

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

Session - Emerging Shifts in Sex
Workers' Rights

Supreme
Court Order
on Rights of
Sex Workers
May 2022



Developed by SANGRAM
Sanstha, 2023
VAMP Institute



Session – Emerging shifts in sex worker rights

Supreme Court Order on Rights of Sex Workers, May 2022

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

2023/ SANGRAM Sanstha. VAMP Institute

Legal Team, Advisors, Editors

Rakesh Shukla; Kranti LC; Aarthi Pai; Vidya Ravi; Meena Seshu, Laxmi Murthy

Session Objective

This session is aimed at creating awareness on the Supreme Court Judgement of Budhadev Karmaskar Versus State of West Bengal and the consequent interim order of the Supreme Court in May 2022.

It discusses the possible impact of Interim orders of Supreme Court on rights of sex workers.

The session discusses possible avenues for sex worker groups and activists emerging from this order.

Background

1. Sex worker brutally beaten to death by accused, Budhadev. [1999]
2. Trial Court and High Court convicted accused. Accused appealed before Supreme Court and the conviction was confirmed. [2011]
3. "... 'prostitutes' (sic) also have a right to live with dignity under [Article 21](#) of the Constitution of India since they are also human beings and their problems also need to be addressed." [Sc, Cr App 15/2010, Order dated 14 February 2011]
4. Case was expanded to address the problems faced by sex workers and a Panel set up. Terms of Reference made to the Supreme Court panel
5. Prevention of Trafficking
6. Rehabilitation of sex workers who wish to leave sex work
7. Conditions conducive for a sex worker to live with dignity according to Article 21 of Indian Constitution
8. Panel gave detailed recommendations made on how the rights of sex workers can be protected and upheld. [15th Interim Report, 2015]
9. The Government agreed to a few of the recommendations of the Supreme Court Panel. Supreme Court gave directions to the State Governments on the recommendations that the Central Government agreed with. [19th May 2022]
10. State governments instructed to implement accepted recommendations.

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.*

What are the orders of the Supreme Court - 1

ii) Any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault, including immediate medical assistance,

AGREED

in accordance with Section 357C of the Code of Criminal Procedure, 1973 read with "Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence", Ministry of Health and Family Welfare (March, 2014).

iv) The State Governments may be directed to do a survey of all ITPA Protective Homes so that cases of adult women, who are detained against their will can be reviewed and processed for release in a time-bound manner.

AGREED

v) It has been noticed that the attitude of the police to sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised.

AGREED

The police and other law enforcement agencies should be sensitised to the rights of sex workers who also enjoy all basic human rights and other rights guaranteed in the Constitution to all citizens.

Police should treat all sex workers with dignity and should not abuse them, both verbally and physically, subject them to violence or coerce them into any sexual activity.

These are the recommendations of the Supreme Court Panel that the Central Government did not dispute.

Activity – As the participants to read these recommendations. Conduct a discussion with them on the possible avenues for advocacy.

By these recommendations, it is clear that Sex workers' right to stigma and discrimination free health service is upheld. Similarly, right against invasion of privacy by the media, preventing police law enforcement from using life saving equipment such as condoms and lubes as evidence of an offence.

Another positive move by the Supreme Court is to ensure that the State and District Legal Aid Services extends the benefit of legal aid to sex workers. The space of legal aid has been denied to sex workers. Due to the existing perception that sex work is illegal, sex workers have not been able to access police or legal aid when their rights have been violated. Lawyers have also been reluctant to provide legal assistance often advising them to pay fines rather than contest charges of soliciting, or doing sex work. Consequently, these recommendations calling on the legal aid authorities to increase their interaction with sex workers will be an immense push for the recognition of sex worker rights. In this case, it is compulsory for the SLSA and DLSA to give information on how they can access the courts and enforce their rights to prevent harassment at the hands of police and traffickers. This is a huge entry point for the sex worker groups. They must use this for discussions in their advocacy meetings.

The recommendation for the review of survey homes to be conducted by the Ministry of Women and Child is encouraging and paves the way for future advocacy efforts. That sex workers must not be placed in ITPA Homes against their consent.

What are the orders of the Supreme Court - 2

vi) The Press Council of India should issue guidelines for the media to take utmost care not to reveal the identities of sex workers, during arrest, raid and rescue operations, whether as victims or accused and not to publish or telecast any photos that would result in disclosure of such identities. **AGREED**

Section 354C, IPC which makes voyeurism a criminal offence, should be strictly enforced against electronic media, to prohibit telecasting photos of sex workers with their clients in the garb of capturing the rescue operation.

Vii) Measures that sex workers employ for their health and safety (e.g., use of condoms, etc.) must neither be construed as offences nor seen as evidence of commission of an offence. **AGREED**

ix) Central Government and the State Governments, through National Legal Services Authority, State Legal Services Authority and District Legal Services Authority, should carry out workshops for educating the sex workers about their rights vis-a-vis the legality of sex work, rights and obligations of the police and what is permitted/prohibited under the law. **AGREED**

Sex workers can also be informed as to how they can get access to the judicial system to enforce their rights and prevent unnecessary harassment at the hands of traffickers or police.

