
THE UNFINISHED PROMISE OF POST-BUDHADEV KARMASKAR JURISPRUDENCE FOR SEX WORKERS IN INDIA

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ABSTRACT

The Supreme Court of India's sustained jurisprudence in *Budhadev Karmaskar v. State of West Bengal*, spanning the original 2011 judgment and a sequence of landmark orders through 2022, has produced a constitutional architecture of considerable doctrinal richness. The Court has affirmed that sex workers possess the full complement of fundamental rights under Part III of the Constitution, articulated specific limits on the coercive power of the State, and directed affirmative welfare obligations upon State governments. Yet the decade that has followed this jurisprudential advance has not produced a corresponding transformation in the lived experience of sex workers across India. Police raids continue to be used as instruments of extortion and degradation rather than law enforcement. Protective homes function as sites of indefinite, non-consensual detention. Legal aid, the constitutional mechanism through which rights become actionable, reaches sex worker communities rarely, belatedly, and ineffectively. This article argues that the central problem is not doctrinal insufficiency but implementation architecture failure: a structural gap between a sophisticated constitutional text and the institutional conditions necessary for its realisation. It further argues that this gap cannot be closed by further judicial pronouncement alone, and that meaningful reform requires community-grounded legal aid, ITPA amendment, and the disaggregation of the State's anti-trafficking apparatus from its treatment of consensual adult sex work. The analysis draws on constitutional doctrine, empirical field research, and comparative human rights norms to make the case that sex workers' rights in India remain, for most of their bearers, a promise that the Constitution cannot yet reach.

Keywords: Budhadev Karmaskar; sex workers' rights; Article 21; institutional violence; legal aid; ITPA; Indian constitutional law.

I. INTRODUCTION: THE PARADOX OF RIGHTS THAT EXIST ONLY ON PAPER

There is something deeply contradictory about a legal system that recognises a group of people as constitutional right-holders, yet consistently fails to protect those rights in practice. Indian constitutional law has gradually arrived at this uncomfortable reality in the case of sex workers. Through its landmark directions in *Budhadev Karmaskar v. State of West Bengal*¹, the Supreme Court made it clear that sex workers are entitled to dignity under Article 21, equal protection under Article 14, and access to free legal aid under Article 39A. On paper, the constitutional position is now relatively clear.

But constitutional recognition alone does not change lived realities. A Supreme Court judgment cannot automatically prevent police brutality during midnight raids. It cannot ensure that a woman standing before a magistrate understands the proceedings taking place around her. Nor can it guarantee that an adult woman will not be illegally confined for months inside a shelter home in the name of 'protection.' The gap between constitutional promise and constitutional experience continues to remain painfully wide.

This article examines that gap. The argument here is not that constitutional litigation has failed entirely. The *Budhadev* jurisprudence represents a significant legal and historical shift. It changed the language through which the law views sex workers, moved away from purely moralistic approaches, and created important tools for future rights-based advocacy. At the same time, treating judicial recognition as though it automatically results in rights realisation would be a serious mistake. The continued existence of institutional violence despite clear constitutional protections forces a difficult truth: legal declarations alone cannot dismantle deeply embedded systems of discrimination and control.

The article proceeds in four stages. Section II analyses the constitutional framework developed through *Budhadev* and places it within the broader evolution of Article 21 jurisprudence. Section III focuses on the major sites of institutional violence, namely police action, protective homes, and welfare exclusion, and explains why constitutional safeguards have failed to meaningfully discipline them. Section IV argues that legal aid is not simply one right among many but the foundational mechanism upon which all other constitutional protections depend. Section V proposes a reform agenda that requires courts, legislatures, and community

¹ *Budhadev Karmaskar v. State of West Bengal*, (2011) 11 S.C.C. 538 (India).

institutions to work together if constitutional protections are to move beyond symbolic recognition.

A clarification on scope is necessary. This article focuses specifically on adult sex workers who voluntarily engage in sex work. It does not minimise the serious problem of trafficking, coercion, or exploitation, all of which require strong State intervention. However, one of the central arguments of this article is that the legal system's persistent conflation of consensual sex work with trafficking has itself become a primary driver of institutional violence, and that constitutional clarity requires their disaggregation.

II. THE CONSTITUTIONAL FRAMEWORK: WHAT BUDHADEV REALLY CHANGED

A. From Procedural Guarantee to Human Dignity

The doctrinal significance of *Budhadev Karmaskar* can only be understood within the larger evolution of Article 21 jurisprudence. Originally, Article 21 was interpreted very narrowly. In *A.K. Gopalan v. State of Madras*², the Court treated the provision as requiring only that there be some procedure established by law before liberty could be restricted, regardless of whether that procedure was fair or just.

