

The Supreme Court has upheld the rights of sex workers, directing state authorities to ensure their constitutionally guaranteed rights. However, these will remain words on paper until a concentrated effort is made to make them a reality on the ground. This brochure aims to raise awareness about the recommendations of the Supreme Court which have direct relevance to lives and work of sex workers. A strong ground-level campaign based on awareness of the legal position will take the right steps towards ensuring a life of dignity for all workers.

This brochure has been developed based on the Order of the Hon'ble Supreme Court in the matter Budhadev Karmaskar Versus Union Of India dated 19 May 2022 (SC Criminal Appeal 15/2020). The language of the Order has been simplified to assist in creating awareness.



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Courting Our Rights

Supreme Court Upholds Sex Workers'



Background

On 19 May 2022, the Supreme Court of India gave an interim order on the rights of sex workers. This case, **Budhadev Karmaskar Versus Union Of India** was filed in 2010 and the Supreme Court in an interim order of 2011 stated that “Sex Workers 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”.

Following this Order, the Supreme Court set up a panel in 2011 to provide recommendations.

As part of its 3rd Term Of Reference (TOR), the Panel had to recommend conditions conducive for sex workers who wish to continue working as sex workers with dignity commensurate with Article 21 of the Constitution of India.

As part of the TOR, this panel met with activists, NGOs, lawyers, sex workers, sex worker networks across India, to understand the problems of sex workers. National Network of Sex Workers' (NNSW) members including SIAAP, KSWU, VAMP, UKMO, Vadamalar Federation, WINS and SANGRAM Sanstha were part of these discussions. Members came together and made a detailed submission on the problems of the Immoral Trafficking (Prevention) Act (ITPA) and gave their recommendations.

The SC panel made recommendations to the Court on how the rights of sex workers could be protected and upheld. In addition, the Supreme Court has been active during the COVID -19 epidemic in asking for States to give ration to sex workers without asking for identity documents.

Recommendations of the Supreme Court.

In May 2022, the Supreme Court gave directions to the governments of states and Union Territories on recommendations agreed upon by

the central government. The Supreme Court instructed immediate implementation of these recommendations.

➤ 1) 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)

➤ 2) 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 released in a time-bound manner.

➤ 3) 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.

➤ 4) 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 broadcast any photos that would result in disclosure of their identity.

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

➤ 5) 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.

➤ 6) 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 should be informed as to how they can approach the judicial system to enforce their rights and prevent unnecessary harassment at the hands of traffickers or police.

Other Observations made by the Supreme Court.

The State Government/ UT's, Authorities implementing the ITPA must comply with the recommendations of the Panel and the provisions of the Act.

Every individual in this country has a right to a dignified life under Article 21 of the Constitution of India, regardless of their profession.

Authorities who have a duty under Immoral Traffic (Prevention) Act, 1956 must be mindful of their constitutional obligations.

On Aadhar Card

The Supreme Court has also issued directions that sex workers who do not have residence proof are also entitled to Aadhar Cards. It is not necessary for the person to be a part of Targeted Intervention Programs of SACS/NACO.

Sex workers who are part of Targeted Interventions (TI) will be able to get Aadhar Cards on the basis of a proforma certificate 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.

The Supreme Court has underscored key rights of sex workers and has called on State Governments to protect those rights.

➤ Health Care Providers

● **Right to medical assistance** and all protection given to sex workers who face sexual assault or violence.

➤ Police and Law Enforcement Agencies

- Should be sensitised on human rights of sex workers and constitutional rights.
- Should treat sex workers with dignity, should not abuse them verbally or physically.
- Should not subject sex workers to violence or force them into sexual activity.

➤ Right to Privacy - Media

Cannot show photographs, videos or reveal names of sex workers during raids and rescue or during arrests.

➤ **Right to Information** – NALSA, SLISA, DLSA must educate sex workers about their rights.

- Legality of sex work,
- Rights and obligations of the police
- What is permitted/prohibited under the law.
- How can they access the judicial system to enforce their rights.
- Prevent harassment by Traffickers or police.

➤ Right to Identification Documents

Lack of residence proof cannot be used to deny sex workers Aadhar Identification Documents

➤ Women who have been detained in **ITPA rescue homes** against their will, must be released.

➤ Condoms and other health products cannot be used against her as evidence of an offence.