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Joint Stakeholder Submission**

**CREA**

CREA is a feminist international human rights organization based in the Global South and led by global South feminists. CREA's work draws upon the inherent value of a rights-based approach to sexuality and gender equality.

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### **Executive Summary**

1. This report is jointly submitted by CREA and the Sexual Rights Initiative (SRI). The report outlines the current legal and policy context as relates to sex work - and the threat posed by ongoing legislative and executive initiatives that conflate trafficking with voluntary adult sex work. It focuses on how criminalization of all forms of sex work harms sex workers in India, and violates their fundamental rights as contained in the Constitution of India and in international treaties and norms, exposing sex workers to violence, police harassment, and hindering access to justice and healthcare.
2. Decriminalization and recognition of sex work as work is vital for sex workers to negotiate safer and healthier working conditions and access the legal system without fear of incrimination, and also allows for effective anti-trafficking interventions.
3. Evidence from sex worker led organizations and collectives show that criminalisation of sex work results in or exacerbates rights violations. When sex workers are viewed as ‘criminals’ under the law, violence against them is encouraged, even when they are reporting violence.<sup>1</sup>
4. The Independent Commission on AIDS in Asia,<sup>2</sup>UN Special Rapporteur on Right to Health,<sup>3</sup> Global Commission on HIV and the Law<sup>4</sup> and UNDP Asia Pacific<sup>5</sup> have recommended the decriminalization of sex work involving consenting adults.
5. Anti-trafficking initiatives continue to exceptionally and unduly focus on sex work performed by women rather than consider other sectors where persons are vulnerable such as labour. There is a need to address root socio-economic-political causes that contribute to unsafe migration, of all genders, such as poor quality of education, unsafe working conditions, lack of viable livelihood opportunities, displacement, climate change, familial violence, societal discrimination etc.
6. Sex work must be recognized as work and sex workers must be considered to be informal labourers in order to fulfil their fundamental rights to live with dignity<sup>6</sup>, to privacy<sup>7</sup>, to freedom

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<sup>1</sup> P. 4, Global network of Sex Work Projects, Policy Brief: The Impact of Criminalisation on Sex Workers’ Vulnerability to HIV and Violence (2017).

<sup>2</sup> P. 9, Report of the Commission on AIDS in Asia, Redefining AIDS in Asia: Crafting an Effective Response, Oxford University Press (2008).

<sup>3</sup> Paras 46, 49, 76, Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council, A/HRC/14/20 (27 April 2010).

<sup>4</sup> P. 10, 40, United Nations Development Programme, Global Commission on HIV and the Law: Risks, Rights and Health (2012)

<sup>5</sup> PP. 6-7, UNAIDS, UNFPA and UNDP, Sex Work and the Law in Asia and the Pacific, HIV and human rights in the context of sex work (2012).

<sup>6</sup> Article 21, Constitution of India, 1950; Article 3, Universal Declaration of Human Rights, 1948.

<sup>7</sup> Article 21, Constitution of India, 1950; Article 12, Universal Declaration of Human Rights, 1948; Article 17, International Covenant on Civil and Political Rights, 1966.

from violence and cruelty<sup>8</sup>, to health<sup>9</sup> and to choose one's livelihood and to decent working conditions.<sup>10</sup>

## Introduction

7. As per the latest available data, there are approximately 1.26 million sex workers in urban India.<sup>11</sup> The National AIDS Control Organization ('NACO') notes that there were 868,000 registered female sex workers in 2009<sup>12</sup>, which is a conservative estimate. Sex work in India is not criminalized per se, but a range of criminal laws punish acts sex workers routinely engage in, resulting in an environment of de facto criminalization.
8. Law enforcement actors continue to deploy the model of 'raid, rescue and rehabilitation' with impunity, resulting in violence against and harassment of sex workers, evictions of sex workers' from their homes and workplaces, removal of their children from their custody, loss of their savings, livelihoods, and access to water, electricity and safe housing, intrusive behaviour by media, loss of privacy, and involuntary detention in so-called shelter homes. This is an violation of sex workers' constitutional right to live with dignity and bodily autonomy<sup>13</sup>.
9. Sex workers face pervasive stigma and discrimination from societal and state actors, amplified in denial of accessible, affordable, acceptable and quality healthcare services and systems<sup>14</sup>.

## Sex work as work

10. Sex workers constitute part of the informal labour market, and they may operate independently, individually or collectively with other sex workers.<sup>15</sup> Sex workers have a right to work, including the right to freely choose their employment, to work in favourable conditions, and to have protections against unemployment<sup>16</sup>. Article 19(1)(g) of the Indian Constitution guarantees the right to to practise any profession, or to carry on any occupation, trade or business, subject to 'reasonable restrictions in the interests of general public'<sup>17</sup>. The

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<sup>8</sup> Article 21, Constitution of India, 1950; Article 5, Universal Declaration of Human Rights, 1948; Article 7, International Covenant on Civil and Political Rights, 1966.

<sup>9</sup> Article 21, Constitution of India, 1950; Article 12, International Covenant on Economic, Social and Cultural Rights, 1966; Article 12, Convention on the Elimination of all forms of Discrimination Against Women, 1979.

<sup>10</sup> Articles 19(1)(g) and 21, Constitution of India, 1950; Articles 23, 24 and 25, Universal Declaration of Human Rights, 1948; Articles 6 and 7, International Covenant on Economic, Social and Cultural Rights, 1966; Article 11, Convention on the Elimination of all forms of Discrimination Against Women, 1979.

<sup>11</sup> P. 16, UN AIDS, UNGASS Country Progress Report: India (2010).

<sup>12</sup> P. 121, National AIDS Control Organization, Sankalak: Status of National AIDS Response (2nd ed.), Ministry of Health and Family Welfare, Government of India (2020).

<sup>13</sup> Article 21, Constitution of India, 1950.

<sup>14</sup> See UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000).

<sup>15</sup> P. 1, Global Network of Sex Work Projects, Policy Brief: Sex Work as Work (2017).

<sup>16</sup> See Article 23(1), Universal Declaration of Human Rights, 1948; Articles 6 and 7, International Covenant on Economic, Social and Cultural Rights, 1966; Article 11, Convention on the Elimination of all forms of Discrimination Against Women, 1979.

<sup>17</sup> See Article 19(6), Constitution of India, 1950.

Directive Principles of State Policy<sup>18</sup> listed in the Constitution of India also state that ‘*the State shall make provision for securing just and humane conditions of work.*’<sup>19</sup>

11. Indeed, the International Labour Organization (‘ILO’) has recommended that sex work be recognised as an occupation to ensure labour and human rights and standards are followed, in particular emphasising non-discriminatory access to health services and occupational safety for sex workers.<sup>20</sup> However, the legal and policy framework in place in India denies sex workers’ the enjoyment of their right to work.
12. Given the interdependence of human rights, the ability to work openly, and freely would allow sex workers to enjoy some of their other human rights and alleviate some of the violations sex workers face. Sex workers would be able to collectively organise for conditions of decent work, access remedies for violence and police harassment, access health services, and avail of social benefit schemes and services.

