal system should continue to criminalise sex work in the name of morality, or shift to a rights-based and regulatory approach that genuinely respects the dignity and autonomy of sex workers.

## **EVOLUTION OF THE IMMORAL TRAFFIC (PREVENTION) ACT, 1986**

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<sup>10</sup> *Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCC 283.

<sup>11</sup> Ibid

<sup>12</sup> Ibid

The regulation of sex work in India has developed through a long history influenced by colonial morality, global commitments, and domestic debates about exploitation and rights. The main law in force today is the Immoral Traffic (Prevention) Act, 1986 (ITPA), which evolved from the earlier Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). Tracing this legal journey helps us better understand the context in which the Supreme Court delivered its judgment in *Budhadev Karmaskar v. State of West Bengal*.

During the colonial period, prostitution was not directly prohibited, but it was subject to strict policing under laws such as the Cantonments Act, 1864 and the Contagious Diseases Acts, 1864–1869. These laws were less concerned with the rights or dignity of women and more with public health and military discipline, particularly the prevention of venereal diseases among soldiers. The emphasis was on controlling women's bodies rather than addressing trafficking or exploitation, thereby laying the foundation for a morality-driven and punitive approach that continued even after independence.<sup>13</sup>

Post-independence, India's shift towards enacting a national law on sex work was significantly influenced by international commitments. In 1950, the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, obliging signatory states to criminalise exploitation of prostitution and trafficking. As a signatory, India was required to align its domestic law with these obligations, which led to the enactment of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). This legislation was the first comprehensive national law on the subject, criminalising a wide range of activities connected with sex work, such as brothel-keeping, procuring, and soliciting, while leaving the act of engaging in sex work itself in a legal grey area.

By the 1970s and 1980s, however, it became increasingly clear that SITA was inadequate to deal with the emerging problems of organised trafficking, child prostitution, and large-scale exploitation in brothels.<sup>14</sup> Moreover, it was criticised for being outdated and inconsistent with evolving international human rights standards, particularly the Convention on the Elimination

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<sup>13</sup> Mrinal Satish, "Prostitution and the Law: The Indian Experience" (2008) 50(4) Journal of the Indian Law Institute 603, 605 (2008).

<sup>14</sup> Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton University Press, 2011) 102–105.

of All Forms of Discrimination Against Women (CEDAW)<sup>15</sup>, which India ratified in 1981.<sup>16</sup> In response, Parliament amended the law in 1986 and renamed it the Immoral Traffic (Prevention) Act, 1986 (ITPA). While these amendments were intended to strengthen measures against trafficking and sexual exploitation, they also broadened the scope of criminalisation, making it increasingly difficult for sex workers to carry on their occupation without falling foul of the law.

## **KEY PROVISIONS OF THE IMMORAL TRAFFIC (PREVENTION) ACT, 1986**

The Immoral Traffic (Prevention) Act, 1986 contains a series of provisions that aim to combat trafficking and exploitation, but in practice, they extend deep into the regulation and criminalisation of sex work itself. At the heart of the Act lies Section 3<sup>17</sup>, which makes the keeping or managing of a brothel a punishable offence. The provision defines brothels broadly to include any premises used for the purpose of prostitution, meaning that even two or more sex workers choosing to live and work together may be considered as running a brothel. This provision has often been criticised for pushing sex work further underground, thereby exposing sex workers to greater exploitation and vulnerability.

Section 4<sup>18</sup> criminalises living on the earnings of prostitution, prescribing punishment for anyone who knowingly lives wholly or partly on such earnings. While the intention behind this provision is to target pimps and exploiters, its scope is wide enough to cover dependents of sex workers, including their children or family members who may be supported through their income.<sup>19</sup> This creates a paradox in which the law penalises those who rely on the sex worker's livelihood, thereby indirectly stigmatising and criminalising sex workers themselves.

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<sup>15</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>16</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13. India ratified CEDAW on 9 July 1993 (with certain reservations).

<sup>17</sup> Section 3, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

<sup>18</sup> Section 4, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

<sup>19</sup> Mrinal Satish, "Prostitution and the Law: The Indian Experience" (2008) 50(4) Journal of the Indian Law Institute 603, 609.

