

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



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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.

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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.

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.

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.

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

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.”

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.](#)

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.

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.