### **Legal and policy context**

13. In India - legislation and policy documents often conflate sex work and trafficking, contrary to the provisions of the The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (the ‘Palermo Protocol’), which India has ratified. As a result, the regulation of sex work is often found in laws aimed at trafficking.
14. Sex work performed by adults with consent cannot be equated with trafficking for the purpose of exploitation, which entails coercion<sup>21</sup>. Such conflation undermines sex workers’ autonomy to choose what is best for them as per their lived realities. The misconceived conflation of voluntary sex work, trafficking, and ‘commercial sexual exploitation’ (undefined) is apparent across both Central and State government schemes and policies for rehabilitation. For instance, the National Legal Services Authority (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015 considers ‘marginalized voluntary sex workers’ as ‘victims of commercial sexual exploitation’, apart from those children and adults who are trafficked for the purpose.<sup>22</sup> Such conflation is dangerous, legitimizes and sanctions harassment and forceful confinement of sex workers and those assumed to do sex work<sup>23</sup>, and reduces their access to life-saving HIV and violence prevention interventions.<sup>24</sup>

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<sup>18</sup> Article 37, Constitution of India, 1950 states that, “*The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.*”

<sup>19</sup> Article 42, Constitution of India, 1950.

<sup>20</sup> International Labour Office, Recommendation concerning HIV and AIDS and the World of Work, No. 200 (2010); see para 208, International Labour Conference, Provisional Record, 13 (Rev.), 99th Session, Geneva (2010).

<sup>21</sup> Pp. 39-40, United Nations Development Programme, Global Commission on HIV and the Law: Risks, Rights and Health (2012); see also CREA, NSWP and SHARP, Sex Work and Trafficking: A Donor–Activist Dialogue on Rights and Funding (2008).

<sup>22</sup> P. 5, National Legal Services Authority (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, India (2015).

<sup>23</sup> PP. 5-12, Global Network of Sex Work Projects, Policy Brief: The Impact of Anti-Trafficking Legislation and Initiatives on Sex Workers (2018).

<sup>24</sup> See pp. 14-19, UNAIDS, Guidance note on HIV and sex work (Geneva, 2009, updated 2012).

15. Article 23 of the Constitution of India, 1950 prohibits “traffic in human beings, begar<sup>25</sup> and other similar forms of forced labour” without defining or elaborating these terms. The Immoral Traffic (Prevention) Act, 1956 (‘ITPA’) is the primary legislation governing activities related to ‘prostitution’ and provides for rescue, rehabilitation and correction of sex workers. ITPA criminalises keeping or allowing a premises to be used as a brothel<sup>26</sup>, living on earnings of sex work<sup>27</sup>(inclusive of family members and dependants), procuring, inducing or detaining for ‘prostitution’ with or without consent<sup>28</sup>, ‘prostitution’ in the vicinity of public places<sup>29</sup> and soliciting in public places<sup>30</sup>. Women arrested or picked up under these offences can be detained in a ‘corrective institution’ for a minimum period of 2 years<sup>31</sup>. Women ‘rescued’ are brought before a Magistrate and are forced to undergo medical examinations for sexually transmitted diseases<sup>32</sup>.
16. While there are sex workers of all genders who serve clients of all genders, a disproportionate number of cases are registered/used as a threat against female sex workers under section 7 and 8 ITPA, exposing them to harassment, detention and violence by the police.<sup>33</sup> However, jurisprudence over the years has noted that the law was not intended to criminalize individual adult sex workers. In September 2020, High Court of Bombay, in an appeal against detention of adult sex workers in corrective institutions, observed, *“It is interesting to note the relevant provisions of the said Act, which go to show that the purpose and the object of the Act is not to abolish prostitution or the prostitute. There is no provision under the law which makes prostitutions per se a criminal offence or punishes a person because he indulges in prostitution. What is punishable under the Act is sexual exploitation or abuse of person for commercial purpose...”*<sup>34</sup>
17. The Indian Penal Code, 1860 (‘IPC’) also contains several provisions on human trafficking and related crimes. Section 370, IPC defines the offence of trafficking of persons and contains elements similar to those laid down in Article 3 of the Palermo Protocol. Consent of the ‘victim’ is immaterial.<sup>35</sup> The Committee on Amendments to Criminal Law (Verma Committee, 2013) clarified the intent behind Section 370 and stated that law-enforcement agencies should not harass sex workers who undertake activities of their own free will, nor their clients.<sup>36</sup> However, Section 370 has been used regularly in conjunction with ITPA cases.

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<sup>25</sup> Form of forced labour in pre-independence India, still prevalent in rural areas.

<sup>26</sup> Section 3, Immoral Traffic Prevention Act, 1956.

<sup>27</sup> Section 4, Immoral Traffic Prevention Act, 1956.

<sup>28</sup> Section 5 and 6, Immoral Traffic Prevention Act, 1956.

<sup>29</sup> Section 7, Immoral Traffic Prevention Act, 1956.

<sup>30</sup> Section 8, Immoral Traffic Prevention Act, 1956.

<sup>31</sup> Section 10A, Immoral Traffic Prevention Act, 1956.

<sup>32</sup> Section 15(5)(A), Immoral Traffic Prevention Act, 1956.

<sup>33</sup> See pp. 143-144, Mona Mishra, Sutapa Majumdar and Akhila Sivadas, *The Grudging Inclusion of Sex Workers in India*, India Exclusion Report (2021).

<sup>34</sup> ***Kajal Mukesh Singh and ors. v. The State of Maharashtra***, Criminal Writ Petition No. 6065 of 2020, High Court of Bombay.

<sup>35</sup> See Explanation 2, Section 370 (1), Indian Penal Code, 1860.

<sup>36</sup> Email communication dated February 8, 2013 addressed to Ms. Meena Seshu, from Gopal Subramaniam, Verma Committee member, available at <http://nnswindia.org/upload/News/Press-Release/Clarification-from-verma-Commission-on-370.pdf>; see p. 23, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers’ Vulnerability to Exploitative Practices* (2018).

<sup>37</sup> The recommendations of the Verma committee in this regard have not been fully implemented.

18. Other provisions that are used to harass sex workers are Section 286 of the IPC which penalizes public nuisance and Section 294 which penalizes obscene acts and songs in public spaces. These provisions are used to harass sex workers, even when they are not working, often targeting trans sex workers performing daily tasks in public spaces.<sup>38</sup> In addition to ITPA, India has various special legislations governing other aspects of “trafficking of persons”<sup>39</sup>.

19. In the Supreme Court case of *Budhadev Karmaskar v. State of West Bengal*<sup>40</sup> (*Budhadev*) the Court comprised a panel of advocates and sex worker representatives.<sup>41</sup> It sought recommendations on the rehabilitation of sex workers who wish to leave sex work voluntarily and to provide conducive conditions for sex workers who wish to continue working in accordance with Article 21 of the Constitution.<sup>42</sup> The Panel submitted its final report in 2016 and made a number of recommendations including:

- Adult sex workers and their clients engaged in voluntary sex should not be harassed, arrested or prosecuted;
- Voluntary sex work should not be conflated with trafficking;
- In cases of raid on any brothel, children over-18 years and old parents living on earnings of sex workers should not be criminalized;
- Children should not be forcibly separated from their mother because of her status as a sex worker;
- Police and other law enforcement agencies should be sensitized to rights of sex workers and should not subject them to violence or coerce them into any sexual activity;
- Press Council of India should issue appropriate media guidelines to not reveal identities of sex workers during arrest, raid and rescue operations; and finally,
- Central and State Governments must involve sex workers and/or their representatives in decision making processes for any policy relating to sex work.<sup>43</sup>

20. To date the Government of India has not thoroughly engaged with these recommendations, instead repeatedly stating its intention to introduce comprehensive anti-trafficking legislation.

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<sup>37</sup> See summary of analysis of cases under Section 370, IPC from 2013-2018, Prabha Kotiswaran, How Did We Get Here? Or A Short History of the 2018 Trafficking Bill, Economic and Political Weekly Engage, Vol. 53, Issue No. 29 (21 July 2018).