Section 5<sup>20</sup> deals with procuring, inducing, or taking a person for the purpose of prostitution. It imposes strict penalties on those who exploit others, particularly women and children, for commercial sex. While this section directly addresses trafficking and coercion, its enforcement has often been inconsistent, with trafficked individuals themselves at times being treated as offenders rather than victims deserving protection.

Section 6<sup>21</sup> provides for punishment in cases where a person is detained in premises where prostitution is carried on. It authorises severe penalties for anyone who detains or wrongfully confines a person for the purpose of prostitution. Though this section seeks to prevent coercion, its application has often overlapped with rescue operations that are coercive in themselves, blurring the line between protection and punishment.

Section 7<sup>22</sup> prohibits prostitution in or near public places, such as hotels, hostels, educational institutions, and places of worship. The radius defined by the Act is so wide that in urban areas it is nearly impossible for sex workers to carry on their work without falling foul of this provision. By criminalising the location of sex work rather than the act itself, the section effectively restricts sex workers' ability to earn a livelihood, forcing them into more hidden and unsafe spaces.

Section 8<sup>23</sup> further penalises soliciting in public places. It criminalises any attempt by sex workers to seek clients through words, gestures, or any other form of solicitation. This provision is particularly damaging as it effectively makes it illegal for sex workers to communicate with potential clients, thereby undermining their right to carry on their chosen occupation and exposing them to police harassment and extortion.

Perhaps the most controversial provisions of the ITPA are contained in Sections 16 and 17, which deal with “rescue and rehabilitation.” Section 16<sup>24</sup> empowers a magistrate to order the removal of a woman or child from a brothel and place them in protective custody, while Section 17<sup>25</sup> authorises their detention in protective homes. Although intended to safeguard those who are coerced or trafficked, in practice these provisions often result in forcible

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<sup>20</sup> Section 5, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

<sup>21</sup> Section 6, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

<sup>22</sup> Section 7, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

<sup>23</sup> Section 8, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

<sup>24</sup> Section 16, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

<sup>25</sup> Section 3, Immoral Traffic (Prevention) Act, 1956 (as amended in 1986).

detention of adult sex workers against their will.<sup>26</sup> Many are confined in “protective” homes under poor conditions, with limited autonomy and no real choice about whether to leave sex work or not. This undermines the agency of sex workers, treating them as incapable of making decisions about their own lives.

Taken together, these provisions demonstrate that while the ITPA does not directly criminalise the act of engaging in sex work, it criminalises almost all of the conditions in which it can be carried out. Brothel-keeping, soliciting, or even supporting one’s family through sex work earnings can all attract penalties under the law. Moreover, the rescue and rehabilitation provisions often blur the line between protection and coercion, leading to outcomes that contradict the constitutional guarantees of dignity and autonomy under Articles 14, 19, and 21.<sup>27</sup> The cumulative effect of these provisions has been to stigmatise sex workers, push them into precarious and unsafe working conditions, and expose them to harassment from both law enforcement and society at large.

## **CRITICISM AND HUMAN RIGHTS CONCERNs UNDER THE ITPA, 1986**

Although the Immoral Traffic (Prevention) Act, 1986 was enacted with the stated aim of combating trafficking and protecting vulnerable women and children, its provisions have long been criticised for conflating consensual sex work with exploitation. By criminalising the circumstances in which sex work takes place rather than addressing trafficking directly, the Act undermines the constitutional rights of adult sex workers who voluntarily engage in the trade.

One of the major criticisms of the ITPA lies in its overbroad criminalisation of brothel-keeping under Section 3. The definition of a brothel is so wide that even two sex workers living together for mutual safety and support can be penalised. This directly contradicts the principle of autonomy under Article 21 of the Constitution, which protects the

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<sup>26</sup> Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton University Press, 2011), pp. 156–160.

<sup>27</sup> *Budhadev Karmaskar v. State of West Bengal*, (2011) 10 SCC 283

right to livelihood and personal liberty.<sup>28</sup> Similarly, Section 4, which criminalises living on the earnings of prostitution, has been criticised for punishing not only exploitative pimps but also dependents such as children, elderly parents, or spouses who may rely on a sex worker's income. Instead of protecting families, the provision indirectly perpetuates their vulnerability.

