

Sex Work and the Indian Judiciary: Shifting Narratives on Consent and Choice

Ms Riya Kanwar

Assistant Professor, Faculty of Law, GLS University, Ahmedabad. Email Id- riya.kanwar2@gmail.com

Abstract

Sex work in India occupies a paradoxical legal and social position—while the act of sex work is not criminalized per se, surrounding activities are penalized under the Immoral Traffic (Prevention) Act, 1956 (ITPA), leading to systemic marginalization, police harassment, and social stigma. This paper critically examines the evolving stance of the Indian judiciary, tracing the shift from a paternalistic, moralistic framework towards a rights-based, autonomy-respecting interpretation of sex workers' legal status. Landmark judgments such as *State of Maharashtra v. Madhukar Narayan Mardikar* and the *Budhadev Karmaskar* case series demonstrate an important judicial acknowledgment of sex workers' dignity, agency, and right to livelihood under Articles 14, 19, and 21 of the Constitution.

The paper further explores how this judicial evolution aligns with feminist and intersectional perspectives that emphasize consent, choice, and the compounded oppression faced by sex workers due to caste, poverty, and gender. It highlights the urgent need to reform outdated legislation like the ITPA, advocating for decriminalization and integration of sex workers into the legal and policy mainstream. Drawing from recent Supreme Court directives, NGO reports, and international models, the study recommends a shift from criminalization to empowerment, ensuring sex workers are treated not as victims or criminals but as citizens entitled to constitutional protections. The conclusion calls for comprehensive legislative reform, institutional sensitization, and inclusion of sex workers in policy formulation to realize a just and equitable future.

Keywords: Sex Work in India, Judicial Activism, Human Rights and Autonomy, Immoral Traffic (Prevention) Act, 1956, Intersectional Feminism

Introduction

Sex work in India has long existed in a legal gray zone—where the act of selling sex is not expressly illegal, but many activities around it are criminalized under the *Immoral Traffic (Prevention) Act*, 1956 (“ITPA”) and related provisions in the Indian Penal Code. While private, consensual sex work remains technically permissible, brothel-keeping, soliciting, pimping, or living off the earnings of sex work continue to be punishable offenses (Chowdhury, 2022). This legal ambiguity has not only rendered sex workers vulnerable to criminal sanctions but also exposed them to social ostracism and exploitative policing.

Historically, judicial responses were inclined toward paternalism. In *Gaurav Jain v. Union of India* (1997), the Supreme Court emphasized “rescuing” children in red-light areas, reinforcing a narrative of sex workers as helpless victims bereft of agency. Similarly, in *Sangram v. CBI* (1998), courts reiterated the need to “save” women from prostitution.

A watershed moment came in *State of Maharashtra v. Mardikar* (1991), where the Court affirmed that even sex workers are entitled to privacy and dignity, stating:

“Even a woman of easy virtue is entitled to privacy, and no one can invade her privacy as and when he likes.”

More recent jurisprudence underscores a decisive shift toward recognizing sex workers as autonomous rights-bearers. In *Budhadev Karmaskar v. State of West Bengal* (2011; reaffirmed in 2022), the Supreme Court explicitly declared sex work a “profession” and directed that consensual adult sex workers should not be arrested, harassed, or penalized, especially during brothel raids, unless they were implicated in trafficking or pimping. Courts also upheld that sex workers’ children must not be separated from their mothers merely due to the profession, unless clear evidence of trafficking exists.

By early 2024, the Supreme Court further reaffirmed these principles—ordering police forces across India to treat sex workers with dignity, refrain from harassment, and treat consensual adult sex work as lawful, emphasizing that Article 21 (Right to Life and Dignity) extends to sex workers and their children (desk, 2024). At the district level, courts have mirrored this progressive stance. In a Mumbai sessions court in 2023, the judiciary released a detained sex worker in a shelter home, observing that sex work is not a crime, and detention without consent violated her rights under Article 19 (freedom of movement and residence) (Hakim, 2023)

Parallel to judicial activism, recent reporting underscores a troubling persistence of sex trafficking operations disguised within spas and lodges. In Maharashtra, police raids dismantled interstate trafficking rings; simultaneously in Bihar and Varanasi, authorities busted flesh trade rackets operating under restaurant or spa cover-ups. (Bose, 2025) These operations underscore the police’s critical responsibility in differentiating consensual sex work from trafficking, and applying the letter of court orders sensitively.