This changed after the Emergency. In *Maneka Gandhi v. Union of India*³, the Supreme Court held that the procedure depriving a person of liberty must itself be fair, just, and reasonable. The Court expanded this further in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*⁴, recognising that the right to life encompasses not mere survival but the right to live with human dignity and all that makes life meaningful and complete.

What *Budhadev* did was extend this constitutional understanding to sex workers, a group historically excluded from such protections in practice. Earlier legal approaches viewed sex workers through lenses of morality, criminality, or rescue: objects of State control, not constitutional subjects capable of asserting rights. The 2011 judgment altered this framework.

² *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27 (India).

³ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

⁴ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, A.I.R. 1981 S.C. 746 (India).

The subsequent orders of Dec. 2021⁵, Feb. 2022⁶, and May 2022⁷ attempted to operationalise these protections further, including directing non-discriminatory welfare access, prohibiting police interference in consensual adult sex work, mandating para-legal volunteer systems, and calling for law enforcement sensitisation.

Three aspects of this jurisprudence deserve particular attention. First, the Court recognised that dignity cannot depend on social approval: constitutional rights do not weaken simply because society disapproves of a profession. Second, the Court acknowledged that the State itself can become a source of violence, visible in the May 2022 direction that welfare benefits be distributed through District Legal Services Authorities rather than police agencies. Third, the Court's maintenance of continuing supervisory jurisdiction reflects an implicit recognition that judicial declarations alone are insufficient: constitutional compliance cannot be assumed after a judgment is delivered.

B. Equality, Non-Discrimination, and Occupational Freedom

The constitutional protections available to sex workers extend beyond Article 21. Article 14⁸ places an important restraint on arbitrary State action. In practice, sex workers are routinely subjected to harassment, extortion, violence, and arbitrary detention in ways impermissible in the policing of any other occupation. Under Article 14, this structural pattern of differential treatment is constitutionally suspect.

Article 15⁹ adds a further dimension. Since sex work in India is overwhelmingly occupied by women while its clientele is predominantly male, discriminatory enforcement operates through gendered power structures.¹⁰ A legal framework that disproportionately penalises sex workers while extending immunity to clients raises serious concerns about sex-based discrimination under Article 15(1).

⁵ *Budhadev Karmaskar v. State of West Bengal*, Order dated 14 Dec. 2021, Writ Petition (Crl.) No. 136 of 2010 (Supreme Court of India).

⁶ *Budhadev Karmaskar v. State of West Bengal*, Order dated 28 Feb. 2022, Writ Petition (Crl.) No. 136 of 2010 (Supreme Court of India).

⁷ *Budhadev Karmaskar v. State of West Bengal*, Order dated 19 May 2022, Writ Petition (Crl.) No. 136 of 2010 (Supreme Court of India).

⁸ Constitution of India, 1950, art. 14.

⁹ Constitution of India, 1950, art. 15(1).

¹⁰ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45–62 (Oxford University Press, 1999).

Article 19(1)(g)¹¹, which protects the freedom to practise any profession, presents perhaps the most complex constitutional question. Technically, Indian law does not criminalise consensual adult sex work itself. However, the Immoral Traffic (Prevention) Act, 1956¹² criminalises nearly every surrounding activity, including brothel-keeping, soliciting, and living on the earnings of sex work, making lawful exercise of the occupation practically impossible. The proportionality doctrine articulated in *K.S. Puttaswamy v. Union of India*¹³ requires that restrictions on fundamental rights be not only rationally connected to a legitimate aim but also necessary and proportionate in impact. The current enforcement framework, which operates against consensual adult sex work rather than trafficking or coercion, does not satisfy that standard.

III. THREE SITES OF INSTITUTIONAL VIOLENCE AND WHY THE CONSTITUTION HAS NOT DISCIPLINED THEM

A. Police Raids: Violence Performed as Law Enforcement

The police raid is the primary interface between the State and sex workers in India. Community-led documentation, public health research, and human rights submissions converge on a consistent picture: raids conducted without individual grounds for arrest, physical assault of detainees, sexual violence in custody, confiscation of mobile phones to prevent contact with lawyers or family, extraction of money as the condition of release, and systematic non-compliance with the safeguards that *D.K. Basu v. State of West Bengal*¹⁴ made constitutionally mandatory for every arrest.