<sup>38</sup> Consultations by CREA with trans rights activists from Trans Rights Now Collective, India (March 2022).

<sup>39</sup> For instance, see the Juvenile Justice (Care and Protection of Children) Act 2015, the Transplantation of Human Organs Act 1994, the Bonded Labour System (Abolition) Act 1976, the Contract Labour Act 1970, the Inter-state Migrant Workmen Act 1979, the Children Act 1933 and the Child Labour Act 1986.

<sup>40</sup> Criminal Appeal No. 135 of 2010, Supreme Court of India.

<sup>41</sup> Supreme Court order dated 19 July 2011 in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010.

<sup>42</sup> Supreme Court order dated 26 July 2012 in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010.

<sup>43</sup> For detailed recommendations, see Annexures 4, 5 and 6, Report of the panel appointed by the Supreme Court in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010 (September 2016).

<sup>44</sup> Indeed since the last UPR review, two Bills for prevention, protection, and rehabilitation of trafficking survivors were introduced in Parliament in 2016 and 2018.

21. The United Nations Special Rapporteurs on Trafficking, especially women and children, and on Contemporary Forms of Slavery, noted with the concern that the 2018 Bill addressed trafficking from a criminal law perspective [which] is not sufficiently complemented by a human-rights based and victim-centred approach, and this risked further harming already vulnerable individuals.<sup>45</sup>
22. Despite widespread concern from human rights experts and communities most affected by such a law, the Ministry of Women and Child Development introduced yet another anti-trafficking Bill in 2021, in the midst of the COVID-19 pandemic.<sup>46</sup> Stakeholders were required to give feedback in less than 2 weeks, an unreasonable timeline given that nation-wide lockdowns could not allow for public consultations. This was also in contravention of the Pre-Legislative Consultation Policy of 2014 which mandates that a minimum of 30 days be given for public comments on draft bills.
23. The latest version of the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 yet again runs afoul of human rights standards and principles of due process with its over-broad, vague and poorly defined provisions.<sup>47</sup> The Bill criminalizes trafficking for the purpose of exploitation, but the definition of exploitation is very broad, with no requirements of force, coercion, deception or manipulation as in the Palermo Protocol. The definition of 'sexual exploitation' now includes 'exploitation of prostitution'.<sup>48</sup> If the Bill were to become law, Section 370 and 370A of the IPC would stand deleted<sup>49</sup>, but provisions of ITPA would still operate- creating administrative chaos, inconsistent application, and according even more power to the police.<sup>50</sup>
24. Consent of the 'victim' is considered irrelevant, reducing all adult sex work to 'trafficking in persons'.<sup>51</sup> When law enforcement agencies, especially police officers, think of sex work as

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<sup>44</sup> See Supreme Court Order dated 27 February, 2020, *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010 where the Additional Solicitor General stated that, "that a Group of Ministers has been constituted to examine the two draft legislations. That Report of the Committee appointed by this Court shall be taken into consideration by the Group of Ministers."

<sup>45</sup> Maria Grazia Giammarinaro, Special Rapporteur on trafficking in persons, especially women and children and Urmila Boola Special Rapporteur on contemporary forms of slavery, including its causes and consequences, "India must bring its new anti-trafficking Bill in line with human rights law, urge UN experts", OHCHR, Geneva (23 July 2018).

<sup>46</sup> See draft of Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 website of Ministry of Women and Child Development, available at <https://wcd.nic.in/sites/default/files/DRAFT%20TRAFFICKING%20IN%20PERSONS%20%28PREVENTION%2C%20CARE%20AND%20REHABILITATION%29%20BILL%202021%20%281%29.pdf>.

<sup>47</sup> For a detailed critique of the Bill, see Coalition Critiques Problematic Trafficking Bill, 2021 (15 July 2021), available at <https://nationalnetworkofsexworkers.medium.com/coalition-critiques-problematic-trafficking-bill-2021-7b0e0a359f7f>.

<sup>48</sup> See Clause 2(25); Explanation I, Clause 23; Clause 25(1) (o) of the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

<sup>49</sup> Clause 59, Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

<sup>50</sup> See Prabha Kotiswaran and Sharda Rajam, Violating Freedoms and Criminalising Labour in Proposed Law on Trafficking, The India Forum (23 November 2021).

<sup>51</sup> See Explanation II, Clause 23, Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

immoral or exploitative, these broad definitions can be used to criminalize sex workers as ‘traffickers’ or label them as ‘victims’ who need to be ‘rescued’. The Bill provides a framework for full criminalization punishing ‘*every customer, employer, pimp, broker by whatever name called, who causes engag[ment] of services of a victim as a result of which he is exploited.*’<sup>52</sup> The Bill criminalizes owning or possessing property (including jewellery, bank accounts) from the proceeds of an offence.<sup>53</sup>

25. The Bill makes it compulsory to report a person who has been or may have been ‘trafficked’ or ‘exploited’, to the police (not compulsory for family members.)<sup>54</sup> Since the Bill considers sex workers as ‘victims’ of trafficking or exploitation or as offenders, this mandatory reporting requirement will create fear of imprisonment and police harassment in anyone working with sex workers including healthcare providers, Targeted Interventions (TIs)<sup>55</sup>, lawyers, NGOs, counsellors and journalists. This provision compromises confidentiality and privacy of sex workers and they may not approach persons/groups for support. This may put the health and lives of sex workers at risk and increase vulnerability to violence. A mandatory reporting provisions provision further ensures that there is no recourse to social protection systems for violation of rights of sex workers, if going to the health professional for advice would be in an environment which puts both of them in the purview of criminal law.
26. The Bill also prohibits the use of media for trafficking and bans the voluntary production and viewing of pornography as well as the use of technology for consensual sexual activity and imposes liability on intermediaries although other laws already deal with this.<sup>56</sup> This targets online forms of sex work, which many sex workers are employing, especially as a result of the ongoing COVID-19 pandemic and ensuing restrictions.
27. Per the Bill, aggravated forms of trafficking (with heightened penalties) include trafficking which causes exposure to HIV; results in pregnancy; includes forceful confinement to a brothel; for the purpose of ‘prostitution’; and related to work in massage parlours and spas.<sup>57</sup> This criminalizes circumstances closely linked to sex work, potentially harming sex workers’ livelihoods. The provision on ‘trafficking caused by administering any chemical substance or hormones on a person for the purpose of early sexual maturity’<sup>58</sup> may be used against trans sex workers and those who assist them to undertake hormone therapy and gender affirming procedures.

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<sup>52</sup> See Clause 30(1) read with Explanation 1 and 2, and Clause 2(7), Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

<sup>53</sup> See Clause 39(1) read with Clause 2(19), Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

<sup>54</sup> See Clause 35, Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

<sup>55</sup> Targeted Intervention (TI) programme provides a package of prevention, support and linkage services to a focused group of High Risk Groups in a defined geography through a peer-led, outreach based service delivery model in partnership with Non-Governmental Organizations (NGOs) and Community Based Organisations (CBOs); see p. 45, National AIDS Control Organization, Sankalak: Status of National AIDS Response (3rd. ed.), Ministry of Health and Family Welfare, Government of India (2021).

<sup>56</sup> See Clause 33(1) and (2) read with Clause 2(25) and Explanation I, Clause 23, Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

<sup>57</sup> See Clauses 25(1)(c), (h), (o), (p), (q), Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

<sup>58</sup> See Clause 25(1)(d), Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.



28. Though the Bill had not been introduced in Parliament, it is feared that the Ministry of Women and Child Development will continue to advocate for and introduce ill-informed and harmful legislation.