Thus, the introduction to this paper frames an evolving legal landscape in which Indian courts increasingly pivot from treating sex work under moralistic or protectionist paradigms, toward an affirming constitutional framework recognizing consent, dignity, agency, and lawful occupation. Yet the contrast with enforcement remains stark. High-level judicial pronouncements offer promise, but implementation gaps especially in police behaviour, legislative inertia, and societal stigma continue to undermine the transformative potential of this jurisprudential shift.

Legal Framework Governing Sex Work in India

The Immoral Traffic (Prevention) Act (ITPA), 1956, is India’s principal legislation addressing sex work, trafficking, and associated activities. Notably, while voluntary selling of sex by an adult is not criminalized, the law criminalizes core support activities that sex work requires:

Key Provisions of the ITPA

- **Section 3:** Running or allowing premises to be used as a brothel, punishable by 1–3 years’ rigorous imprisonment (up to 5 years for repeat offences) plus a fine. Any lease used for brothel activities becomes void upon conviction.
- **Section 4:** Living on the earnings of a sex worker—assumed if one lives with a sex worker—punishable by imprisonment (up to 2 years or 7–10 years, depending on circumstances such as child prostitution) and a fine.

- **Section 5:** Procuring, inducing, or transporting adults for prostitution carries imprisonment for 3–7 years and possible fines; longer prison terms apply if done against someone's will or involving minors.
- **Section 6:** Detention in a brothel for prostitution is subject to 7–10 years or life imprisonment, plus fines, with reduced sentencing possible under specific conditions.
- **Section 7:** Prohibits prostitution or associated acts within 200 meters of public or sensitive areas (e.g., educational institutions), punishable by imprisonment up to 3–6 months and/or fines. Hotels where prostitution occurs may lose licenses.
- **Section 8:** Public solicitation or seduction for prostitution is punishable by imprisonment (up to 6 months) and/or a fine. Repeated offences incur harsher penalties.

Statutory Aims vs. Practical Effects

Legally, the ITPA ostensibly aims to combat trafficking and sexual exploitation. In practice, however, the penalization of brothel-keeping, solicitation, and related activities pushes sex work underground, marginalizing sex workers and exposing them to undue police scrutiny and social stigma. (SRIVASTAVA, n.d.)

Key critiques include:

- **Protection gaps:** Sex workers lack legal safeguards or labour rights under the Act. Protection homes (Section 21) exist, but survivors often avoid them due to coercive conditions and lengthy detentions.
- **Corruption and misuse:** Enforcement is uneven, and police officers or local authorities may exploit sex workers—while clients and brothel owners often evade accountability.
- **Entrapment via definitions:** The Act equates two or more sex workers working together to a brothel (thus criminalised), forcing sex workers to operate in isolated conditions, amplifying harm rather than reducing it.

Judicial Perspectives & Emerging Trends

The Supreme Court has progressively recognised sex work as a constitutionally protected profession:

- In **Budhadev Karmaskar v. State of West Bengal (2011, reaffirmed 2022)**, the Court held that sex workers are entitled to human dignity under Article 21 and must not be arrested or penalized for consensual adult sex work; police action should be limited to trafficking, pimping, or exploitation. It also mandated police training and access to medical/legal aid for sex workers.
- Earlier judgments such as **Bhootalingam v. Andhra Pradesh (1996)** echoed the autonomy and rights of sex workers. In **Gaurav Jain v. Union of India (1997)**, the Court directed protection and rehabilitation of sex workers' children and recognized their rights to equal dignity and opportunity.

Despite judicial clarity, interpretation and implementation vary. For instance, the **Kerala High Court in Mathew v. State of Kerala (2022)** expanded Section 5 to include customers under procurement; Andhra Pradesh and Karnataka high courts issued contrasting judgments disallowing such extension.

Recent Enforcement & Context

While the law criminalises associated activities, actual police action often conflates consensual sex work with trafficking. Recent enforcement examples illustrate this tension:

- **June 2025, Nagpur (Ramtek):** A flesh trade racket disguised as a hotel was busted. Cases were filed under Sections 3, 4, and 5 for running a brothel and procuring sex workers under false pretenses. Authorities rescued a woman and detained suspects. (Today, n.d.)
 - Similar prostitution rings were dismantled in **Bathinda, Thiruvananthapuram, and Udaipur**—operators charged under brothel and trafficking sections of the ITPA typically. (Today, n.d.)
- These incidents underscore the importance of **distinguishing exploitation from consensual sex work**, as reaffirmed by Supreme Court mandates.

