

MODULE - LAWS AND POLICIES
THAT IMPACT PEOPLE IN SEX
WORK IN INDIA

Session –Approaches to Sex Work

Approaches to Sex Work



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Session – Approaches to Sex Work, 2014 (update 2023)

Credit, Disclaimer

The Module has been prepared by SANGRAM Sanstha for creating awareness and training people in sex work, activists.

The sections in this module have been updated to reflect recent discussions and judgments wherever needed.

The Modules and its contents may be used with due acknowledgement to SANGRAM Sanstha. The contents of this module are not intended to replace law in any manner. The purpose is educational and information sharing

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Legal Team, Advisors, Editors

Aarthi Pai; Meena Seshu

Images – R. Suresh

Session Objective

Participants will understand various approaches to sex work.

This will help participants to understand decriminalisation of sex work

Target audience for this session is CBO members /workers

Part 1. Components of Sex Work

According to you what are the components of sex work?

Facilitator Notes

The facilitator must focus on the following key points:

- *A Sex worker's brutal murder is the case of Budhadev Karmaskar.*
- *On 19 May, the Supreme Court of India gave an interim Order on the rights of sex workers. This case has been going on for over 10 years.*
- *Explain to audience that Article 21 is the Right to life and liberty are the fundamental rights guaranteed under Indian Constitution to each citizen of the country.*
- *Public Interest Litigation (PIL) by its own action is taken by Supreme Court when the Fundamental Rights (Art.14,19 & 21) of large community (sex workers) are infringed. Budhadev Karmaskar's case is an Appeal which was converted to PIL.*
- *Supreme Court observed that the fundamental rights guaranteed to every Indian citizen under Constitution must be extended to sex workers and children of sex workers without any discrimination of social stigma attached to the work done by them.*
- *For removing the social stigma attached to a sex workers profession, and to allow them to live with dignity and equal opportunity for them and their children, the Supreme Court ordered for the constitution of the panel to study on their rights.*
- *The Panel set up by Supreme court has met many activists, NGOs, sex workers, sex workers network to understand the problem of community and the challenges faced by them.*
- *NNSW members came together and made a detailed submission on the problems of ITPA and their recommendations.*
- *Sex workers and activists who worked tirelessly with the panel, represented the sex workers cause in court.*
- *These recommendations which have already been agreed on by the Central Government are important for advocacy.*

Four Important Components of Sex Work



Sex Worker



Space
Brothel



Third Party



Clients

Components of Sex Work

- **Sex worker** is an adult female, trans or male who **provides sexual services** in return for money or other benefits.
 - Adult
 - Sex workers do not sell their bodies/sex. They provide a service like other service providers.
 - They have the right to enter and exit this work with dignity.
- **Client** is an adult female, male or trans who receives sexual services.
- Agent/ Third Party includes auto rickshaw drivers, cigarette and pan vendors, brothel madams, sex workers themselves who provide reference to other workers or give rooms on rent to other workers, out of work or older sex workers.
- **Brothel** is any room or space given out for sex workers to work.
- All these components need to operate within **safe working environment**. This is an environment where sex workers can negotiate safety and protect themselves from sexually transmitted infections, violence, abuse, harassment, stigma and discrimination by law enforcement, societal interventions and paying and non – paying clients.
- Safe working environment includes availability of free life saving commodities such as condoms, lubes; access to health services; freedom to access justice, complain against violence by clients or goons.

Facilitator points

1. Sex workers are adults who consent to providing sexual services. Sex workers are female, trans and male.

Please note that sex workers do not sell their bodies. This language has been given by the abolitionist movement that a woman sells her body. The facilitator must explain that the sale of any product means that full control of that product or thing is handed over to the purchaser, once and for all. That is the entire understanding in Trafficking. Once sold the person has no control over any aspect of his/ her/ their life and its decisions.

Is that the case with sex workers?

When a client pays for our service, do we retain the ability to say no to providing certain forms of service?

Once the service is given is the sex worker forced to remain or does she have the freedom to leave?

If the client pays for one service, can he demand more than one service for the same amount? Do we have the right to refuse?

These factors decide whether sex workers sell their bodies or provide a sexual service.

Take the example of a lawyer or surgeon – do they sell their brain or their hand, or do they provide a service? If the answer to this question is that lawyers and doctors provide a service, why does it change when it comes to a sex work? Why are sex workers told that they sell their bodies?