### **Violence by Police Officers**

29. In the previous UPR cycle, the Government of India accepted several recommendations on violence, including those by the Government of Japan's to "take more effective measures to protect and promote the rights of women and girls, as they continue to be subjected to widespread violence, discrimination and exploitation,"<sup>59</sup> and the Government of Kyrgyzstan's recommendation to "take additional serious measures to eliminate violence against women and children, including sexual violence".<sup>60</sup> These recommendations have not been implemented in relation to violence against sex workers.

30. In his 2010 report, the Special Rapporteur on the Right to Health noted that "violence towards sex workers, often perpetrated by those in positions of authority, is a common aspect of sex work, and an unfortunate corollary of criminalization. Where sex work is criminalized, the sector is effectively driven underground, which has been noted to create an environment of increased violence."<sup>61</sup>

31. Police officers often levy petty fines (bribes) or demand sexual favours<sup>62</sup> in lieu of shutting down sex workers' businesses or arresting them.<sup>63</sup> The threat of police violence often forces sex workers to work in isolation, without safety networks with their peers, and makes them more vulnerable to violence by clients and other members of the public.

32. Trans sex workers are usually not apprehended under ITPA, but are often accused by police officers of theft, chain snatching, public nuisance and obscenity in a public place. Police officers often assume any trans woman in a public place is a sex worker soliciting clients.<sup>64</sup> Police misgender, harass, and force them to undress, confiscate their belongings and use transphobic slurs. They threaten to disclose their identity to landlords and neighbours, exacerbating an already precarious situation of poverty and marginalization.

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<sup>59</sup> 161.200, UNGA, Report of the Working Group on the Universal Periodic Review, India, Addendum, 'Views on Conclusions and/or Recommendations, Voluntary Commitments and replies presented by the State under review', Human Rights Council, A/HRC/36/10/Add.1 (16 September 2017).

<sup>60</sup> 161.201, UNGA, Report of the Working Group on the Universal Periodic Review, India, Addendum, 'Views on Conclusions and/or Recommendations, Voluntary Commitments and replies presented by the State under review', Human Rights Council, A/HRC/36/10/Add.1 (16 September 2017).

<sup>61</sup> Para 41, Anand Grover, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Human Rights Council, A/HRC/14/20 (27 April 2010).

<sup>62</sup> See Case studies on p.3, Joint Stakeholders Submission 9 to the Universal Periodic Review, Violations faced by Sex Workers in India (2016).

<sup>63</sup> See p. 5, Global network of Sex Work Projects, Policy Brief: The Impact of Criminalisation on Sex Workers' Vulnerability to HIV and Violence (2017); P. 61, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018); see Submission to the CEDAW Report, National Network of Sex Workers, India, *Violence Faced by Sex Workers in India* (2019).

<sup>64</sup> Consultations by CREA with trans rights activists working with Trans Rights Now Collective, India (March 2022)

33. As recently as 2021, sex workers in Bengaluru publicly protested against police harassment and extortion by threats of false cases.<sup>65</sup>

### **Raid and Rescue Missions Perpetrate Violence and Stigma Against Sex Workers**

34. A common pattern in raids, especially those in brothel settings, is the abrupt and forceful entry of police officers, humiliation, verbal and physical abuse by police officers, pulling of hair, disrobing<sup>66</sup>, media presence violating the privacy of sex workers, sexual coercion and extortion of money from sex workers by the police, detention of sex workers- particularly those in possession of condoms, confiscation of sex workers' belongings, money and jewellery, mandatory medical examinations, and threats of 'outing' to family members.<sup>67</sup> Their phones may be taken away which prevents them from contacting community leaders or lawyers for help.<sup>68</sup> Additionally such measures condemn sex workers to a cycle of debt, with their earnings being used for legal fees, surety for bail, bribes to officials and a loss of livelihood due to incarceration.<sup>69</sup>
35. Media personnel present at these raids take photographs and videos without consent<sup>70</sup>. These are publicized in sensationalist and biased news reports and shows. Some sex workers have died by suicide on account of the abuse and stigma following this.<sup>71</sup>
36. Under ITPA, a Magistrate can remove a 'prostitute' from any place under his jurisdiction and prohibit her from re- entering it, in the interests and well-being of the 'general public'.<sup>72</sup> Raids conducted in order to 'protect' women and the 'general public' often penalize sex workers, result in dispossession and loss of shelter.
37. Once 'rescued', a woman can either be sent to the 'safe custody' of her husband, parents or guardian.<sup>73</sup> Most family members are previously unaware that she is a sex worker, exposing her to violence at home.<sup>74</sup> This is further complicated in the case of migrant sex workers who have left their homes, often years previously. Purely as a shaming tactic, the woman often

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<sup>65</sup> Sanjana Deshpande, 'We're not criminals': Bengaluru sex workers protest against police brutality', NewsMinute (10 March 2021), available at

<https://www.thenewsminute.com/article/we-re-not-criminals-bengaluru-sex-workers-protest-against-police-brutality-144940>

<sup>66</sup> See p. 58, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>67</sup> See pp. 56-62, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>68</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers (March 2022).

<sup>69</sup> See pp. 79-82, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>70</sup> See P. 60, *Raided*, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018); Case studies and focus group discussions in Joint Stakeholders Submission 9 to the Universal Periodic Review, *Violations faced by Sex Workers in India* (2016).

<sup>71</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers (March 2022).

<sup>72</sup> Section 20, Immoral Traffic Prevention Act, 1956.

<sup>73</sup> Section 17(2) and (3), Immoral Traffic Prevention Act, 1956.

<sup>74</sup> See Aarthi Pai, Meena Saraswathi Seshu and Laxmi Murthy, *In Its Haste to Rescue Sex Workers, 'Anti-Trafficking' Is Increasing Their Vulnerability*, *Economic and Political Weekly Engage*, Vol. 53, Issue No. 28 (14 July 2018).

has to sign an affidavit that she will not do sex work in future<sup>75</sup>. If the guardians are not deemed suitable by the Magistrate, the woman can be detained in a protective home for a minimum of 1 year, which can extend to 3 years<sup>76</sup>.

38. Due to the ITPA provisions adult sex workers to continue to face violence through the raid and rescue missions which violate their rights to live with dignity,<sup>77</sup> to privacy,<sup>78</sup> against arbitrary arrest<sup>79</sup> and to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>80</sup>.
39. Even though ITPA mandates that the special police officer or the trafficking police officer shall be accompanied by at least two women police officers during searches, and that interrogation of 'removed' women should only be done by a woman police officer or in the presence of a *lady member* of a recognised welfare institution or organization<sup>81</sup>, this is rarely followed. In fact, sex workers claim that the presence of female police officers during such searches is not rights-affirming or gender sensitive.<sup>82</sup> Such officers behave similarly as their male counterparts, often with heightened gendered slurs and abuses. Stigma, violence and harassment are institutional problems, not specific to a few police officers.
40. The former U.N Special Rapporteur on violence against women, Ms. Rashida Manjoo noted the Indian Government's focus on maintaining 'public morality' as opposed to rights based interventions to human trafficking.<sup>83</sup> She also recommended that the State '[ensure] that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers'.<sup>84</sup>
41. A 2018 study drawing on empirical research with hundreds of sex workers in four Indian states conducted between 2015 and 2017 revealed that of the total sample of 243 picked up in raids, 193 women had voluntarily entered sex work.<sup>85</sup> Out of these, 82 sex workers had been forcibly incarcerated for one month, 44 were incarcerated for up to 6 months, and 14 were incarcerated for up to three years.<sup>86</sup> 152 of the 193 (79%) women who had been picked

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<sup>75</sup> See p. 19, 51, 58, 78, 92, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>76</sup> Proviso to Section 17(4), Immoral Traffic Prevention Act, 1956.