The *D.K. Basu* requirements such as arrest memo, notification of family within eight to twelve hours, medical examination, production before a magistrate within twenty-four hours, maintenance of accessible custody records, are the constitutional minimum.¹⁵ Their systematic violation in the context of ITPA raids is not a procedural irregularity but a pattern of fundamental rights violations carried out under colour of law. The post-2020 *Budhadev* orders

¹¹ Constitution of India, 1950, art. 19(1)(g).

¹² Immoral Traffic (Prevention) Act, No. 104 of 1956, Acts of Parliament, 1956 (India), as amended by the Immoral Traffic (Prevention) Amendment Act, No. 44 of 1986, Acts of Parliament, 1986 (India).

¹³ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

¹⁴ *D.K. Basu v. State of West Bengal*, A.I.R. 1997 S.C. 610; (1997) 1 S.C.C. 416 (India).

¹⁵ Toorjo Ghose et al., Sex Workers and Police in Sonagachi: A Public Health Intervention, 21 Culture, Health & Sexuality 665, 667–71 (2011).

invoke *D.K. Basu* specifically in the sex work context¹⁶, making this characterisation unambiguous.

Three structural conditions explain the persistence of these violations despite clear constitutional prohibition.¹⁷ First, police culture is shaped by institutional environments such as training academies, station hierarchies, peer norms, and departmental incentive structures that apex court decisions cannot directly reach. Sensitivity training programmes have not been implemented with sufficient depth to produce cultural change. Second, raids function as economic extraction mechanisms: the threat of arrest under the ITPA's broad provisions provides leverage for structured payments from sex workers and establishment operators. The institutional incentive runs directly against constitutional compliance because safeguards would constrain the leverage that makes extraction possible. Third, the practical impunity of officers who commit violations is near-total, the result of barriers to complaint that convert formal accountability mechanisms into practical nullities.

B. Protective Homes: Welfare as Detention

The Immoral Traffic (Prevention) Act, 1956 creates an institutional architecture of quasi-custodial control through the protective home mechanism.¹⁸ Sections 18 and 19 empower a magistrate to close premises used as a brothel and to place persons found therein in a protective home. The statutory framing presents this as welfare. The empirical reality is rather different.

Placement in a protective home under Section 19 does not follow a criminal trial. It does not require proof beyond reasonable doubt. It does not, in most States, provide for mandatory legal representation. Persons brought before a magistrate following a raid are frequently unrepresented and unaware of any right to contest the placement order.¹⁹ The Advisory Board established under Section 17 for periodic review of detentions functions irregularly across most States and does not provide the adversarial scrutiny that constitutional standards for deprivation of liberty require.

The constitutional problem at the core of this system is the denial of legal agency. The raid-

¹⁶ Code of Criminal Procedure, No. 2 of 1974, Acts of Parliament, 1973 (India), §§ 41, 41A, as amended by the Code of Criminal Procedure (Amendment) Act, No. 5 of 2009, Acts of Parliament, 2008 (India).

¹⁷ National Network of Sex Workers, *Raided: Experiences of Anti-Trafficking Raids in India* 35–42 (2018).

¹⁸ Immoral Traffic (Prevention) Act, No. 104 of 1956, Acts of Parliament, 1956 (India), §§ 17, 18, 19.

¹⁹ *Pramod Bhagwan Nayak v. State of Gujarat*, Gujarat High Court (2006) (India).

and-rescue model proceeds on the assumption that persons engaged in sex work cannot reliably assess their own situation.²⁰ This assumption is empirically unfounded in relation to consenting adults and constitutionally untenable in a legal order that has, in *Budhadev*, affirmed the right of adult consensual sex workers to dignity and autonomy.²¹ The right to personal liberty under Article 21 is not suspended by the State's belief that it knows better than the individual what is in that individual's interest. Involuntary placement in a protective home, which severs a person from her community, livelihood, and children, is a deprivation of liberty that the ITPA mechanism cannot constitutionally justify.

C. Welfare Exclusion as Structural Violence

The third site of institutional violence is less immediately visible but no less severe: the systematic exclusion of sex workers from welfare entitlements available to every other category of citizen. Health schemes, ration access, vaccination programmes, and social security provisions all require documentation as a condition of access. Sex workers who lack Aadhaar cards, ration cards, voter identity cards, or proof of residence are excluded from this welfare architecture not because any law expressly excludes them, but because administrative systems were designed without them in mind.

