

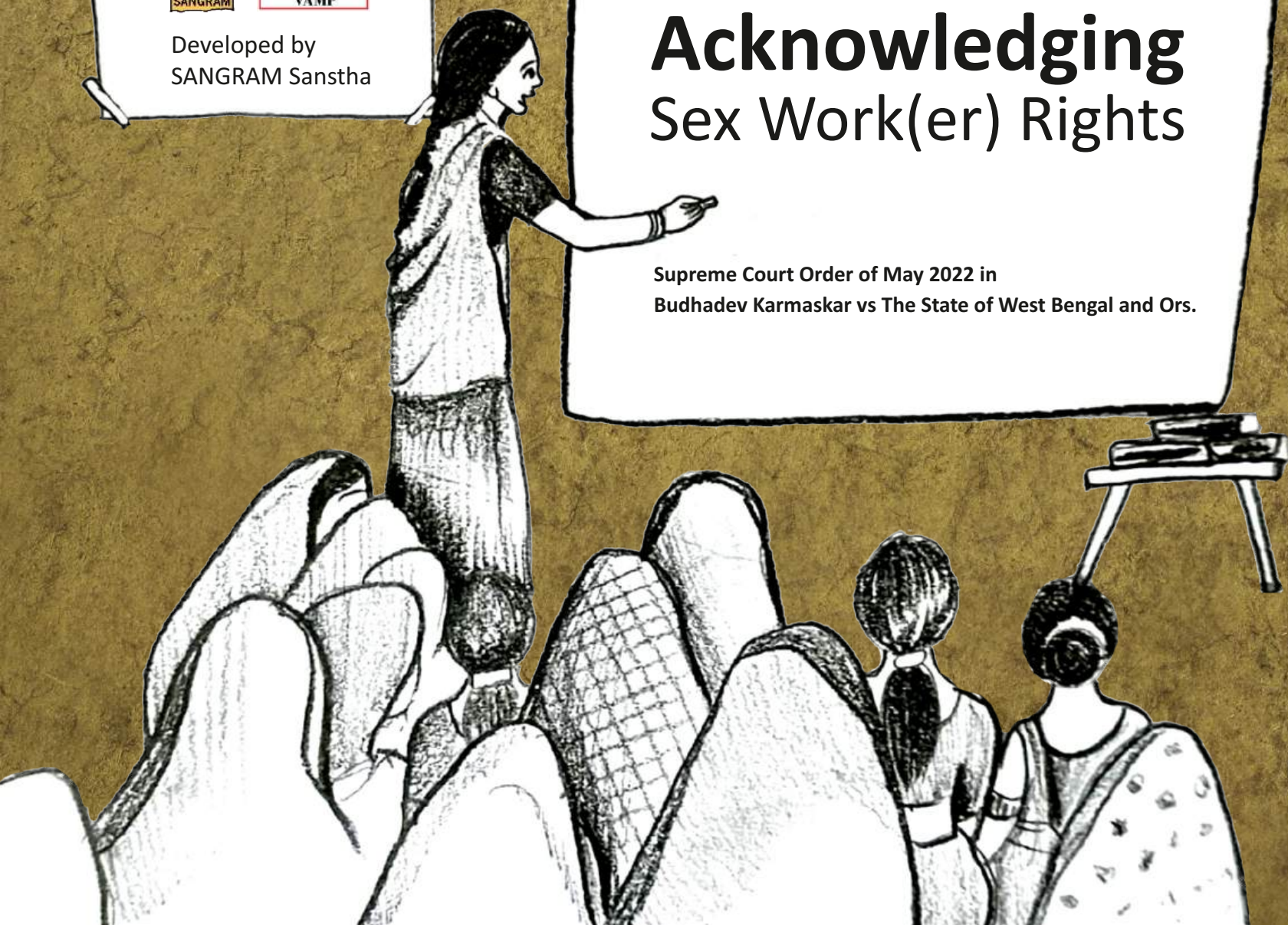


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SANGRAM Sanstha



Acknowledging Sex Work(er) Rights

Supreme Court Order of May 2022 in
Budhadev Karmaskar vs The State of West Bengal and Ors.