<sup>77</sup> Article 21, Constitution of India, 1950; Articles 1 and 3, Universal Declaration of Human Rights, 1948.

<sup>78</sup> Article 21, Constitution of India, 1950; Article 12, Universal Declaration of Human Rights, 1948; Article 17, International Covenant on Civil and Political Rights, 1966.

<sup>79</sup> Article 22, Constitution of India, 1950; Article 9, Universal Declaration of Human Rights, 1948; Article 9, International Covenant on Civil and Political Rights, 1966.

<sup>80</sup> Article 21, Constitution of India, 1950; Article 5, Universal Declaration of Human Rights, 1948; Article 7, International Covenant on Civil and Political Rights, 1966.

<sup>81</sup> Section 15(6A), Immoral Traffic Prevention Act, 1956.

<sup>82</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers (March 2022).

<sup>83</sup> See para 28, United Nations General Assembly, Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, A/HRC/26/38/Add.1 (1 April 2014).

<sup>84</sup> See para 78 (e), United Nations General Assembly, Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, A/HRC/26/Add.1 (1 April 2014).

<sup>85</sup> Pp. 53-54, *Raided*, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>86</sup> Pp. 53-54, *Raided*, Sampada Grameen Mahila Sanstha (SANGRAM, India), *Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

up during raid missions returned to sex work.<sup>87</sup> As of 2018, 218 women of the 243 women had been released.<sup>88</sup> A significant portion (77%)(168 out of 218) of women who had been picked up during raid missions returned to sex work post release.<sup>89</sup> More than one-third, or 36% (13 out of 36) of women who had been trafficked were doing sex work at the time of the study and stated that they wanted to remain in sex work.<sup>90</sup> These findings should urge the Government to consider that outdated anti-trafficking measures centring 'raid and rescue' and conflating trafficking with voluntary sex work are ill-suited to 'protect' persons who have been trafficked, and often result in their involuntary detention.

42. Despite public dissemination of these findings and advocacy by sex worker collectives, raids continue unabated. In 2019, more than 100 sex workers in Pune suffered multiple raids, forcing them to continue their work at insecure locations, and many were detained in shelter homes.<sup>91</sup> In 2021, sex workers were beaten using sticks, insulted with slurs, and their phones and jewellery were confiscated during a raid.<sup>92</sup>
43. Sex worker collectives have decades of experience in addressing trafficking and unsafe working conditions. They are the best placed to identify minors and adults unwilling to do sex work and support them<sup>93</sup>. For instance, the Self-Regulatory Board model of the Durbar Mahila Samanvaya Committee interviews new entrants with a view to reduce all forms of violence, including trafficking.<sup>94</sup> If the girl is a minor and forcibly brought, she is sent back to her home or offered space in a rehabilitation home, which is also run and monitored by Durbar. In 2016, the Supreme Court Panel constituted in **Budhadev**, recommended that SRBs be established in all major cities of India.<sup>95</sup> The Veshya Anyay Mukti Parishad (VAMP) also responds to forced and minor entry into sex work through similar committees.<sup>96</sup>

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<sup>87</sup> P. 54, *Raided, Sampada Grameen Mahila Sanstha (SANGRAM, India), Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>88</sup> P. 56, *Raided, Sampada Grameen Mahila Sanstha (SANGRAM, India), Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>89</sup> P. 56, *Raided, Sampada Grameen Mahila Sanstha (SANGRAM, India), Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>90</sup> P. 93, *Raided, Sampada Grameen Mahila Sanstha (SANGRAM, India), Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

<sup>91</sup> See Varsha Torgalkar, 'Illegal' Police Raids Have Forced Pune's Sex Workers to Operate in Unsafe Conditions, *The Wire* (14 June 2019), available at <https://thewire.in/rights/pune-sex-workers-police-raids>.

<sup>92</sup> See Jahnvi Sen, How a Nagpur Police Raid to 'Rescue Underage Sex Workers' Criminalised an Entire Neighbourhood, *The Wire* (18 January 2021), available at

<https://thewire.in/rights/nagpur-sex-workers-police-raid>; see Sukanya Shantha, Nagpur Police Abruptly Shut Down City's Oldest Red Light Area, Damaging Livelihoods of Sex Workers, *The Wire* (1 September 2021), available at <https://thewire.in/government/nagpur-ganga-jamuna-shut-down-livelihoods-sex-workers>.

<sup>93</sup> For instance, see UNDP, UNAIDS, UNFPA, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work* (2012), pp. 27-28, 66-73.

<sup>94</sup> See Smarajit Jana, Bharati Dey, Sushena Reza-Paul and Richard Steen, Combating human trafficking in the sex trade: can sex workers do it better?, *Journal of Public Health*, Vol. 36, Issue 4, pp. 622-628 (December 2014); see also pp. 147-148, Mona Mishra, Sutapa Majumdar and Akhila Sivadas, *The Grudging Inclusion of Sex Workers in India*, India Exclusion Report (2021).

<sup>95</sup> P. 148, Mona Mishra, Sutapa Majumdar and Akhila Sivadas, *The Grudging Inclusion of Sex Workers in India*, India Exclusion Report, 2021.

<sup>96</sup> See pp. 86-87, *Raided, Sampada Grameen Mahila Sanstha (SANGRAM, India), Raided: How Anti-Trafficking Strategies Increase Sex Workers' Vulnerability to Exploitative Practices* (2018).

### **‘Rehabilitation’ measures institutionalize adult sex workers against their will**

44. The primary form of rehabilitation is confinement in protection or corrective homes under ITPA. There are also ‘voluntary’ shelter homes under the *Ujjwala* Scheme<sup>97</sup> and short stay *Swadhar Greh*<sup>98</sup> homes. The *Ujjwala* Scheme exclusively focusses on ‘victims of trafficking for commercial sexual exploitation’, inevitably including all adult sex workers. There has been no clarification on how these shelter homes operate in relation to those under ITPA, resulting in confusion on duration and conditions of stay.
45. There is extensive documentation of coercive detention, dehumanizing treatment, surveillance, harassment, violence, and isolation from family and friends, in both state and NGO run shelter homes. Detention prevents sex workers from working and increases their debt burden (to landlords, moneylenders, family, partners etc.) once they are released.<sup>99</sup> Sex workers are separated from their children who may be placed in childcare institutions and receive no information regarding their whereabouts or well-being.<sup>100</sup> Their mental health deteriorates as they do not know when they will be released, and there are no opportunities for appeal against detention. They are not provided access to legal aid lawyers, community based organizations or sex worker activists who can assist them.<sup>101</sup> Women have described such confinement as worse than prison, where they would have fewer restrictions on meeting kin, and could at least hope for bail.<sup>102</sup>

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<sup>97</sup> Government of India, Ministry of Women and Child Development, UJJAWALA: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation (Effective 1st April, 2016), available at <https://wcd.nic.in/sites/default/files/Ujjawala%20New%20Scheme.pdf>.

<sup>98</sup> Government of India, Ministry of Women and Child Development, SWADHAR GREH: A Scheme that caters to primary needs of women in difficult circumstances (2015), available at <https://wcd.nic.in/sites/default/files/Revised%20Guidelines%20Swadhar%20Greh%2C2015%20%28%20English%29.pdf>.

<sup>99</sup> For instance, see case studies in Joint Stakeholders Submission 9 to the Universal Periodic Review, Violations faced by Sex Workers in India (2016).