The COVID-19 pandemic illuminated this exclusion sharply. The closure of establishments eliminated primary income for hundreds of thousands of sex workers. Ration schemes were in principle available to all; in practice, undocumented sex workers were turned away.²² The NHRC Advisory of 2021²³, which recognises sex workers as informal workers entitled to labour law and social security protections, represents significant normative progress. If its recommendations were implemented, and if the Unorganised Workers' Social Security Act, 2008²⁴ were applied without discrimination to sex workers, the result would be structural inclusion rather than continued exclusion. The constitutional arguments for this are well-founded; the political will to pursue them has not yet materialised.

²⁰ Aziza Ahmed, When Anti-Trafficking Programmes Undermine the Health and Well-Being of Sex Workers, 22 B.U. Pub. Int. L.J. 1, 8–14 (2014).

²¹ Meena Saraswathi Seshu, Women in Prostitution: Is Rescue Necessary?, in Rajeswari Sunder Rajan ed., *The Scandal of the State: Women, Law, and Citizenship in Postcolonial India* 183, 185–90 (Duke University Press, 2003).

²² *Budhadev Karmaskar v. State of West Bengal*, Order dated 19 May 2022, Writ Petition (Crl.) No. 136 of 2010 (Supreme Court of India).

²³ National Human Rights Commission of India, Advisory on the Rights of Sex Workers (2021).

²⁴ Unorganised Workers' Social Security Act, No. 33 of 2008, Acts of Parliament, 2008 (India).

IV. LEGAL AID: THE LOAD-BEARING MECHANISM THAT HAS FAILED

There is a temptation to frame the gap between constitutional promise and constitutional experience as a problem of enforcement alone. That framing understates the depth of the problem. The more fundamental issue is access: sex workers lack, in most circumstances and at most stages of their interaction with legal institutions, the practical capacity to invoke the constitutional protections to which they are formally entitled. Legal aid, understood broadly as the full architecture through which people come to know their rights, assert them, contest violations, and obtain remedies, is the mechanism through which formal entitlement becomes practical access. It is the mechanism that has most comprehensively failed.

A. The Constitutional and Statutory Mandate

Article 39A of the Constitution²⁵ directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and to provide free legal aid so that access to justice is not denied by reason of economic or other disabilities. The Supreme Court in *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*²⁶ elevated this directive principle to a component of the fundamental right under Article 21: the right to legal representation is constitutional entitlement, not charity, and its denial where liberty is at stake is itself a constitutional violation. The Legal Services Authorities Act, 1987²⁷ gave institutional form to this mandate, establishing NALSA and the network of State and District Legal Services Authorities. The eligibility categories include women and persons in custody, covering sex workers on both counts, with no provision permitting exclusion on moral grounds.

B. Four Failures in Sequence

The failure of legal aid for sex workers is not a single discrete problem but a cascade of four distinct failures, each compounding the last.

The first is the awareness failure. Legal aid unknown to those who need it is functionally non-existent. Outreach by State Legal Services Authorities to sex worker communities has been irregular and largely ineffective, producing conditions in which the majority of sex workers are

²⁵ Constitution of India, 1950, art. 39A, inserted by the Constitution (Forty-Second Amendment) Act, No. 109 of 1976, Acts of Parliament, 1976 (India).

²⁶ *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*, A.I.R. 1979 S.C. 1369; (1980) 1 S.C.C. 98 (India).

²⁷ Legal Services Authorities Act, No. 39 of 1987, Acts of Parliament, 1987 (India), §§ 4, 7, 12, 13.

unaware of their entitlement to free legal services. Social isolation, itself the product of stigma, marginalisation, and the legal geography of sex work, compounds this information deficit.

The second is the quality failure. Where legal aid is nominally provided, typically through a panel lawyer at the magistrate stage of ITPA proceedings, the representation provided frequently bears no meaningful relationship to the constitutional standard articulated in *Hussainara Khatoon*.²⁸ Panel lawyers accept guilty pleas without consultation, fail to challenge coerced confessions, appear at hearings without meeting their clients, and decline to raise constitutional challenges to invalid arrests. This reflects both a structural problem (poor remuneration and excessive caseloads) and a cultural one: professional stigma toward persons arrested under the ITPA.