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SANGRAM Sanstha

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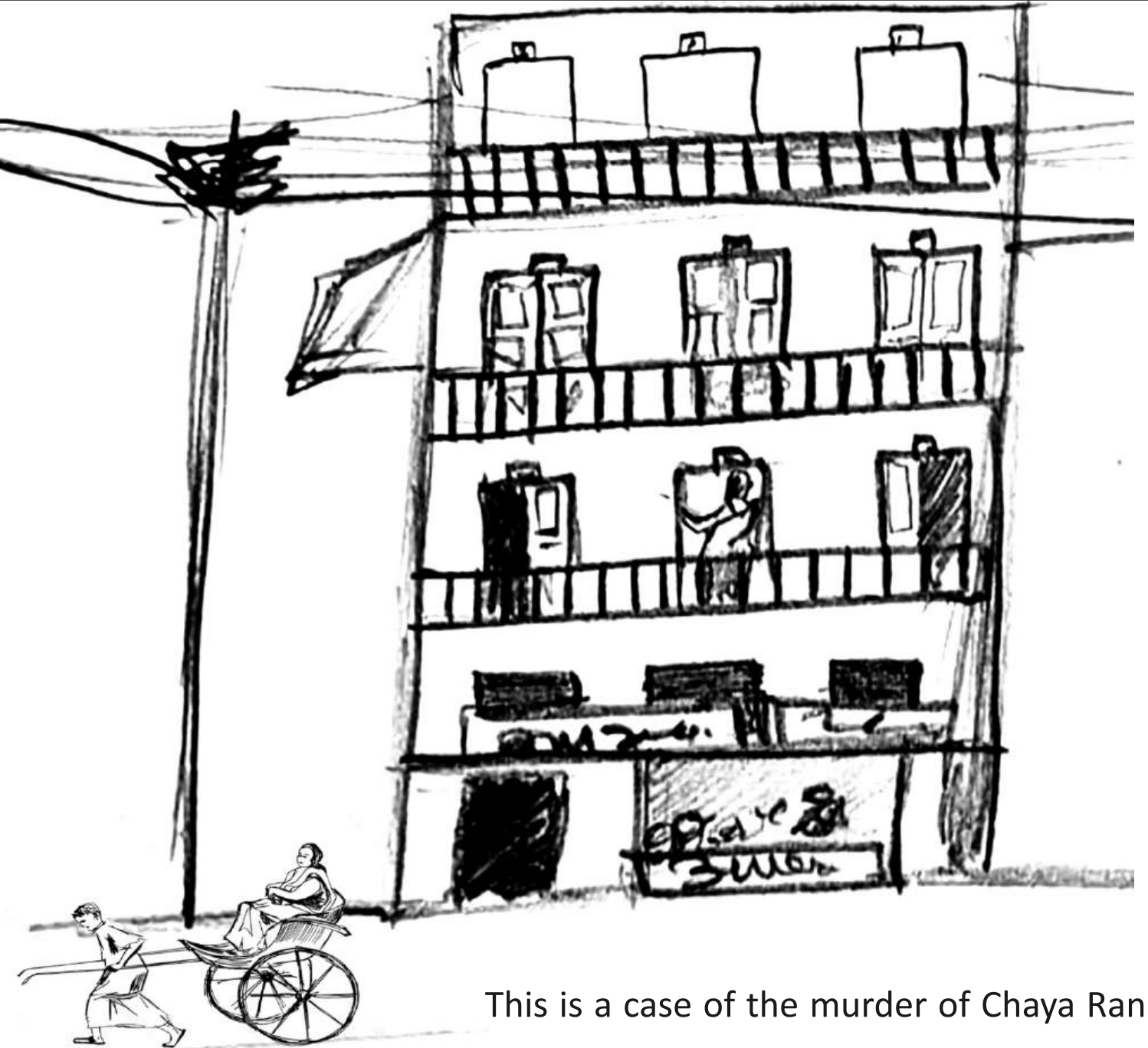
The lives of sex workers in India are extremely challenging. Living on the intersects of grey laws, policies, morality and social bias, they have found it difficult to eke out a livelihood with dignity.

Since 2011, there have been gradual shifts in the understanding of sex worker rights, due to mobilisation of sex workers and also through enabling interventions by the Supreme Court of India.

This graphic book seeks to understand these changes.



Let us tell you the story of Buri.
A sex worker in Kolkata



This is a case of the murder of Chaya Rani Pal, (Buri) who was 45 years old. Buri lived in a three storey building in Jogen Duta lane, which is part of the brothel area in Kolkata.