<sup>100</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers (March 2022).

<sup>101</sup> See Sadhana Mahila Sangha, Bangalore, Submission to the Special Rapporteur on Violence against Women: Violence against people in sex work in India (2014), available at [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Shelters/Ramya\\_Jawahar\\_Kudekallu.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Shelters/Ramya_Jawahar_Kudekallu.pdf)

<sup>102</sup> Vibhuti Ramachandran, Rescued but not released: the ‘protective custody’ of sex workers in India, OpenDemocracy (18 August 2015), available at <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/rescued-but-not-released-protective-custody-of-sex-workers-in-i/>.

46. Such measures violate rights including the right to life, liberty and security,<sup>103</sup> right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment,<sup>104</sup> right to move freely,<sup>105</sup> and the right to protection from arrest in certain cases.<sup>106</sup>
47. The Supreme Court of India in **Budhadev** has noted that rehabilitation must not be coercive, and that sex workers cannot be forcibly detained in corrective homes “which they consider a virtual prison” as a condition for rehabilitation.<sup>107</sup> Despite these observations, forced rehabilitation continues to be the norm.<sup>108</sup>
48. Most shelter homes provide skills-training as a part of ‘rehabilitation’ including sewing, embroidery, pottery and making snacks<sup>109</sup>. But these un-innovative self-employment schemes are rarely either sustainable or sufficiently lucrative. For instance, in 2017, rehabilitation of young sex workers under a project by the Kerala State AIDS Control Society failed as they did want to give up their substantial earnings from sex work.<sup>110</sup> As early as 2011, the Supreme Court stated that “merely sending them to homes is sending them to starvation”.<sup>111</sup>

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<sup>103</sup> Article 21, Constitution of India, 1950; Article 3, Universal Declaration of Human Rights, 1948; Article 6, International Covenant on Civil and Political Rights, 1966.

<sup>104</sup> Article 21, Constitution of India, 1950; Article 5, Universal Declaration of Human Rights, 1948; Article 7, International Covenant on Civil and Political Rights, 1966.

<sup>105</sup> Article 19(1)(d), Constitution of India, 1950; Article 13, Universal Declaration of Human Rights, 1948; Article 12, International Covenant on Civil and Political Rights, 1966.

<sup>106</sup> Article 22, Constitution of India, 1950; Article 9, Universal Declaration of Human Rights, 1948; Article 9, International Covenant on Civil and Political Rights, 1966.

<sup>107</sup> Supreme Court orders dated 2 August 2011 and 24 August 2011, **Budhadev Karmaskar v. State of West Bengal**, Criminal Appeal No. 135 of 2010.

<sup>108</sup> For instance, see case studies in Joint Stakeholders Submission 9 to the Universal Periodic Review, Violations faced by Sex Workers in India (2016).

<sup>109</sup> P. 78, Raided, Sampada Grameen Mahila Sanstha (SANGRAM, India), Raided: How Anti-Trafficking Strategies Increase Sex Workers’ Vulnerability to Exploitative Practices (2018).

<sup>110</sup> Jestin Abraham, As sex work pays more, rehabilitation project fails in Kerala, New Indian Express (3 November 2017), available at

<https://www.newindianexpress.com/states/kerala/2017/nov/03/as-sex-work-pays-more-rehabilitation-project-fails-in-kerala-1690589.html>.

<sup>111</sup> Supreme Court order dated 24 August 2011, **Budhadev Karmaskar v. State of West Bengal**, Criminal Appeal Number 135 of 2010.



49. In 2018, there was a spate of reports and audits into state run shelter homes across India. Reports from Uttar Pradesh<sup>112</sup>, Bihar<sup>113</sup>, Odisha<sup>114</sup>, Madhya Pradesh<sup>115</sup>, Delhi<sup>116</sup> revealed dehumanizing living conditions, sexual abuse and other rights violations. A rescued adult Uzbek national died by suicide in a shelter home run by anti-trafficking organization, Prajwala in Hyderabad.<sup>117</sup>In 2022, 14 women 'rescued' from sex work escaped from an *Ujjwala* home in Hyderabad<sup>118</sup>
50. These incidents viewed collectively should prompt the Government to review its outdated rehabilitation policies and engage in meaningful consultations with sex worker collectives who have been successful in their rights based anti-trafficking initiatives.

### Denial of Access to Justice

51. Criminalization of sex work combined with stigma and discrimination deprives sex workers of redressal or remedies against harms at the workplace such as denial to pay for services or mistreatment by agents and clients. Sex workers cannot seek remedies for violence and harassment by family members, landlords, healthcare professionals and service providers.

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<sup>112</sup> See India Today Web Desk, The girls returned crying: Child reveals details of abuse at UP shelter home, India Today (6 August, 2018), available at <https://www.indiatoday.in/india/story/the-girls-returned-crying-child-reveals-details-of-abuse-at-up-shelter-home-1306417-2018-08-06>; The Wire Staff, Deoria Shelter Home Girls 'Drugged Before Being Sexually Exploited', The Wire (19 November 2018), available at <https://thewire.in/rights/deoria-shelter-home>.

<sup>113</sup>See India Today Web Desk, Abuse at Bihar Shelter Homes, India Today (6 August, 2018), available at <https://www.indiatoday.in/india/story/bihar-shelter-homes-rape-case-tiss-report-1306304-2018-08-06>; see Piyush Tripathi, Bihar shelter home case: We used to cut ourselves to avoid sexual abuse-reveals survivor, Times of India (29 July 2018), available at <https://timesofindia.indiatimes.com/india/bihar-shelter-home-case-girls-used-to-cut-themselves-to-avoid-sexual-abuse-reveals-survivor/articleshow/65181870.cms>; see Suhas Munshi, Rape, Beatings, Murder: How Shelter Homes Today Have Become a Safe Haven for Sexual Abuse, News18 (29 July 2018), available at <https://www.news18.com/news/india/rape-beatings-murder-how-shelter-homes-today-have-become-a-safe-haven-for-sexual-abuse-1826947.html>.

<sup>114</sup> See Press Trust of India, Odisha Shelter Home Girls Allege Sexual Abuse, In-Charge Arrested, NDTV (2 December, 2018), available at <https://www.ndtv.com/india-news/odisha-shelter-home-girls-allege-sexual-abuse-in-charge-arrested-1956650>.

<sup>115</sup> See the Scroll Staff, Director of a Bhopal children's shelter home arrested for allegedly sexually abusing inmates, The Scroll (15 September 2018), available at [https://scroll.in/latest/894498/director-of-a-bhopal-childrens-shelter-home-arrested-for-allegedly-sexually-abusing-inmates?fbclid=IwAR1o\\_xcJcDkFxn6ABOc8KbH1zqKUyj\\_7MhsK-SBUouR5jhHvOdfEK\\_rxs1g](https://scroll.in/latest/894498/director-of-a-bhopal-childrens-shelter-home-arrested-for-allegedly-sexually-abusing-inmates?fbclid=IwAR1o_xcJcDkFxn6ABOc8KbH1zqKUyj_7MhsK-SBUouR5jhHvOdfEK_rxs1g).

<sup>116</sup>See Michael Safi, Delhi's women shelters to be inspected after abuse allegations, The Guardian (7 August 2018), available at <https://www.theguardian.com/world/2018/aug/07/delhi-india-shelters-vulnerable-women-inspected-after-abuse-allegations>; see Hindustan Times Correspondent, Girls at Delhi shelter home abused by staff, chilli powder in private parts, Hindustan Times (19 December 2018), available at <https://www.hindustantimes.com/delhi-news/girls-at-delhi-shelter-home-abused-by-staff-chilli-powder-in-private-parts/story-bzQiUZenB1bq1jsooNy7dO.html>.