NGO and Advocacy Perspectives

Sex worker-led organizations like Durbar Mahila Samanwaya Committee (DMSC) and Sadhana Mahila Sangha advocate for decriminalisation, arguing the ITPA criminalises consensual adult work while offering no rights or protection under Indian labour or human rights frameworks. Anti-trafficking NGOs, on the other hand, often support stricter ITPA enforcement—even to the extent of interpreting solicitation clauses flexibly—for what they frame as victim protection, sometimes overshadowing voluntary labour narratives

Judicial Approach: From Paternalism to Rights-Based Framework

Earlier Judicial Trends

During the late 1990s, the Indian judiciary largely construed sex workers as victims deserving rescue and rehabilitation rather than autonomous individuals with agency:

- In *Gaurav Jain v. Union of India* [(1997) 8 SCC 114], the Supreme Court decreed that children of sex workers must be removed from the “infernal environment” of red-light areas. The Court encouraged coercive measures—counseling, cajoling, and, as a last resort, legal compulsion—to separate children from brothel management. This underscores a protective, non-agency-based view of sex workers.
- In *Sangram v. CBI* [(1998) Cri LJ 1626], courts reiterated the need to “save” women from prostitution, emphasizing rehabilitation over any form of informed consent or choice, reinforcing sex workers as objects of pity rather than rights-bearing individuals.

Turning Point: Respecting Dignity and Consent

A judicial shift began in *State of Maharashtra v. Madhukar Narayan Mardikar* [(1991) 1 SCC 57], where the Supreme Court affirmed that sex workers do not forfeit their constitutional rights. The Court famously declared:

“Even a woman of easy virtue is entitled to privacy, and no one can invade her privacy as and when he likes.”

This marked a momentous departure from a purely moralistic and paternalistic stance. Even earlier, the Court in *Bhootalingam v. Andhra Pradesh* [(1996)] recognized that adult sex workers—absent evidence of trafficking or coercion—could not be presumed victims and retained agency over their bodies and livelihood.

The *Budhadev Karmaskar* Case Series: A Judicial Milestone

2011 Judgment: Declaring Dignity under Article 21

In *Budhadev Karmaskar v. State of West Bengal* (2011), the Supreme Court not only dismissed the appellant’s murder appeal but seized an opportunity to frame sex workers’ rights within Article 21 ensuring protection of human dignity as intrinsic to the right to life. The Court appointed a Panel headed by Pradip Ghosh to advise on rehabilitation and living-with-dignity measures for sex workers.

The Panel was tasked with:

- Prevention of trafficking
- Rehabilitation mechanisms for sex workers wishing to exit the profession
- Conditions enabling sex workers to continue working with dignity in line with constitutional mandates. (Bose, 2025)

2022 Order: Mandating Rights-Based Directions

Since no legislation had incorporated the Panel's recommendations during 2016–2022, the Supreme Court invoked its powers under *Article 142* to issue binding interim directions in May 2022. Key mandates included:

- **Equal protection of law for adult consensual sex workers:** police must not arrest, penalize, harass, or victimise them merely for being in a brothel, provided no evidence of trafficking or exploitation exists.
- **Access to essential services without stigma:** sex workers should be able to obtain ration cards, voter ID, Aadhaar, and open bank accounts without requiring proof of residential address or declaration of profession.
- **Provision of humane social infrastructure:** including day care for children, night shelters, and vocational support to enable dignified living options within or outside the profession.
- **Access to protection and justice:** law enforcement must document crimes reported by sex workers—especially sexual offences—and provide medico-legal assistance in line with Section 357C of CrPC and Ministry of Health protocols.
- **Anonymous and sensitive media coverage:** sex workers' identities must not be disclosed during raids, arrests, or prosecutions.

Implementation & Ground Realities

District-level courts began to reflect this jurisprudential shift. For instance, a Mumbai Sessions Court in 2023 ruled that consensual sex work is not an offence and detained sex workers must be released, emphasizing their fundamental rights under Articles 19(1)(d) and (e)—freedom of movement and residence.

Consent and Choice: Reconciling Law with Reality

A persistent legal and normative confusion in India stems from conflating **sex work** with **trafficking**—even though the two differ profoundly in terms of autonomy, coercion, and choice.