Sections 7 and 8, which restrict sex work in or near public places and prohibit solicitation, effectively criminalise sex workers' ability to find clients. These provisions have been a major source of harassment, extortion, and abuse by the police, who often target sex workers under the guise of enforcing the law. By making it practically impossible to carry on sex work without violating these sections, the ITPA violates the equality clause under Article 14 and the right to carry on an occupation under Article 19(1)(g).

Perhaps the most troubling are the “rescue and rehabilitation” provisions in Sections 16 and 17. While they appear benevolent in theory, in practice they have often resulted in the forcible detention of adult sex workers in so-called protective homes. Many sex workers are placed in these institutions without their consent, in violation of their autonomy and dignity. Reports have documented poor living conditions in such homes, lack of rehabilitation opportunities, and restrictions on movement, making the process more punitive than protective. In this way, the law denies sex workers agency and assumes that they are incapable of making decisions about their own lives—a stance that is inconsistent with constitutional jurisprudence on personal liberty.

The Supreme Court in *Budhadev Karmaskar v. State of West Bengal* sought to counterbalance these statutory shortcomings by affirming that sex workers are entitled to the same dignity and rights as other citizens under Article 21. By invoking Article 142, the Court directed measures to protect sex workers from harassment, improve access to healthcare and welfare, and safeguard the rights of their children. However, this judicial intervention, though progressive, operates in direct tension with the punitive structure of the ITPA. While the Court sought to shift the legal discourse towards dignity and protection, the statutory framework continues to treat sex work as an immoral activity to be suppressed rather than as a form of livelihood that may require regulation and safeguards.

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<sup>28</sup> Constitution of India, art. 21; see *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 (expanding right to livelihood).

This contradiction highlights a deeper human rights concern: the ITPA, in its current form, fails to distinguish between voluntary adult sex work and coercive trafficking. In conflating the two, it undermines India's obligations under international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>29</sup> The punitive nature of the Act stands at odds with the constitutional principles of equality, dignity, and freedom of choice.

The *Budhadev Karmaskar* judgment, therefore, exposes the inadequacy of the ITPA. While the judiciary has attempted to mitigate the harms caused by the law, the solution ultimately lies in legislative reform. Unless the Act is amended to decriminalise consensual adult sex work and distinguish it from trafficking, sex workers will continue to face systemic harassment, legal uncertainty, and denial of basic rights. The contradiction between constitutional protections and statutory restrictions underscores the urgent need for India to rethink its approach—moving away from moralistic criminalisation towards a rights-based framework that genuinely protects both sex workers and victims of trafficking.

## **CASE BACKGROUND: BUDHADEV KARMASKAR V. STATE OF WEST BENGAL**

The *Budhadev Karmaskar* case began with a criminal appeal, but over time, it evolved into a series of landmark rulings that transformed the legal discourse on sex work in India. The case arose from the brutal murder of a sex worker, Chhaya Rani Pal, also known as “Buri,” in Kolkata in 1999. The trial court convicted the appellant, Budhadev Karmaskar, under Section 302 of the Indian Penal Code for the offence of murder, and this decision was affirmed by the Calcutta High Court.<sup>30</sup> When the matter reached the Supreme Court in 2011, the Court not only upheld the conviction but also chose to broaden its inquiry. It took note of the systemic violence and social exclusion faced by sex workers, declaring that they too are citizens entitled to live with dignity under Article 21 of the Constitution. The Court particularly emphasised that the children of sex workers should not be deprived of education, healthcare, and other opportunities merely because of their mothers' occupation. This marked a

<sup>29</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, ratified by India in 1993.

<sup>30</sup> *Ibid.*

significant moment of judicial recognition, as the Court shifted the lens from crime and morality to dignity, welfare, and rights.

In its 2011 judgment, the Court went further by invoking its extraordinary powers under Article 142 of the Constitution to initiate social reform. It constituted a panel of senior advocates, academics, and social workers to study the conditions of sex workers and recommend measures for their protection and welfare. Through a series of subsequent interim orders, the Court issued important directives to state authorities and law enforcement agencies. It directed that police must not harass adult sex workers who engage in consensual work, recognising that criminalisation of their livelihood violated their dignity.<sup>31</sup> It also held that sex workers who are victims of sexual assault must be treated at par with other women under the law, thereby securing their right to equal protection. In an important step, the Court clarified that the mere possession of condoms should not be treated as evidence of prostitution or trafficking, as doing so would deter safe sex practices and endanger public health.<sup>32</sup> Furthermore, it ordered that children of sex workers should not be forcibly separated from their mothers unless there was a clear threat to their wellbeing, stressing that stigma cannot be the basis for denying parental rights.<sup>33</sup> To address systemic exclusion, the Court also directed governments to ensure that sex workers could access Aadhaar and other welfare entitlements, recognising their equal claim to citizenship rights.<sup>34</sup> These progressive directions reflected the Court's willingness to go beyond adjudication of a criminal appeal and to engage in judicial social engineering to protect a marginalised group.