<sup>117</sup> Hyderabad: Rescued Uzbek woman ends life in shelter home, Deccan Chronicle (15 April 2018), available at <https://www.deccanchronicle.com/nation/crime/150418/hyderabad-rescued-uzbek-woman-ends-life-in-shelter-home.html>.

<sup>118</sup>Staff Reporter, Fourteen women escape from rescue home, The Hindu (19 February 2022), available at <https://www.thehindu.com/news/national/telegana/fourteen-women-escape-from-rescue-home/article65065591.ece>.

Sex workers are unlikely to file complaints when they fear implication in a case and when police themselves are known for perpetrating abuses.<sup>119</sup>

52. Police often refuse to file complaints for gender based violence, and they do not follow up, even if sex workers manage to get a case registered. The attitude is reversed when there are complaints or criminal cases registered against sex workers. When sex workers facing domestic violence have approached the police for assistance, they have been ridiculed and humiliated.<sup>120</sup>
53. Police officials often make remarks suggesting that sex workers cannot be raped, or asking who would bother to rape a sex worker, negating the importance of their consent. Often sex workers only have the strength to report gender based violence if they have the support of CBOs.<sup>121</sup>
54. This culture of impunity contributes to the stark violation of the right to equality and equal protection before law<sup>122</sup> and the State's duty to ensure equal access to justice and free legal aid.<sup>123</sup>

### **Denial of and discrimination in access to health services**

55. Unfortunately, the Government of India did not receive any recommendations related to respecting the rights of key populations during responses to HIV AIDS. NACO's report of 2021 shows that national HIV prevalence continued to decline from its peak level of 0.54% in 2000-2001 to 0.33% in 2010 to 0.22% in 2020.<sup>124</sup> Female sex workers are included in key populations with high-risk behaviour, and had HIV prevalence 6 to 13 times higher than national average (1.56%).<sup>125</sup> During 2020-21, >95 % of registered female sex workers were covered by targeted intervention programmes which have been able to keep a very low HIV positivity rate.<sup>126</sup> However, sex workers continue to face stigma and discrimination. During consultations, sex workers shared how, during raids, law enforcement considers possession of condoms as evidence of doing sex work which creates fear in using condoms.<sup>127</sup>

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<sup>119</sup> For instance, see Case Studies in Submission to the CEDAW Report, National Network of Sex Workers, India, Violence Faced by Sex Workers in India (2019).

<sup>120</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers (March 2022).

<sup>121</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers on the Right to Health (February 2022).

<sup>122</sup> Article 14, Constitution of India, 1950; Article 7, Universal Declaration of Human Rights, 1948; Articles 14 and 26, International Covenant on Civil and Political Rights, 1966.

<sup>123</sup> Article 39A, Constitution of India, 1950.

<sup>124</sup> P. 23, National AIDS Control Organization, Sankalak: Status of National AIDS Response (3rd. ed.), Ministry of Health and Family Welfare, Government of India (2021).

<sup>125</sup> P. 17, 28, National AIDS Control Organization, Sankalak: Status of National AIDS Response (3rd. ed.), Ministry of Health and Family Welfare, Government of India (2021).

<sup>126</sup> P. 45, National AIDS Control Organization, Sankalak: Status of National AIDS Response (3rd. ed.), Ministry of Health and Family Welfare, Government of India (2021).

<sup>127</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers (March 2022); see also Global network of Sex Work Projects, Policy Brief: The Impact of Criminalisation on Sex Workers' Vulnerability to HIV and Violence (2017).



56. Criminalization has created a chilling effect on sex workers' ability to negotiate safe sex and undermines public health interventions especially in the case of HIV related treatment and care.<sup>128</sup> It also discourages them from seeking health services including tests for HIV and other STIs.<sup>129</sup>
57. Mandatory testing for STIs and HIV is often done without fully-informed decision making and results are used to justify detention in shelter homes.<sup>130</sup> When sex workers living with HIV are detained at shelter homes or police stations, they cannot access ART which is essential for their health.
58. Female sex workers report stigmatization in government hospitals, especially when providers assume their profession on the basis of their HIV status or residence in a red-light area. They are subjected to lewd comments, sexually harassed, asked for sexual services and their data is not kept confidential.<sup>131</sup> Trans sex workers face intersectional discrimination on account of their gender identity and profession. Providers either keep them at a distance and do not examine them properly or ask invasive questions about their intimate body parts and gender identity.<sup>132</sup> Many sex workers cannot afford to access private healthcare facilities so they are forced to endure this humiliation and discrimination.
59. These issues are amplified when sex workers seek sexual and reproductive health related information or services. Sex workers seeking an abortion, especially young sex workers, are often asked to bring their partners or parents to the hospital, or for letters in writing stating they do not have partners, which is in contravention of the Medical Termination of Pregnancy Act.<sup>133</sup>
60. These are grave violations of the right to health guaranteed by the Constitution and human rights standards.<sup>134</sup>

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<sup>128</sup> See pp. 36-39, United Nations Development Programme, Global Commission on HIV and the Law: Risks, Rights and Health (2012); see pp. 3-5, UNAIDS, Guidance note on HIV and sex work (Geneva, 2009, updated 2012).

<sup>129</sup> See p. 2, Global Coalition on Women and AIDS, Violence against Sex Workers and HIV Prevention, Information Bulletin Series No. 3, WHO (2005).

<sup>130</sup> See Case studies highlighted in National Network of Sex Workers, India, Submission to CEDAW, Health Status of Sex Workers in India (2019); See p. 36, Partners for Law in Development and SAMA Resource Group for Women and Health, Country assessment undertaken for National Human Rights Commission, Status of human rights in the context of Sexual Health and Reproductive Rights in India (2018).

<sup>131</sup> See Case studies in Joint Stakeholders Submission 9 to the Universal Periodic Review, Violations faced by Sex Workers in India (2016).; Consultations by CREA with sex worker activists from All India Network of Sex Workers (March 2022); See Shalini Singh, 'They grope me when they give my medicines', People's Rural Archive of India (21 February 2022), available at <https://ruralindiaonline.org/en/articles/they-grope-me-when-they-give-my-medicines/>.

<sup>132</sup> Consultations by CREA with trans rights activists, Grace Banu and Akkai Padmashali, India on the right to health (February, 2022); See Case studies highlighted in National Network of Sex Workers, India, Submission to CEDAW, Health Status of Sex Workers in India (2019).

<sup>133</sup> Consultations by CREA with sex worker activists from All India Network of Sex Workers on the Right to Health (February 2022).

<sup>134</sup> Article 21, Constitution of India, 1950; Article 12, International Covenant on Economic, Social and Cultural Rights, 1966; Article 12, Convention on the Elimination of all forms of Discrimination Against Women, 1979.