Consent Versus Coercion: A Legal and Lived Divide

Trafficking often involves force, deceit, or coercion that strips individuals of agency, while consensual sex workers consciously choose the profession due to economic or personal reasons. Expert research indicates:

- Sex-trafficked individuals experience **rape as initiation**, chronic control, debt bondage, and denial of condom use—conditions that sharply contrast with consensual sex work grounded in autonomy and negotiation.
- Anti-trafficking laws rooted in moralizing narratives criminalize the ecosystem around sex work—brothel-keeping, solicitation—causing sex workers who voluntarily choose the trade to face arrest, separation, and institutional trauma. For instance, 79% of women raided in Maharashtra said they had entered sex work voluntarily and did *not* want “rescue”.

Voices of Sex Worker Collectives & NGOs

Organisations representing sex workers like Durbar Mahila Samanwaya Committee (DMSC) and Veshya Anyay Mukti Parishad (VAMP) argue for differentiation in legal treatment:

- Sex workers' input on the Trafficking Bill (2016) emphasized that *consenting adults should not be automatically classified as "victims"*, and their consent must be recognized in any rescue intervention.
- Leaders from Durbar, based in Sonagachi, stress that *sex work is work*, demanding legal recognition, occupational rights, and social safety nets. Their grassroots work offers vocational training, financial inclusion, and healthcare to thousands of sex workers.

Judicial Reconciliation of Consent with Constitutional Rights

The Supreme Court's **2022 *Budhadev Karmaskar*** directives were pivotal in legally acknowledging this distinction:

- Adult sex workers acting with consent cannot be arrested or penalized merely because brothel-keeping is illegal—**voluntary sex work is not a crime**.
- The Court underscored that sex workers must be treated with dignity, given access to identity documents, healthcare, legal aid, and protected from forced rescue operations that ignore consent.

These judicial pronouncements align seamlessly with key constitutional provisions:

- **Article 21:** The right to life inherently includes dignity, bodily autonomy, and self-expression—all recognized as applicable to sex workers and their children.
- **Article 19(1)(g):** Denies undue restraint on the right to practice any profession, trade, or business—including sex work as a livelihood.
- **Article 14:** Guarantees **equal protection of the law**, meaning consensual adult sex workers cannot be discriminated against or treated as criminals merely due to their profession.

On-Ground Impacts, Gaps & Legal Realignment

- A 2023 Bombay High Court decision reinforced that adult sex workers cannot be involuntarily detained in shelter homes; it rejected the infantilizing narrative that all sex workers are victims.
- Yet, despite judicial clarity, enforcement remains uneven. Human rights NGOs report ongoing harassment, extortion and raids that ignore distinctions between consensual sex work and trafficking.

Meanwhile, anti-trafficking initiatives—like the rescue of a 15-year-old girl from force in West Bengal in July 2025—highlight the need for discerning action: trafficking victims must be rescued, whereas consensual sex work demands recognition and protection.

Feminist and Intersectional Perspectives

Feminist discourse on sex work remains deeply polarized. The central tension lies between abolitionist feminists, who argue that sex work is inherently a manifestation of patriarchal violence, and sex-positive or rights-based feminists, who advocate for the agency, dignity, and labour rights of sex workers. This debate becomes even more complex in the Indian context, where gender is inextricably linked with caste, class, religion, and regional hierarchies.

The Abolitionist View: Sex Work as Patriarchal Oppression

This school of feminist thought, often aligned with radical feminism, sees prostitution as a form of male domination that commodifies women's bodies. Scholars like Catharine

MacKinnon and Andrea Dworkin have argued that sex work cannot be separated from coercion, given the systemic inequalities that shape women's choices. In India, this view underpins anti-trafficking laws and rescue-centric policies that aim to "rehabilitate" women presumed to be victims, even when their entry into sex work is consensual. Such policies, critics argue, often erase sex workers' voices and autonomy.

Rights-Based Feminism: Choice, Agency, and Labour

Contrastingly, rights-based feminist scholars like Gayle Rubin, Kamala Kempadoo, and Indian thinkers such as Meena Seshu (SANGRAM) and Leena Kejriwal argue that sex work, when consensual, must be understood as work, deserving of labour protections, dignity, and decriminalization.

They emphasize that agency can exist even within constrained choices especially when the alternative is deeper poverty, starvation, or abuse in other informal sectors. As Meena Seshu aptly states, "Sex workers do not need rescue; they need rights."

Intersectionality in the Indian Context

Indian sex workers overwhelmingly come from marginalized communities—particularly Dalit, Bahujan, Adivasi, and Muslim groups. Their lived experiences are shaped not just by gender, but by:

- Caste-based exclusion, where certain communities (e.g., the Bedia or Nat) have historically been pushed into intergenerational sex work.
- Poverty, with a large section of sex workers citing economic distress or debt as the primary reason for entering the trade.
- Stigma and criminalization, which lead to denial of housing, health services, and even protection under the law.