There is a sizeable population of male and trans sex workers. Please remember the motto of NNSW and its members is that any individual who does not consent to sex work must be empowered to exit this work with dignity. She/ He/ They have full right to enter and full right to exit with dignity. At no point should a sex worker be conflated with victims of trafficking. There are often questions about people under 18. Please note any individual under 18 years is a minor and it is illegal in India for any minor to be engaged in work. In the sex worker rights movement, we strongly oppose the entry of any minors. Our partners work to ensure that any minors found in sex work are counselled by NNSW workers, removed to safety, sent back to their parents or sent to CWC.

1. Clients are adult male, trans and female. While most clients are male, it is possible to see trans and female clients also. Clients are a key part of our work.
2. Agents and Third parties could also be sex workers themselves.
3. Brothel spaces are used by sex workers to work together safely. Sex workers state that the risk to their safety increases when they work alone. Under ITPA brothels are equated with spaces of trafficking.

Inform all participants that all these elements need to be safely available for sex workers if they need to work safely, free of violence and fear.

If condoms are used as evidence of sex work and used to arrest workers, it impacts the health and safety of all workers.

Part 2. Legal approaches

Understanding how view
these four aspects



Approach of the Law

Laws are aimed at each of the four categories

1. Laws aimed against the sex worker.
2. Laws aimed against the third parties involved in management and organisation of sex work.
3. Laws aimed at those who purchase sexual services.
4. Laws against the use of spaces for sex work.

1. Laws aimed at the sex worker

a. The act of prostitution / sex work (Provision of sexual services).

b. Soliciting (loitering for the purposes of prostitution/ sex work).

c. Type of work engaged in.


For instance, laws can make the act of sex work illegal dependent on where or how it occurs: in a brothel; outdoors in public places (i.e. street work); as escort work (i.e. where a sex worker is dropped off / goes to the client); or as an independent sex worker working from a private residence.

Distinctions can be made by whether a sex worker is working alone or with others.

d. Eviction, rehabilitation on arrest

e. Nuisance and Public Order


2. Laws aimed at Third Parties



- a. Living off the earnings of a sex worker – those who depend wholly or in part on the income of a sex worker (e.g. a partner, adults in a family).
- b. Brothel keeping – i.e. those owning or managing and, sometimes those assisting with, operating a brothel.
- c. Procuring – arranging or making someone available for prostitution

3. Laws aimed at those who use sexual service

4. Laws aimed at spaces



✗ Demand Reduction laws aimed at the client

✗ Brothel keeping

✗ Lodges and rooms used for sex work

Legal Approaches



1. Criminalisation / Prohibition
 - a. Total criminalisation / Prohibition / Abolition
 - b. Regulation - Partial criminalisation / Prohibition
2. Legalisation
3. Decriminalisation