On September 17, 1999, around 9.00 p.m. Buri was sleeping outside her room on the second floor. A man named Budhadev Karmaskar approached her asking for sexual services. She declined.



In a fit of anger, Karmaskar assaulted Buri. He banged her head several times, kicked and thrashed her and smashed her hands and legs. Buri fell down to the first floor. Karmaskar again dragged her by her hair and banged her head against the wall.



Asha Khatoon who was on the second floor witnessed this horrific incident and raised an alarm. Karmaskar ran away.



Buri was rushed to the Medical College Hospital but she died on the way due to massive injuries to her head. She was bleeding from the head, nose and ear. She had around 11 injuries to her face.



Within five hours of the incident, the Police arrested Karmaskar in Jogen Dutta Lane.



The trial court and High Court of West Bengal convicted Budhadev Karmaskar, who then approached the Supreme Court.

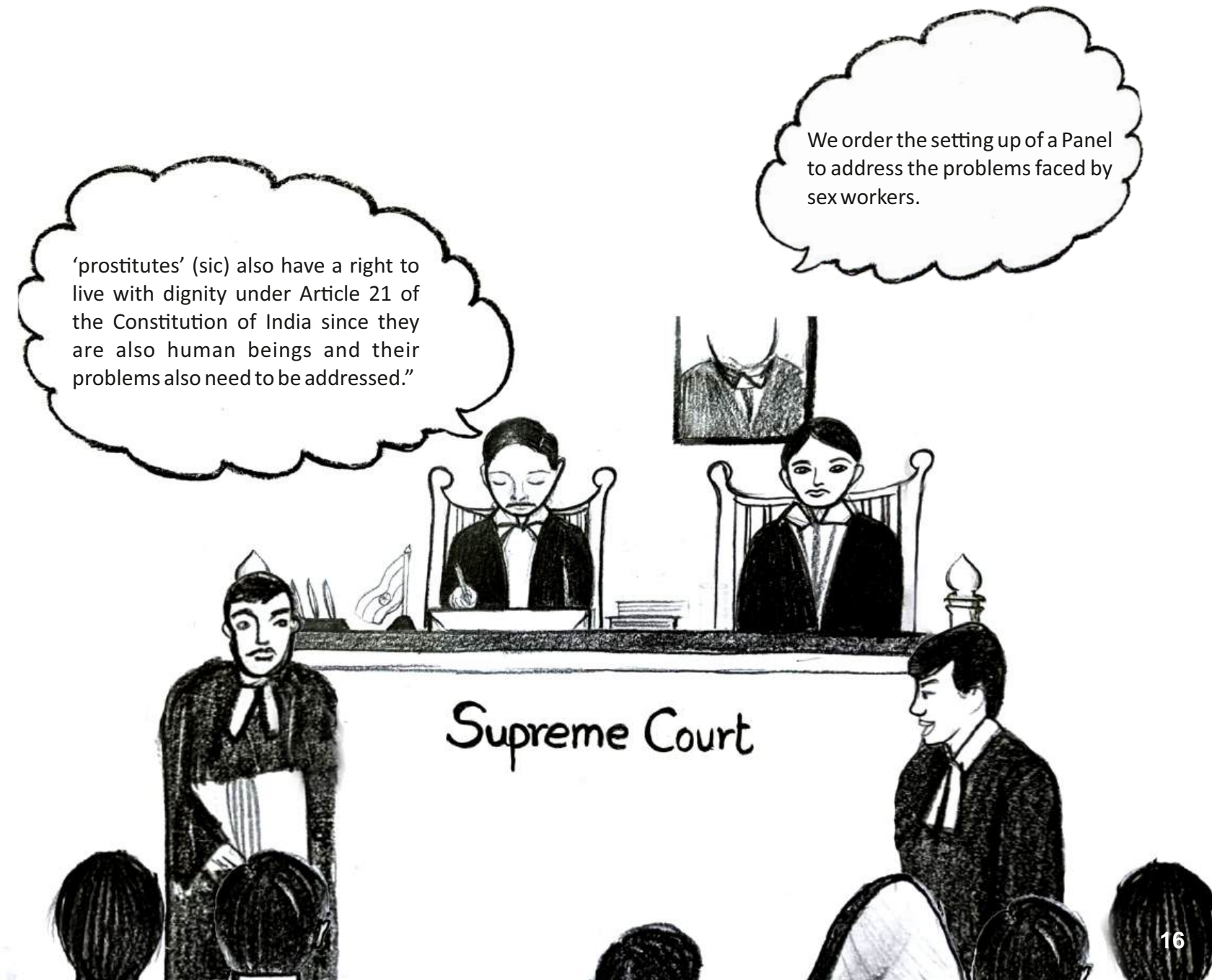


In 2011, Budhadev Karmaskar came before the Supreme Court, which rejected his appeal of innocence.