An intersectional feminist approach first theorized by Kimberlé Crenshaw thus calls for a deeper recognition of how multiple systems of oppression interact to shape sex workers' realities in India. It shifts the question from "Are they truly free to choose sex work?" to "Are they truly free to choose anything else?"

Judicial Alignment with Feminist Intersectionality

The Indian judiciary, particularly in the **Budhadev Karmaskar** case series, has shown increasing sensitivity to these layered realities:

- The Supreme Court explicitly acknowledged sex workers' right to dignity, choice, and constitutional protections, moving beyond moral judgment.
- In *State of Maharashtra v. Sangita* [(2022) SCC OnLine Bom 1912], the Bombay High Court refused to institutionalize an adult woman rescued from a brothel, recognizing her autonomy and rejecting the infantilizing logic of "rescue."
- Courts now increasingly engage with NGO submissions and collective testimonies from sex worker organizations, reflecting a move toward inclusive jurisprudence.

Collective Feminist Action and Sex Worker Movements

Organizations like DMSC (Durbar Mahila Samanwaya Committee) in Kolkata and VAMP (Veshya Anyay Mukti Parishad) in Sangli, Maharashtra, led by sex workers themselves, are grounded in feminist values of autonomy, solidarity, and mutual care. These collectives challenge the binary of victim/agent and offer models of community-led empowerment.

Conclusion and the Road Ahead

The evolving judicial landscape in India marks a significant departure from the traditional moralistic and punitive approach towards sex work. Where earlier rulings framed sex workers as victims to be rescued or moral deviants to be reformed, recent judicial pronouncements—especially in the *Budhadev Karmaskar* case series have emphasized constitutional values of dignity, autonomy, and equality. This progressive shift reflects a reimagining of sex workers as rights-bearing individuals, capable of agency and entitled to the full protection of the law. However, judicial interventions, though powerful, are not sufficient in isolation. The legal regime continues to be anchored in the Immoral Traffic (Prevention) Act, 1956, a colonial-era statute that conflates consensual adult sex work with trafficking, and reinforces stigma and criminalization. Despite the Supreme Court's recognition of sex work as a potential livelihood when consensual, the ITPA penalizes associated activities such as soliciting, brothel management, and third-party earnings creating structural vulnerabilities that leave sex workers open to police abuse, eviction, extortion, and denial of healthcare and legal remedies.

Need for Legislative Reform

The time is ripe for parliamentary action. Decriminalization—not just non-prosecution—is essential. India must move towards:

- **Amending or repealing the ITPA**, replacing it with a rights-based, labour-focused framework;
- **Legally distinguishing sex work from trafficking**, ensuring that anti-trafficking laws are not weaponized against consenting adults;
- **Guaranteeing social protections**, such as access to health, housing, banking, and welfare services, regardless of one's profession.

International models like New Zealand's Prostitution Reform Act (2003) and Canada's harm-reduction approaches offer compelling precedents where consensual sex work has been recognized and regulated without moral condemnation.

Sensitization and Structural Change

Laws are only as effective as their implementation. Therefore, judicial pronouncements must be complemented by:

- **Police sensitization and accountability mechanisms**, to prevent harassment and unlawful detention;
- **Training for lower judiciary and legal aid officers**, to adopt a non-discriminatory approach;
- **Public awareness campaigns** to reduce stigma and normalize respectful engagement with sex workers as citizens;
- **Integration of sex workers in policy-making**, ensuring their lived experiences guide the creation of just and inclusive laws.

The Role of Civil Society and Collectives

Organizations such as DMSC (Durbār Mahila Samanwaya Committee), SANGRAM, and VAMP have long advocated for sex workers' rights, often with limited state support. The judiciary's recent recognition of these voices signals the importance of collaboration between the legal system, civil society, and affected communities.

References

1. Immoral Traffic (Prevention) Act, 1956.

2. *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.
3. *Sangram v. CBI*, 1998 Cri LJ 1626.
4. *State of Maharashtra v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57.
5. *Budhadev Karmaskar v. State of West Bengal*, 2011 SCC OnLine SC 1112.
6. Supreme Court Order dated May 19, 2022, in *Budhadev Karmaskar*.
7. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
8. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol).
9. Universal Declaration of Human Rights, 1948.
10. Constitution of India, Articles 14, 19, 21.