The matter did not end there. Over the next decade, the case remained alive before the Supreme Court through continuing mandamus, as the Court monitored implementation and received periodic reports from the appointed panel.<sup>35</sup> This culminated in a landmark 2022 judgment, where the Court consolidated its interim directions into a binding framework. In this ruling, the Court once again underscored that sex workers are entitled to live with dignity, free from violence, stigma, and arbitrary interference by the state. It reiterated that sex work, when consensual and between adults, cannot be treated as a criminal offence, even though the statutory framework of the ITPA continues to penalise surrounding activities.<sup>36</sup>

<sup>31</sup> *Budhadev Karmaskar v. State of W.B.*, (2011) 11 SCC 538 (interim order).

<sup>32</sup> *Ibid.*, (2011) 13 SCC 69 (interim order).

<sup>33</sup> *Ibid.*, (2011) 12 SCC 94 (interim order).

<sup>34</sup> *Ibid.*, (2012) 3 SCC 287.

<sup>35</sup> *Ibid.*, (2015) 2 SCC 654.

<sup>36</sup> *Ibid.*, (2022) 7 SCC 347.

Importantly, the Court directed that sex workers must not be arrested or penalised merely for engaging in voluntary sex work, unless there is evidence of coercion, trafficking, or involvement of minors. It further ordered that police should treat complaints by sex workers with the same seriousness as those by any other citizen, reinforcing the principle of equality under Article 14.<sup>37</sup>

The 2022 judgment also recognised the need for sex workers to access basic entitlements without discrimination. The Court directed governments to ensure issuance of identity documents such as Aadhaar, ration cards, and voter IDs, enabling them to claim welfare benefits, healthcare, and financial services.<sup>38</sup> By formalising its interim directions into enforceable guidelines, the Court not only provided immediate relief to sex workers but also signalled a broader shift in legal philosophy—from viewing sex workers as subjects of “rescue and rehabilitation” under the ITPA to recognising them as rights-bearing citizens entitled to autonomy and equality.

Together, the 2011 and 2022 judgments in *Budhadev Karmaskar* represent one of the most significant developments in Indian jurisprudence on sex work. The case began as an individual criminal appeal but evolved into a continuing exercise in constitutional adjudication, where the Supreme Court actively sought to harmonise the punitive framework of the ITPA with the expansive protections guaranteed by Article 21. By doing so, the Court not only exposed the inadequacies of existing legislation but also raised fundamental questions about whether consensual adult sex work should remain trapped within a morality-driven statutory regime or be reframed through a rights-based legal model.

## **COMPARATIVE INTERNATIONAL MODELS: NORDIC VS. NEW ZEALAND APPROACHES**

The Indian experience with the regulation of sex work, especially after the *Budhadev Karmaskar* judgments, mirrors a broader global debate on how states should address prostitution, trafficking, and the rights of sex workers. Two dominant models illustrate the

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<sup>37</sup> Ibid

<sup>38</sup> Ibid

contrasting approaches, the Nordic (or Swedish) model and the New Zealand model of decriminalisation.

## The Nordic Model

First adopted in Sweden in 1999 and later followed by countries such as Norway, Iceland, France, and Canada, the Nordic model treats prostitution as a form of gendered violence and exploitation. Its central principle is to criminalise the demand side of sex work—namely, the clients who purchase sexual services—while decriminalising the selling of sex.<sup>39</sup> By targeting buyers rather than sex workers, the model seeks to reduce demand and, in turn, curb trafficking and exploitation. Supporters argue that it is a feminist approach that recognises sex work as inherently exploitative and works towards its eventual eradication.

