



SEX WORKERS LEAD THE WAY TRAINING CURRICULUM FOR VAMP INSTITUTE

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



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SANGLI, MAHARASHTRA, INDIA

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.

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2. Laws and Policies Impacting Rights of Sex Workers

This segment deals with the numerous laws in India that have bearing and impact on the lives of sex workers. The module is structured and premised on the current discourse on rights of sex workers, positions taken by sex worker networks around the world and a rights-based approach to sex workers rights which has been evolved in partnership with members of the global sex worker networks.

Case studies, Research documents, legal briefs, training modules, including resources of SANGRAM, VAMP, NSWP have been extensively referred to in developing this module. Over a period of time local facilitators will be able to use their own experiences to replace the case studies provided for discussion.

There are seven sections to the Module on Laws and Policies Impacting Rights of Sex Workers.

Section 1. Approaches to Sex Work

What is sex work? Integral elements of this work

Differentiating between Criminalisation, Legalisation, Decriminalisation

Advocating for the Decriminalised Demand

Section 2. Emerging Shifts in Sex Workers' Rights

Supreme Court Recommendations 2022 [re Budhadev Karmaskar V. Union of India]

15th Interim SC Panel Recommendations, Road ahead for advocacy

Section 3. Shifting Focus from Recognition to Rights Affirmation and Protection

Reading down Section 377, Indian Penal Code.

Transgender Persons (Protection of Rights) Act, 2019; Strategies for Advocacy

Section 4. Tackling Violence in the personal and private sphere

Protection of Women from Domestic Violence Act, 2005

Gender Based Violence

Section 5. Sex Work and Trafficking – Unravelling the Puzzle.

Immoral Traffic Prevention Act, Section 370 Indian Penal Code

Section 6. The Cyber Highway and Pitfalls

Information Technology Act (2000)

Section 7. Negotiating the Labyrinth of the Law

First Information Reports – Our Rights

Right to Bail? Is there one for sex workers.

Legal Aid

Brief description of each section of the Legal Module

The first section is the building block of the sex workers movement advocacy for rights. It comes from the recognition of the legal regimes that exist and the way they impact sex workers. It helps participants understand why sex workers in India and the South Asia region demand full Decriminalisation.

The second section is focused on understanding the recommendations of the Supreme Court which was given in May 2022. The order is one in a series of crucial recognitions for the rights of people in sex work and their right to work. The module will introduce participants to the broader discourse and the need to premise all initiatives and advocacy keeping sex workers at the centre.

The third section engages with the movement for trans rights and the emerging law and practice. From a brief overview of the 2019, landmark Judgment by the Supreme Court reading down Section 377 of the Indian Penal Code, the module traces the crucial victory for trans people in the now famous NALSA judgment and the framing of a new law “Transgender Persons (Protection of Rights) Act, 2019”. There have been numerous strides made in seeking reservations, State specific Rules framed for trans persons. This module engages with the ongoing debates.

The fourth section engages with the topic of violence in intimate and personal spaces in the lives of people in sex work and possible strategies to tackle it through the Protection of Women from Domestic Violence Act, 2005. The module will share strategies through case studies and discussions on the role that various structures such as the Protection Officer, Police, judiciary, legal aid can play in providing protecting against domestic violence.

The fifth section is an extremely contentious space between the sex worker rights and abolitionist groups. The conflation of trafficking and sex work has muddied the waters and caused tremendous harm to sex workers, while making it difficult for victims of trafficking to access the necessary assistance that they need. This module engages with the law and its interpretation that has resulted in these fault lines. The Immoral Traffic Prevention Act, Section 370 of the Indian Penal Code, provisions of the Juvenile Justice Act are a few that have been used to clamp down on sex work in India.

The sixth section engages with Cyber Laws and offers suggestions and solutions for workers who have faced cyber stalking, taking of and dissemination of pictures and videos without consent. Many workers have reported being blackmailed or harassed as a consequence of these offences. However, they have been unable or assistance when approaching the local police.

No curriculum is complete without seeking to engage and build sex work capacities. The final module builds participant skills and understanding in the practical aspects of law such as the importance of a well drafted complaint, what to look for in an First Information Report, Right to Bail when arrested and legal aid.

The curriculum is designed to communicate concepts that can be applied on field by sex workers within their own settings. It is envisaged that this basic curriculum will be ***enriched with the experiences of the trainers and participants as the Institute evolves***. This is a structure that will be fashioned by the skills, capacities of the trainers and as they grow more confident in the techniques of using the curriculum, the content is likely to become richer.