The third is the temporal failure. The critical window for effective legal assistance is the period immediately following arrest and preceding the first magistrate appearance, precisely when police abuse and coercion most frequently occurs. The constitutional requirements of the *D.K. Basu* guidelines and Article 22 are designed to protect this window. In practice, the absence of duty lawyer schemes at police stations, emergency legal aid hotlines, or community para-legal networks with real-time reach means that constitutional protections are routinely subverted before a lawyer ever appears.

The fourth is the documentation failure. Access to legal processes, including filing complaints, obtaining bail, contesting placement orders, and claiming welfare entitlements, requires foundational identity documentation. Sex workers who lack Aadhaar cards, voter identity documents, or proof of address are structurally excluded from these processes regardless of their formal entitlement.²⁹ The May 2022 *Budhadev* order directly addressed this problem, but the administrative infrastructure to give it effect has not been built.

C. The Community Para-Legal Model as Partial Solution

The most promising institutional response to the legal aid crisis is not a top-down expansion of the existing LSA infrastructure (though that too is necessary) but the development of community-grounded para-legal networks embedded in sex worker organisations. The Durbar

²⁸ Meena Seshu & Aarthi Pai, The Immoral Traffic Prevention Act: Implications for Sex Workers in India, in Melissa Ditmore ed., *Encyclopedia of Prostitution and Sex Work* 243, 246–48 (Greenwood Press, 2006).

²⁹ *Manoj Shaw v. State of West Bengal*, Calcutta High Court (2019) (India).

Mahila Samanwaya Committee in Sonagachi, West Bengal, provides the most extensively documented example.³⁰ Trained sex worker para-legals provide first-line legal information, intervene at the point of arrest, accompany members to court, and connect community members with professional legal services. The evidence demonstrates that organised community presence, specifically the knowledge among police officers that arrests generate an immediate organised response, materially reduces arbitrary detention and custodial abuse. The Dec. 2021 *Budhadev* order³¹ gives this model a constitutional mandate. Systematic implementation, with adequate resourcing and genuine partnership with sex worker-led organisations, represents the most actionable path toward closing the legal aid gap.

V. TOWARDS A STRUCTURAL REFORM AGENDA

A. The Limits of Judicial Action Alone

The *Budhadev* proceedings represent one of the most ambitious exercises of continuing supervisory jurisdiction in the Supreme Court's PIL history. Directions have been issued to State governments, expert panels constituted, and periodic compliance reporting required. The record of compliance is, across most States, poor: not because the Court's framework is deficient, but because apex court supervision cannot translate constitutional directions into the daily practices of hundreds of thousands of police officers, magistrates, welfare officials, and legal aid lawyers without complementary institutional architecture at the ground level.

B. Legislative Reform of the ITPA

The ITPA in its current form is constitutionally vulnerable and practically harmful.³² Reform must proceed on two tracks. First, Section 8's soliciting offence must be narrowed to require evidence of actual conduct rather than visible presence, eliminating the status-based arrests that current enforcement enables. Second, the Sections 18–19 protective home mechanism must be restructured to provide mandatory legal representation before any placement order is made, to require individualised judicial findings of incapacity or coercion before involuntary detention can be ordered, and to impose time limits with automatic judicial review. More fundamentally,

³⁰ Toorjo Ghose et al., *Sex Workers and Police in Sonagachi: A Public Health Intervention*, 21 *Culture, Health & Sexuality* 665, 672–76 (2011).

³¹ *Budhadev Karmaskar v. State of West Bengal*, Order dated 14 Dec. 2021, Writ Petition (Crl.) No. 136 of 2010 (Supreme Court of India).

³² *Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (India)*, as introduced in the Lok Sabha (Sixteenth Lok Sabha; lapsed on dissolution).

the ITPA's anti-trafficking provisions must be disaggregated from its provisions governing consensual adult sex work, so that action against genuine trafficking does not operationally depend on systems that simultaneously violate the rights of consenting adults.

C. Restructuring Legal Aid Delivery

Effective legal aid for sex workers requires change at three levels. At the systemic level, the Legal Services Authorities Act should be amended to require mandatory legal representation at all stages of ITPA proceedings, not merely at the Sessions Court level as Section 304 of the Code of Criminal Procedure currently mandates.³³ At the institutional level, NALSA should develop a dedicated national scheme for legal services to sex workers that includes emergency arrest-point assistance, documentation support, and welfare advocacy as core components. At the community level, State Legal Services Authorities must be directed and resourced to partner with sex worker-led organisations to co-develop para-legal training programmes.