However, the Nordic model has drawn criticism for driving the trade underground. While sex workers are not criminalised in theory, they often face increased policing, surveillance, and eviction from their homes. The stigma associated with criminalised buyers indirectly affects sex workers' safety and economic security. Studies in Sweden and Norway suggest that sex workers continue to face violence and barriers to healthcare, showing that criminalisation of any part of the trade tends to reproduce vulnerabilities rather than eliminate them. In the Indian context, scholars and commissions have warned against adopting a punitive model that may worsen the precariousness of sex workers rather than improve their rights and safety.<sup>40</sup>

## The New Zealand Model

In contrast, New Zealand adopted a radically different framework with the Prostitution Reform Act, 2003, which fully decriminalised sex work for adults. Under this model, sex work is treated as a legitimate occupation subject to ordinary labour regulations, workplace safety standards, and contractual rights.<sup>41</sup> The Act distinguishes clearly between consensual

<sup>39</sup> Gunilla S. Ekberg, The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings, 10 *Violence Against Women* 1187 (2004).

<sup>40</sup> Government of India, Ministry of Women and Child Development, *Report of the Committee on Amendments to Criminal Law* (Justice J.S. Verma Committee Report, 2013); Law Commission of India, *Report No. 64: Suppression of Immoral Traffic in Women and Girls Act, 1956* (1975); Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton: Princeton University Press, 2011).

<sup>41</sup> New Zealand, *Prostitution Reform Act, 2003*, Public Act No. 28 of 2003.

sex work and trafficking, focusing enforcement efforts exclusively on coercion, underage prostitution, and exploitation.

The impact has been largely positive. Decriminalisation has enabled sex workers to access legal remedies, report violence without fear of arrest, and claim employment protections.<sup>42</sup> Studies conducted by the New Zealand government and independent organisations show improved health outcomes, better working conditions, and reduced stigma. Importantly, it has not led to a significant increase in sex work, countering one of the common arguments against decriminalisation. Indian scholars have pointed to New Zealand's model as a potential reform pathway, arguing that it better aligns with constitutional guarantees of dignity and autonomy under Articles 14, 19, and 21 than India's current punitive framework under the ITPA.<sup>43</sup>

## Relevance for India

India's current legal framework under the *Immoral Traffic (Prevention) Act, 1986* (ITPA) does not fully follow either of the two international models—the Nordic model or the New Zealand model. On one hand, the ITPA makes several activities linked to sex work a criminal offence. For example, running a brothel, living on the earnings of prostitution, or soliciting clients in public places can all lead to punishment.<sup>44</sup> On the other hand, unlike the Nordic model, India does not punish clients who pay for sexual services. At the same time, India has also not chosen the path of New Zealand, where sex work is fully decriminalised and treated as a legitimate occupation. This creates a “halfway house” situation where sex work itself is not directly illegal, but almost all the conditions around it are criminalised. As a result, sex workers are often left vulnerable to police harassment, exploitation, and unsafe working conditions, while the law still struggles to effectively stop trafficking or protect those who are genuinely coerced.<sup>45</sup>

The *Budhadev Karmaskar* rulings of the Supreme Court tried to fill this gap by moving the law in a more progressive direction. The Court recognised that sex workers, like all other

<sup>42</sup> N.Z. Ministry of Just., Report of the Prostitution Law Review Comm. on the Operation of the Prostitution Reform Act 2003 (2008).

<sup>43</sup> Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton Univ. Press 2011).

<sup>44</sup> *Immoral Traffic (Prevention) Act, No. 104 of 1956, ss. 3–4, 8 (India) (as amended in 1986).*

<sup>45</sup> Prabha Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* 112–18 (Princeton Univ. Press 2011).

citizens, have the right to live with dignity under Article 21 of the Constitution. It directed the police not to harass adult sex workers who voluntarily engage in the trade, emphasised their access to welfare schemes, and sought to protect their children's rights. These judicial directions reflect an effort to bring Indian law closer to the New Zealand approach, which focuses on rights, dignity, and decriminalisation.