Towards this end Trainers are encouraged to be flexible with the modules and change the order depending on the skills and capacities of the participants attending the Institute. Trainers are also encouraged to add local resources, such as local voices, experiences, films, videos, network position papers, research report briefs before the start of the first training and add as the training continues.

Review Process

Finally, a review sheet has been developed which is the final document of this curriculum. Each session of the module must be reviewed by the Trainers. The Trainers are also expected to complete the reflective review after they take the session so that they are able to understand the gaps and strengthen content and its delivery in future Institutes.

Section -

Emerging Shifts in Sex Worker Rights

Review of Supreme Court Order on Rights of
Sex Workers

in re: Budhadev Karmaskar v. UOI, 19 May 2022

SECTION: Emerging Shifts in Sex Workers' Rights

Time : 1 ½ hours

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.

Material : I. **Powerpoint presentation** with notes for the facilitator (With an Audio Visual or as a Flip Chart) with

- a. Background of Judgement, Analysis of Judgement
- b. Working Group Discussion
- c. Case Study for Discussion
- d. Opportunities of advocacy on Panel Recommendations

II. **Annexures- Fact Sheets**

- a. Frequently Asked Questions (Reading Material)
- b. Newspaper article on the Supreme Court Order of May 2022 (Reading Material)

Method : Presentation and Group Discussions

Topics for guided discussions have been provided for the participants to further develop their understanding and perspective on the issue. These include questions and case studies that can be done in small groups. These may be done following the presentation.

Frequently Asked Questions may be used by the Facilitator to explain any questions raised by the audience. In the event there are questions asked outside this set of questions, the facilitator can contact the SANGRAM team. Details of the contact person are provided in the opening page.

The newspaper article is meant as an orientation for participants who wish to learn more about the issue. It can be distributed amongst the audience as an aid to discussion.

Presentation can be done with help of projectors and is advisable to procure one for the training session. In the event a projector is not available, the training can be conducted with flip charts/ flip books.

PART 1. PRESENTATION SLIDES

Slide 1. Background

- ✚ Sex worker brutally beaten to death by accused, Budhadev. [1999]
- ✚ Trial Court and High Court convicted accused. Accused appealed before Supreme Court and the conviction was confirmed. [2011]
- ✚ “... ‘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]
- ✚ 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
- ✚ Prevention of Trafficking
- ✚ Rehabilitation of sex workers who wish to leave sex work
- ✚ Conditions conducive for a sex worker to live with dignity according to Article 21 of Indian Constitution
- ✚ Panel gave detailed recommendations made on how the rights of sex workers can be protected and upheld. [15th Interim Report, 2015]
- ✚ 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]
- ✚ State governments instructed to implement accepted recommendations.

Slide 1. 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.

Slide 2 What are the Orders of the Supreme Court

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, 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).	<u>AGREED</u>
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.	<u>AGREED</u>
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. 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.	<u>AGREED</u>
vi) The Press Council of India should be urged to issue appropriate 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.	<u>AGREED</u>

Besides, the newly introduced Section 354C, IPC which makes voyeurism a criminal offence, should be strictly enforced against electronic media, in order 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.	<u>AGREED</u>
ix) The 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. 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.	<u>AGREED</u>

Slide 2. Facilitator Notes

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.

Slide 3. Other recommendations of the SC panel which were not agreed by Government

<p>(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'.</p> <p>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.</p> <p>There have been concerns that, police view sex workers differently from others.</p> <p>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.</p>	<p><u>NOT</u> <u>AGREED</u></p>
<p>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.</p>	<p><u>NOT</u> <u>AGREED</u></p>
<p>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.</p> <p>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.</p>	<p><u>NOT</u> <u>AGREED</u></p>
<p>x) As already recommended in the 6th interim Report dated 22.03.2012, no child of a sex worker should be separated from the mother merely on the ground that she is in the sex trade.</p> <p>Further, if a minor is found living in a brothel or with sex workers, it should not be presumed that he/she has been trafficked.</p> <p>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."</p>	<p><u>NOT</u> <u>AGREED</u></p>

Slide 3. Facilitator Notes

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 and Slide 3

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.

Slide 4. 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.

Slide 4. Facilitator Notes

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.