These are the recommendations of the Supreme Court Panel that the Central Government did not dispute.

Activity – As the participants to read these recommendations. Conduct a discussion with them on the possible avenues for advocacy.

By these recommendations, it is clear that Sex workers' right to stigma and discrimination free health service is upheld. Similarly, right against invasion of privacy by the media, preventing police law enforcement from using life saving equipment such as condoms and lubes as evidence of an offence.

Another positive move by the Supreme Court is to ensure that the State and District Legal Aid Services extends the benefit of legal aid to sex workers. The space of legal aid has been denied to sex workers. Due to the existing perception that sex work is illegal, sex workers have not been able to access police or legal aid when their rights have been violated. Lawyers have also been reluctant to provide legal assistance often advising them to pay fines rather than contest charges of soliciting, or doing sex work. Consequently, these recommendations calling on the legal aid authorities to increase their interaction with sex workers will be an immense push for the recognition of sex worker rights. In this case, it is compulsory for the SLSA and DLSA to give information on how they can access the courts and enforce their rights to prevent harassment at the hands of police and traffickers. This is a huge entry point for the sex worker groups. They must use this for discussions in their advocacy meetings.

The recommendation for the review of survey homes to be conducted by the Ministry of Women and Child is encouraging and paves the way for future advocacy efforts. That sex workers must not be placed in ITPA Homes against their consent.

Recommendations Not Agreed on by Government- 1

(i) Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases, on the basis of 'age' and 'consent'.

When it is clear that the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action.

NOT
AGREED

There have been concerns that, police view sex workers differently from others.

When a sex worker makes a complaint of criminal/sexual/any other type of offence, the police must take it seriously and act in accordance with law.

iii) Whenever there is a raid on any brothel, since voluntary sex work is not illegal and only running the brothel is unlawful, the sex workers concerned should not be arrested or penalised or harassed or victimised.

NOT
AGREED

Explain to the participants that these are the recommendations made by the Supreme Court Panel in the 15th Interim Report. The Government has not agreed to these recommendations, hence the debates are likely to continue on this in the coming hearing on the matter.

Discussion on Slide 2,3,4,5

Ask participants to observe the following after reading both slides:

*These were the most difficult negotiations that the sex worker groups, activists, lawyers had during discussions held with the Supreme Court Panel. While the government has agreed to **rights OF sex workers**, they have not agreed to any recommendations that may confer **Right TO sex work**.*

The primary demand has been to read down the provisions of ITPA when it involves adult consenting sex workers and their clients. Conflation of sex work with the anti – trafficking provisions have resulted in sex workers being targeted as victims of trafficking and being rescued against their consent.

Hence sex worker groups had demanded that consent of the sex worker must be recognised and when a sex worker is participating in the work of her own consent, the police must not interfere. This argument has been at the heart of the rights movement demand. That sex workers choose sex work as a viable livelihood. This argument has been rejected by abolitionist groups in India, who under the garb of being anti trafficking groups, state that the woman does not have the capacity to consent in such situations.

Similarly, the provisions on Raid and Rescue powers given to law enforcement under the ITPA; has been at the centre of the rights violations faced by sex workers. The recommendation that sex workers who were working in brothels of their own volition not be arrested or harassed was not agreed to by the government.

It has been the experience of sex workers working in brothels that their minor children living with them get picked up during raid and rescue operations and they are separated. This practice continues despite Supreme Court recommendations to the contrary that sex workers must not be separated from their children. Abolitionist groups claim that minors are victims of sexual exploitation or that minors are put into the trade by sex workers. Sex workers continue to face the backlash of these provisions.

Recommendations Not Agreed on by Government- 2

Viii) The Central Government and the State Governments must involve the sex workers and/or their representatives in all decision-making processes, including planning, designing and implementing any policy or programme for the sex workers or formulating any change/reform in the laws relating to sex work. **NOT AGREED**

This can be done, either by including them in the decision-making authorities/panel and/or by taking their views on any decision affecting them.

x) no child of a sex worker should be separated from the mother merely on the ground that she is in the sex trade.

if a minor is found living in a brothel or with sex workers, it should not be presumed that he/she has been trafficked. **NOT AGREED**

In case the sex worker claims that he/she is her son/daughter, tests can be done to determine if the claim is correct and if so, the minor should not be forcibly separated."

These are the recommendations of the Supreme Court Panel that the Central Government did not dispute.

Activity – As the participants to read these recommendations. Conduct a discussion with them on the possible avenues for advocacy.

By these recommendations, it is clear that Sex workers' right to stigma and discrimination free health service is upheld. Similarly, right against invasion of privacy by the media, preventing police law enforcement from using life saving equipment such as condoms and lubes as evidence of an offence.