However, the problem is that these judicial efforts are limited because the ITPA itself has not been changed by Parliament. As long as the law continues to criminalise most aspects of sex work, sex workers will remain in a precarious position—caught between the promises of the Constitution and the prohibitions of the statute. For real change to happen, India needs a clear legislative shift towards a rights-based framework that distinguishes between consensual sex work and trafficking. Decriminalising voluntary adult sex work would not only bring India in line with international best practices but also ensure that its laws truly reflect its constitutional values of dignity, equality, and personal freedom.<sup>46</sup>

## **SUGGESTIONS FOR REFORMING THE ITPA, 1986**

To harmonise the Immoral Traffic (Prevention) Act, 1986 with constitutional guarantees and the progressive vision of the *Budhadev Karmaskar* judgments, several reforms are necessary. First, consensual adult sex work should be decriminalised, while trafficking, child exploitation, and coercion remain strictly prohibited. The definition of brothel-keeping should be narrowed so that premises shared by consenting adults for safety and work purposes are not automatically criminalised, and Section 4 should target exploiters or pimps rather than dependents of sex workers, such as spouses, children, or elderly family members. Similarly, punitive provisions on solicitation and sex work in public spaces should be repealed or replaced with neutral, nuisance-focused regulations, as these provisions are major sources of police harassment.

Rehabilitation and welfare measures must be voluntary for adults, with forced detention reserved only for cases involving children or trafficked persons. Legal safeguards should ensure that sex workers are protected from harassment, and the possession of condoms or

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<sup>46</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 33 on Women's Access to Justice, U.N. Doc. CEDAW/C/GC/33 (2015).

other health-related tools should never be treated as evidence of crime. Access to welfare entitlements and identity documents, such as Aadhaar, voter ID, ration cards, banking, and healthcare services, should be guaranteed to all sex workers without discrimination. At the same time, anti-trafficking provisions should be strengthened through clearer definitions of coercion, enhanced penalties for exploiters, and asset forfeiture provisions for traffickers, ensuring that protection is directed where it is genuinely needed.

Finally, institutional mechanisms such as district- and state-level oversight committees, including sex worker representatives, should be established to monitor implementation, prevent abuse, and ensure that services reach intended beneficiaries. Overall, reforming the ITPA requires adopting a rights-based, constitutional framework that recognises the dignity, autonomy, and equality of sex workers, while retaining strong protections against exploitation and trafficking. Such a transformation would not only resolve the contradictions highlighted in the *Budhadev Karmaskar* rulings but also align India's legal framework with global best practices, moving closer to a regulatory model akin to New Zealand's decriminalisation approach rather than the restrictive Nordic model.

## **CONCLUSION**

The legal and social position of sex workers in India reflects a persistent tension between constitutional rights and morality-driven statutory frameworks. The Immoral Traffic (Prevention) Act, 1986, while intended to combat trafficking and exploitation, has historically criminalised essential aspects of sex work, leading to harassment, marginalisation, and denial of basic rights. Against this backdrop, the Supreme Court's rulings in *Budhadev Karmaskar v. State of West Bengal* (2011 and 2022) represent a landmark shift, recognising that sex workers are citizens entitled to dignity, autonomy, and equal protection under Articles 14, 19(1)(g), and 21 of the Constitution. Through its directions, the Court sought to mitigate the harmful effects of the ITPA, protecting sex workers from police harassment, ensuring access to healthcare and welfare, and safeguarding the rights of their children.

Yet, the judgments also reveal the limitations of judicial intervention in the absence of legislative reform. While the Court's proactive use of Article 142 has provided significant relief, the ITPA's punitive provisions remain largely intact, leaving sex workers vulnerable to

continued legal uncertainty and social stigma. The tension between the constitutional recognition of rights and the statutory framework underscores the urgent need for a rights-based legislative overhaul. Comparative international experiences further illuminate potential paths forward. The Nordic model, which criminalises clients, has reduced demand but increased underground risk and stigma, whereas New Zealand's decriminalisation model demonstrates how recognising sex work as legitimate labour can improve safety, health, and social inclusion without facilitating exploitation.

In this context, reforming the ITPA along the lines suggested—decriminalising consensual adult sex work, narrowing punitive provisions, strengthening anti-trafficking measures, and institutionalising protective mechanisms—would reconcile India's statutory framework with constitutional guarantees. Such reforms would not only empower sex workers, allowing them to live and work with dignity, but also enhance the law's effectiveness in targeting trafficking and exploitation. Ultimately, the *Budhadev Karmaskar* judgments provide a progressive blueprint, but the realisation of its promise depends on legislative action that embraces a human-rights and evidence-based approach. Only through this integrated legal and policy reform can India ensure that sex workers are recognised as rights-bearing citizens rather than victims of a morality-driven legal regime.

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