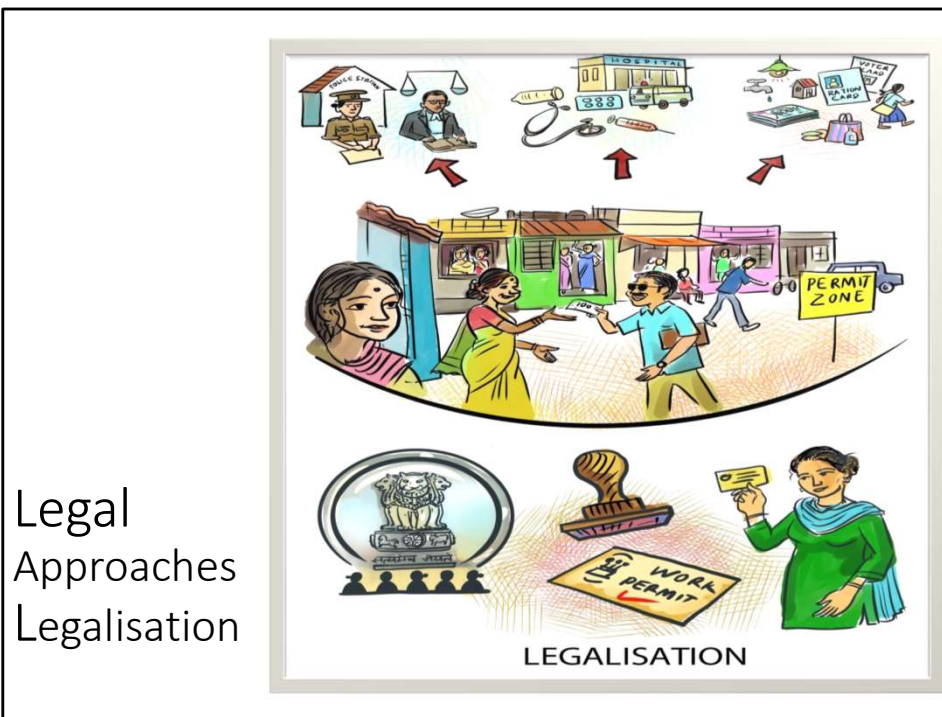


A. Total Criminalisation / Prohibition / Abolition

Under this approach all forms of sex work are unacceptable and therefore illegal. The provision, demand, space, third party – all are illegal. Examples of this form of regulation can be found in Middle Eastern countries, the USA.

B. Regulation

Is a form of partial criminalisation or a modified form of prohibition. The provision of sexual services is permitted. However, activities related to it such as soliciting, brothel, brothel keeping, demand, procuring and living off earnings of sex work may be illegal. This approach is currently prevalent in India.



Sex work controlled by government and is legal under specific conditions which are laid down by the Government.

The premise is sex work is necessary for stable social order, but it should be controlled to protect public order and health.

Conditions can include

Licensing, registration, and mandatory health checks. Licenses can be issued by police and the judiciary, elected municipal authorities

Subject to compulsory health check ups at regular intervals

License given for a specific zone only

Workers without the necessary license /permits are subject to criminal penalties.

Sex work has been legalised in Netherlands, Germany, Iceland, Switzerland, Austria, Denmark, etc.



Repeal of all laws on sex work or the removal of provisions that criminalises all aspects of sex work.

Distinction is made between

- (i) voluntary sex work and
- (ii) that involving either force and coercion or child prostitution
(These are Criminal).

No sex work-specific regulations imposed by the Government.

Work is regulated through existing statutes and regulations.

It is recognised as a legitimate business and, as such, it comes under conventional employment and health regulations and is subject to standard local council business and planning controls.

Those engaged in sex work have the same rights and responsibilities as other workers (e.g. paying taxes).

Demand of the sex worker rights movement

✎ **Sex workers demand a decriminalised set up**

When sex workers come together without fear of persecution they are able to fight exploitative practices

✎ **Removing the criminalized environment**

Though sex work is not illegal in India, there are laws such as the Immoral Traffic Prevention Act that continue to criminalize women in sex work and those who support her work such as third parties.

✎ **Unsafe Working Conditions**

Criminalized environment results in unsafe working conditions for sex workers including exploitative practices by third parties and lack of access to nondiscriminatory health services. Decriminalisation helps sex workers organise and address all forms of exploitation, including abusive, sub-standard or unfair working conditions instituted both within and outside sex work

Explain to participants that the recommendations both those accepted and those not agreed upon provide scope for advocacy:

- *The most crucial role that the CBOs and sex workers can play is to monitor the implementation of the recommendations and alert the Supreme Court when they are not being implemented.*
- *In the long term these recommendations (those accepted and those that have not been accepted) should be used for Strengthen the demand of decriminalisation of sex work in India,*
- *reducing violence against sex workers, strengthen our arguments against forced rescue and detention of adult consenting sex workers in rescue homes with the magistrate*
- *help the sex worker rights movement to argue that Trafficking Laws should be read down in the context of adult consenting sex workers and their clients. As we are all aware the Government plans to introduce the Trafficking bill in the future. Some of the arguments of survey of rescue homes, violence and harassment of police will give further impetus to the demand for decriminalisation of sex work.*
- *The direction given on the issue of Violence by the police should be translated and shared with every CBO in NNSW in all languages.*
- *Immediately approach the State Government to undertake a survey of ITPA Rescue Homes to release all adult women who are placed there against their will (this must be done by all NNSW members on priority)*
- *Many sex workers continue to face discrimination in health care when they experience violence. Now sex workers can use these directives to access better health care and all support accessed by survivors of violence.*
- *Legal Aid Services have now been directed by Supreme Court to take up issues related to sex work. This is a great opportunity for all members to approach the SLSA/ DLSA etc to conduct sensitisation programs. Importantly, such sensitisation programs must take up rights of sex workers to access courts when faced with police harassment. This is a critical victory for the sex workers rights movement.*