Slide 5 Opportunities for advocacy on Panel Recommendations

- ✚ Monitor whether the state government, health services, legal services, press council is complying with the directions of the Supreme Court
- ✚ Document any challenges being faced in getting authorities or stakeholders to comply with the recommendations at the state and district level.
- ✚ Ensure that sex workers who are receiving HIV/AIDS services as part of the prevention program run by the State and Central Government
- ✚ Assist the 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
- ✚ Awareness among community against police violence
- ✚ Expediting survey of detained consenting adult sex workers in rehab centres for their time bound release
- ✚ Health care provider services to be non-discriminatory to community.
- ✚ Conduct sensitisation program about the rights of sex workers to legal aid services
- ✚ Long Term Advocacy
 - Demand for decriminalisation of sex work in India.
 - Demand to add the element of consent in Sections of ITPA and differentiating between trafficking and sex work.

Slide 4. Facilitator Notes

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.*

PART 2. ANNEXURES

ANNEXURE 1.	WORKING GROUP DISCUSSION IDEAS
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- Question 1.** Do you think that the guidelines has benefited sex workers in India? If Yes How. If No – why not?
- Question 2.** What are the opportunities for advocacy from this Order?
- Question 3.** What challenges can we anticipate in the advocacy process? How can we overcome those challenges?
- Question 4.** What are the possible avenues of advocacy with
- Legal Aid Service Authorities (District/ State)
 - Health Services
 - Media
- Question 5.** Draft a letter for each of the above stakeholders with the key issues and recommendations that you would like to convey to them.



ANNEXURE 2. FREQUENTLY ASKED QUESTIONS

1. Is sex work legalised in India after the Budhadev Karmaskar case?

NO. The Supreme Court **HAS NOT** legalised sex work. The Supreme Court has continued to recognise that sex workers who work of their own volition have a right to a life of dignity. They have only underscored or recognised some of the rights of sex workers and called on State Governments to protect those rights.

2. Is carrying of condom an offence for which a sex worker can be arrested?

NO, The Supreme Court directed police not to penalise a sex worker carrying condom. 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. Sex worker carrying condom cannot be arrested or charged of any offense.

3. Does the sex worker who faced sexual violence have a right to medical assistance?

Yes, 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. 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), 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. All the medical evidence tests and reporting shall be conducted by Health Providers in case of sexual assault reported.

4. What are the rights of sex workers when arrested?

All sex workers have the same rights as other citizens in matters of arrest and bail. 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. 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. 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.

5. Can a sex worker get an Aadhar card without an address proof?

Yes, Supreme Court issued directions that a sex worker without address proof is entitled to Aadhar card. Sex workers who are part of Targeted Interventions will be able to get Aadhar Cards on the basis of a proforma verified by the PD, SACS. In the case of sex workers who are not part of any TI, it will be issued after verification by the State Legal Services Authority.

6. Can a sex worker demand the media not to publish their identity in case of arrest or raid?

Yes, Sex workers can demand to keep the identity and photos of them from publishing. Supreme Court directed the Press Council of India to make appropriate guidelines 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. Media can be penalised under IPC for circulating the picture with client taken at the time of raid or arrest. The individual can file a complaint to nearest police station or even the Press Council of India for action against the newspaper.

7. Can an adult sex worker be sent to rescue home against the consent if arrested in raid or rescue operation?

Supreme Court issued direction that an adult having voluntary sex cannot be arrested or rescued. Sex workers can call for their release from rehabilitation centres where they express their unwillingness to stay back at rehabilitation centres. The State Governments are 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.

8. Can a sex worker file criminal complaint of any type?

Yes, sex workers are entitled to all rights guaranteed under Indian Constitution. 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.

Legal Aid Services are free to all citizens earning below 1 lakh irrespective of their identity and profession.

ANNEXURE 3. TOI NEWSPAPER ARTICLE

Why does the SC order mean so much to the sex worker rights movement?

Meena Saraswathi Seshu, Aarthi Pai

Times Of India, 30 May 2022

As the news began to trickle in of the Supreme Court order on sex workers' rights; there was a mixed reaction. Many felt that there was nothing new in the order. Most of these rights already exist for all citizens of India. It is precisely this disconnect with the realities of sex workers lives and struggles that needs to be addressed. Each and every recommendation has meaning. But let's begin with the very manner in which the Supreme Court has addressed sex workers – It writes of their dignity notwithstanding their profession, rights when faced with violence. For many sex workers who have been side-lined, abused in court, been told by judges that sex workers came from the gutter and would prefer a life in the gutter - these words itself are a balm that may begin a healing. So let's not mistake the celebration that's happening across India. These are hard fought victories and no shame in the celebration.