Another positive move by the Supreme Court is to ensure that the State and District Legal Aid Services extends the benefit of legal aid to sex workers. The space of legal aid has been denied to sex workers. Due to the existing perception that sex work is illegal, sex workers have not been able to access police or legal aid when their rights have been violated. Lawyers have also been reluctant to provide legal assistance often advising them to pay fines rather than contest charges of soliciting, or doing sex work. Consequently, these recommendations calling on the legal aid authorities to increase their interaction with sex workers will be an immense push for the recognition of sex worker rights. In this case, it is compulsory for the SLSA and DLSA to give information on how they can access the courts and enforce their rights to prevent harassment at the hands of police and traffickers. This is a huge entry point for the sex worker groups. They must use this for discussions in their advocacy meetings.

The recommendation for the review of survey homes to be conducted by the Ministry of Women and Child is encouraging and paves the way for future advocacy efforts. That sex workers must not be placed in ITPA Homes against their consent.

Other Recommendations

ii) Any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault, including immediate medical assistance, **AGREED**

In accordance with Section 357C of the Code of Criminal Procedure, 1973 read with "Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence", Ministry of Health and Family Welfare (March, 2014).

iv) The State Governments may be directed to do a survey of all ITPA Protective Homes so that cases of adult women, who are detained against their will can be reviewed and processed for release in a time-bound manner. **AGREED**

v) It has been noticed that the attitude of the police to sex workers is often brutal and violent. It is as if they are a class whose rights are not recognised. **AGREED**

The police and other law enforcement agencies should be sensitised to the rights of sex workers who also enjoy all basic human rights and other rights guaranteed in the Constitution to all citizens.

Police should treat all sex workers with dignity and should not abuse them, both verbally and physically, subject them to violence or coerce them into any sexual activity.

These are the recommendations of the Supreme Court Panel that the Central Government did not dispute.

Activity – As the participants to read these recommendations. Conduct a discussion with them on the possible avenues for advocacy.

By these recommendations, it is clear that Sex workers' right to stigma and discrimination free health service is upheld. Similarly, right against invasion of privacy by the media, preventing police law enforcement from using life saving equipment such as condoms and lubes as evidence of an offence.

Another positive move by the Supreme Court is to ensure that the State and District Legal Aid Services extends the benefit of legal aid to sex workers. The space of legal aid has been denied to sex workers. Due to the existing perception that sex work is illegal, sex workers have not been able to access police or legal aid when their rights have been violated. Lawyers have also been reluctant to provide legal assistance often advising them to pay fines rather than contest charges of soliciting, or doing sex work. Consequently, these recommendations calling on the legal aid authorities to increase their interaction with sex workers will be an immense push for the recognition of sex worker rights. In this case, it is compulsory for the SLSA and DLSA to give information on how they can access the courts and enforce their rights to prevent harassment at the hands of police and traffickers. This is a huge entry point for the sex worker groups. They must use this for discussions in their advocacy meetings.

The recommendation for the review of survey homes to be conducted by the Ministry of Women and Child is encouraging and paves the way for future advocacy efforts. That sex workers must not be placed in ITPA Homes against their consent.

Other Recommendations

- **Aadhar cards shall be issued to sex workers,**
 - Based on a Proforma certificate issued by the UIDAI and
 - Submitted by the Gazetted Officer of NACO, Project Director of State AIDS Control Society.
- There shall be no breach of confidentiality, including by assignment of a code in the enrolment numbers that would identify the card holder as a sex worker.
- **Benefit of this recommendation**
 - Sex workers who receive services in HIV/AIDS prevention programs of the Government of India (NACO and SACS), apply for Aadhar services but are denied due to lack of proof of residence.

During the COVID epidemic, sex workers were not able to access social assistance, due to lack of identification documents. Most sex workers have often left homes or work in other parts of the country. Hence, they are not able to access ID documents since they have no supporting papers.

Sex workers who are registered in Targeted Intervention Programs must be informed of these recommendations to ensure that a large number of them are able to get access to identification documents such as the Aadhar Card. The advocacy efforts must be focused on State AIDS Control Authorities and members of the Community Based Organisations receiving HIV prevention services.

Opportunities for advocacy

- 👉 **Monitor** whether state government, health services, legal services, press council is complying with the directions of the Supreme Court
- 👉 **Document** challenges being faced in getting authorities or stakeholders to comply with the recommendations at the state and district level.
- 👉 **Assist** advocates on record by sending them updates when any of these stakeholders are not complying with the directions so that lawyers can intervene and bring it to the notice of the Supreme Court
- 👉 **Expediate** survey of detained consenting adult sex workers in rehab centres for their time bound release
- 👉 **Ensure** that sex workers who are receiving HIV/AIDS services as part of the prevention program run by the State and Central Government
 - 👉 Health care services are non-discriminatory to community.
- 👉 **Conduct**
 - 👉 Sensitisation program about the rights of sex workers to legal aid services
 - 👉 Awareness among community against police violence
- 👉 **Long Term Advocacy**
 - 👉 Advocate for decriminalisation of sex work in India.
 - 👉 Advocate to add the element of consent in Sections of ITPA and differentiating between trafficking and 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.*