## Experiences of Sex Workers during COVID-19

61. During COVID-19, sex workers were prevented from engaging in their work by stringent lockdowns, norms of social distancing, police and community surveillance. Most clients did not seek services for fear of contracting the virus.<sup>135</sup> This meant that sex workers did not have sufficient income for their basic needs including food, rent, medicines, education for their children and debt payments<sup>136</sup>. Sex workers reported facing higher levels of abuse (verbal, and physical) from their families due to their reduced ability to earn.<sup>137</sup>
62. Due to lack of proof of residence, sex workers do not have identification documents (such as ration cards, voter cards, AADHAR- unique identification cards) required for availing government schemes, especially related to health and food services. They relied on relief from NGOs and sex worker collectives.<sup>138</sup>
63. While some State Governments including West Bengal<sup>139</sup> and Maharashtra<sup>140</sup> did provide interim relief in the form of rations and utilities, many sex workers could not receive cash transfers due to lack of identity documents.<sup>141</sup>
64. Police officers continued raid and rescue missions, aggravating the crisis situation of sex workers. Punitive enforcement of lockdowns impeded access to ART and hormone

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<sup>135</sup> See The Press Trust of India, Covid-19 impact: Sex workers fight for survival in age of social distancing, Business Standard (5 October 2020), available at [https://www.business-standard.com/article/current-affairs/covid-19-impact-sex-workers-fight-for-survival-in-age-of-social-distancing-120100500517\\_1.html](https://www.business-standard.com/article/current-affairs/covid-19-impact-sex-workers-fight-for-survival-in-age-of-social-distancing-120100500517_1.html).

<sup>136</sup> See Reshmi Chakraborty and Hema Ramaprasad, 'They are starving': women in India's sex industry struggle for survival, The Guardian (29 April 2020), available at <https://www.theguardian.com/global-development/2020/apr/29/they-are-starving-women-in-indias-sex-industry-struggle-for-survival>; See Raksha Kumar, From debt to depression, the pandemic has hit India's sex workers hard, The Hindu (4 July 2021), available at <https://www.thehindu.com/society/from-debt-to-depression-the-pandemic-has-hit-indias-sex-workers-hard/article-e35113988.ece>.

<sup>137</sup> See Meena Saraswathi Seshu, Aarthi Pai and Laxmi Murthy, Locked Down: Sex Workers and Their Livelihoods, Economic and Political Weekly Engage, Vol. 56, Issue No. 11 (13 March 2021).

<sup>138</sup> For instance see Reza-Paul S et al., Community action for people with HIV and sex workers during the COVID-19 pandemic in India, WHO South-East Asia Journal of Public Health, Vol. 9, Issue No. 2, pp. 104-106 (2020); see Tanika Godbole, Sex workers in India find new ways to earn amid coronavirus pandemic, DW (11 August 2020), available at <https://www.dw.com/en/sex-workers-in-india-find-new-ways-to-earn-amid-coronavirus-pandemic/a-54526927>.

<sup>139</sup> See Roushan Ali, West Bengal govt distributes dry ration to transgenders, sex workers and short-statured people, Times of India (16 October 2020), available at <https://timesofindia.indiatimes.com/city/kolkata/state-distributes-dry-ration-to-transgender-sex-workers-and-short-statured-people/articleshow/78707581.cms>.

<sup>140</sup> See The Wire Staff, In Maharashtra, Govt Aid for Sex Workers During Pandemic Fails to Reach Most in Need, The Wire (25 November 2020), available at <https://thewire.in/rights/maharashtra-covid-19-sex-workers-dry-rations-cash-aadhaar>.

<sup>141</sup> See Tanika Godbole, Sex workers in India find new ways to earn amid coronavirus pandemic, DW (11 August 2020), available at <https://www.dw.com/en/sex-workers-in-india-find-new-ways-to-earn-amid-coronavirus-pandemic/a-54526927>.

replacement therapy<sup>142</sup> and several STI departments in government hospitals were shut during lockdown, forcing sex workers to seek lower quality alternatives.<sup>143</sup>

65. In October 2020, noting the economic vulnerability of sex workers<sup>144</sup>, the NHRC issued an advisory titled 'Rights of Women in the Context of COVID-19' which recommended that sex workers be recognized as informal workers and be registered for benefits<sup>145</sup>. Anti-trafficking organizations including those who seek to abolish sex work, alleged that such recognition would legitimize sexual exploitation.<sup>146</sup> In the short span of a month, they issued a modification stating that sex workers could not legally be recognized as informal workers, but should rather receive assistance on humanitarian grounds.<sup>147</sup>
66. On 29 September 2020, the Supreme Court noted the impact of the pandemic on sex workers' earnings and access to social protection schemes, and directed the Central Government and State Governments/ Union Territories to provide starving sex workers with dry rations without requiring proof of identity.<sup>148</sup> Noting that many sex workers did not avail of such relief when police officers were involved, State Governments were ordered not to associate police authorities in the distribution of dry rations.<sup>149</sup> In December 2021, non-compliance of State Governments caused the Supreme Court to direct immediate issuance of ration/voter identity cards to sex workers.<sup>150</sup> As of February 2022, several State Governments had only implemented these directions in part, while others had not submitted status reports.<sup>151</sup>

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<sup>142</sup> See Solidarity Foundation, Stigma, Stress, and Struggle: COVID-19's impact on India's grassroots gender/sexual minorities and sex worker communities, Reality of Aid Network (9 July 2020), available at <https://realityofaid.org/stigma-stress-and-struggle-in-india/>.

<sup>143</sup> See National Network of Sex Workers, Issues of Sex workers in the times of COVID in India, Submission to the National Human Rights Commission (6 August 2020).

<sup>144</sup> Pp. 1-2, National Human Rights Commission, Advisory on Rights of Women in the context of COVID-19 (October 2020), available at [https://nhrc.nic.in/sites/default/files/Advisory%20on%20Rights%20of%20Women\\_0.pdf](https://nhrc.nic.in/sites/default/files/Advisory%20on%20Rights%20of%20Women_0.pdf).

<sup>145</sup> P. 6, National Human Rights Commission, Advisory on Rights of Women in the context of COVID-19 (October 2020), available at [https://nhrc.nic.in/sites/default/files/Advisory%20on%20Rights%20of%20Women\\_0.pdf](https://nhrc.nic.in/sites/default/files/Advisory%20on%20Rights%20of%20Women_0.pdf).

<sup>146</sup> Jagriti Chandra, 10,000 sex workers decry effort to deny them rights, The Hindu (20 October 2020), available at <https://www.thehindu.com/news/national/10000-sex-workers-decry-effort-to-deny-them-rights/article32896575.ece>.

<sup>147</sup> National Human Rights Commission, Modification in 'Advisory on the Rights of Women in the Context of COVID-19 Pandemic' (10 November 2020), available at <https://nhrc.nic.in/sites/default/files/Modification%20of%20Advisory%20on%20Women.pdf>.

<sup>148</sup> Supreme Court Order dated 29 September, 2020 in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal Number 135 of 2010.

<sup>149</sup> Supreme Court Order dated 28 October, 2020 in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal Number 135 of 2010.

<sup>150</sup> Supreme Court Order dated 14 December, 2021 in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal Number 135 of 2010.

<sup>151</sup> Supreme Court Order dated 28 February, 2022 in *Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal Number 135 of 2010.

## Recommendations

1. Review the Immoral Traffic Prevention Act, 1956 and decriminalize acts related to voluntary sex work by adults including but not limited to soliciting, working in brothels, supporting their families through sex work.
2. Review provisions of the Immoral Traffic Prevention Act, 1956 that provide for mandatory testing for STIs and HIV and forced institutionalization in corrective or protection homes.
3. Recognize sex work as work and enable sex workers to be registered as informal labourers.
4. Include sex workers in social protection and financial support schemes.
5. Introduce gender-sensitive training and awareness programs for law enforcement officials, and judiciary members, particularly those working on anti-trafficking measures.
6. Ensure that anti-trafficking initiatives distinguish between trafficking and voluntary adult sex work.
7. Ensure the meaningful engagement of sex worker led groups and collectives in the creation of any policy or law impacting their rights.
8. Ensure available, acceptable, accessible and quality healthcare services to sex workers.