On 19 May, 2022 the Supreme Court of India gave an interim Order in an ongoing petition on the rights of sex workers. This case, Budhadev Karmaskar vs Union of India has been going on for over 10 years. The Supreme Court had set up a panel (the SC Panel) to give recommendations on how sex workers can live a life of dignity according to the rights given under the Constitution.

This SC panel met with many activists, NGOs, lawyers, sex workers and sex worker rights networks to understand the problems of sex workers and the challenges they face. NNSW members including KSWU, VAMP, UKMO, Vadamar Federation, WINS and SANGRAM were part of these discussions on many occasions. NNSW members came together and made a detailed submission with recommendations (November 2014) on the problems of the Immoral Traffic [Prevention] Act.

The SC panel made detailed recommendations to the Court on how the rights of sex workers can be protected and upheld. It is these recommendations that came up for discussion in the past week. In addition, the Supreme Court in the last year has asked for States to give ration to sex workers without asking for identification. So all these came up together in the past week.

To my mind the second most critical victory has been the directives given with regard to ITPA rescue homes.

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.

This recommendation is a recognition of the injustice that continues to be meted out to adult women who choose sex work as a form of livelihood. Women who work in brothels in Maharashtra or on the streets in other parts of India; not knowing whether on that day they will be picked up that day as trafficked victims and thrown into "Sudhar Gruhs" awaiting justice.

Under the ITPA, sex workers in brothels have been raided, forcibly rescued and then left to languish in rescue homes – all under the pretext of being trafficked victims. Incidentally, we have not had a single incident of a male or trans sex worker being raided under these provisions and sent to rescue homes. Not that I would wish this force against their will on any individual. They have been denied access to their families, lawyers, CBOs. Hyderabad, Mumbai, Pune, Sangli, Satara, Nagpur, Jalgaon, Nashik – these stories repeat themselves in their chilling

narrations and the brazen manner of the activists and NGOs who keep them locked up. A research study “Raided” undertaken by SANGRAM and VAMP in partnership with Saheli Sangh, Adhar Sanstha in Maharashtra had brought to fore this pernicious practice. It has been discussed in the Parliament when the trafficking bill was being debated in 2018. Sex workers who have been released after one or 2 years have related their trauma of being locked up away from their families. None of the rescue homes and the NGOs or activists who run them have ever owned responsibility. These women are seen as “collateral damage” for anti -trafficking efforts and relegated to the footnotes of the anti – trafficking efforts. These activists and NGOs must shoulder the responsibility and accountability for their wrongful actions done with active knowledge that the women incarcerated were not victims of trafficking but adult consenting women in sex work. The question is – will they be held accountable for their criminal acts of wrongful confinement?

Then comes the recommendations to the police

“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. 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 not regular directives. Only sex workers on the receiving end of violence and activists; who have time and again visited police stations, met with the DSP, SP, written innumerable complaints, petitioned Chief Ministers asking / demanding and pleading for the violence to stop; will understand fully the import of these words. It gives me great satisfaction that sex workers, collectives and activists alike will be able to use this directive to ensure that law enforcement agencies do not cross the line when it comes to enforcing the letter and spirit of the law.

Another crucial gain for the movement, has been the strictures against the media while covering raids and arrests.

“The Press Council of India should be urged to issue appropriate 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.”

Revealing names and faces of sex workers is routine both in the English and language media. We have found that regulatory authorities have not been an effective deterrent against this media practice. Lives have been destroyed by self – righteous and over- zealous print and electronic journalists who have splashed names and faces of women who are being pulled out of brothels, escorted into police vans. As the women desperately hide their faces, the media zooms in and takes close -up shots. Such violations and infringements of privacy go unpunished. Women are thrown out of their homes or barred from entering their villages. Driven further into destitution.

No. The Supreme Court HAS NOT legalised sex work. underscored some key rights of sex workers and called on State Governments to protect those rights. There are many more battles that will need to be fought in the courts of law in the days ahead. For the recognition that an adult woman does indeed have the right to consent and be in sex work, that she has the right to work in a safe working environment without being harassed and violated... and many others. But for the moment, lets cherish this achievement of the sex worker rights movement!