D. Accountability Architecture for Police Conduct

Sensitisation training has not produced the institutional culture change that accountability requires. What is needed is an accountability architecture³⁴: mandatory body cameras during raids, accessible independent complaint mechanisms, automatic legal aid notification at the point of arrest, monitoring of *D.K. Basu* compliance by District Legal Services Authorities with mandatory High Court reporting, and genuine consequences, whether departmental, civil, or criminal, for officers responsible for systematic violations.

E. Welfare Inclusion and Identity Infrastructure

The documentation exclusion that prevents welfare access is solvable with political will. Aadhaar enrolment and voter registration drives in sex worker communities, conducted through trusted intermediary organisations with administrative barriers waived by executive order, form the necessary foundation. On this foundation, systematic inclusion in the National Food Security Act, the Unorganised Workers' Social Security Act, and the Ayushman Bharat scheme can be constructed through non-discriminatory implementation guidelines. The NHRC

³³ Code of Criminal Procedure, No. 2 of 1974, Acts of Parliament, 1973 (India), § 304.

³⁴ *D.K. Basu v. State of West Bengal*, A.I.R. 1997 S.C. 610; (1997) 1 S.C.C. 416 (India).

Advisory of 2021 provides the normative authority. The administrative will has not yet been deployed.

VI. A FRESH PERSPECTIVE: THE CONSTITUTIONAL SUBJECT WHO CANNOT USE THE CONSTITUTION

The jurisprudence examined in this article invites a theoretical observation extending beyond sex work. The Indian constitutional order has developed, over seven decades, a remarkably sophisticated framework of rights and remedies. Yet the practical capacity to use that framework is itself unequally distributed, along axes of social position, literacy, economic resources, and institutional connections. Sex workers represent an extreme case of this distributional inequality.³⁵ They are positioned at the intersection of poverty, gender marginalisation, social stigma, and frequent adversarial interaction with the State, conditions that compound to produce near-total practical exclusion from the constitutional system that formally protects them.

The result is a constitutional subject who cannot use the Constitution: a person who holds rights on paper but lacks the practical capacity to exercise them. This condition is not unique to sex work. It is replicated, in varying degrees, across migrant workers, persons with disabilities, scheduled caste communities, and religious minorities, for all of whom formal constitutional protection coexists with institutional exclusion.

The contribution of *Budhadev* jurisprudence, ultimately, is to make this gap between formal and effective constitutional protection visible, and to identify legal aid as the mechanism whose adequacy determines on which side of that gap a person falls. Access to competent legal assistance is not one right among many. It is the right that determines whether all other rights are usable. A constitutional order that guarantees dignity, liberty, equality, and legal aid on paper while allowing the systematic failure of the mechanisms through which those guarantees become actionable has displaced rather than solved its foundational equity problem.

The unfinished project of *Budhadev Karmaskar* is therefore not primarily jurisprudential. The doctrinal work is largely done. The unfinished project is institutional: building, funding, and sustaining the structures through which the constitutional subject who cannot use the

³⁵ Usha Ramanathan, *Illegality and the Urban Poor*, 41 *Econ. & Pol. Wkly.* 3193, 3195–97 (2006).

Constitution becomes one who can. Until that work is done, the Constitution of India will continue to offer sex workers a guarantee that is, for most of them, unreachable in practice.

VII. CONCLUSION

The post-*Budhadev* constitutional framework for sex workers in India is, doctrinally, among the most progressive in the world. It affirms dignity, mandates equality, constrains police power, requires affirmative welfare obligations, and places enforcement within the supervisory jurisdiction of the apex court. Its failure is not a failure of aspiration but of architecture: the architecture through which constitutional text becomes constitutional experience.

This article has argued that three interlocking conditions sustain the gap between the two: the structural embeddedness of police culture and institutional incentives for abuse; the systematic failure of legal aid to reach sex workers with effective assistance at the moments it matters; and the documentary and administrative exclusions that prevent access to formal legal and welfare systems. Each condition is addressable. None is addressable by litigation alone.

The distinctive contribution of this analysis to the existing scholarship is the argument that legal aid is not merely one reform priority among several but the pivotal mechanism on which all others depend. Constitutional rights without legal access are a theoretical endowment. Constitutional rights with effective legal access are a practical resource. The transformation of one into the other, for sex workers and for the many other marginalised populations in whose experience the same paradox presents itself, is the central institutional challenge of Indian constitutional law in its seventh decade. The *Budhadev* jurisprudence has articulated the destination with rare clarity. The path to it runs through community para-legals, amended statutes, restructured accountability, and administrative will. Each step along that path is the condition for the next.