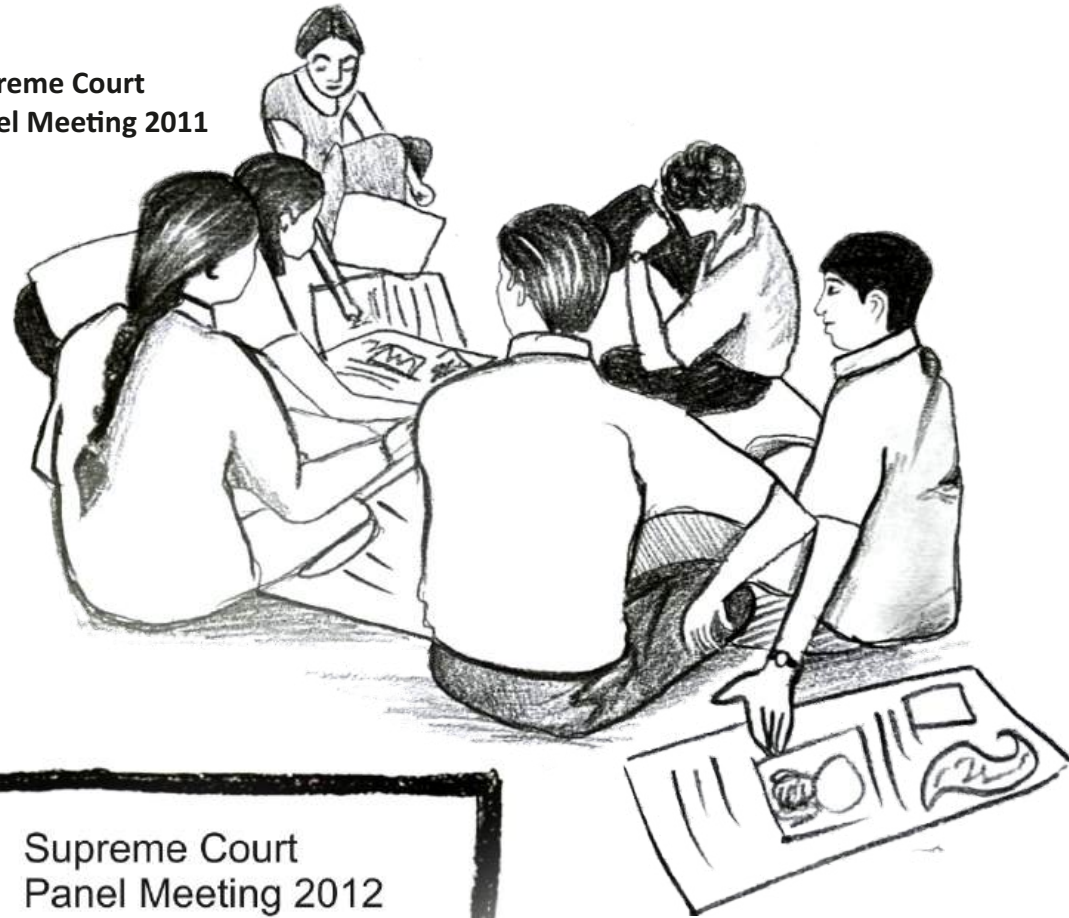




In 2011, the Supreme Court also gave directions on rights of sex workers. They set up a panel.



Supreme Court
Panel Meeting 2011



From 2011 onwards, the Supreme Court Panel met numerous times with activists, sex worker collectives and networks, lawyers, National AIDS Control Organisation (NACO), Ministries, State Government representatives and anti-trafficking groups on three issues-

1. Prevention of trafficking.
2. Rehabilitation of sex workers who wish to leave sex work.
3. Conditions conducive for a sex worker to live with dignity in accordance with Article 21 of the Indian Constitution.

Supreme Court
Panel Meeting 2012



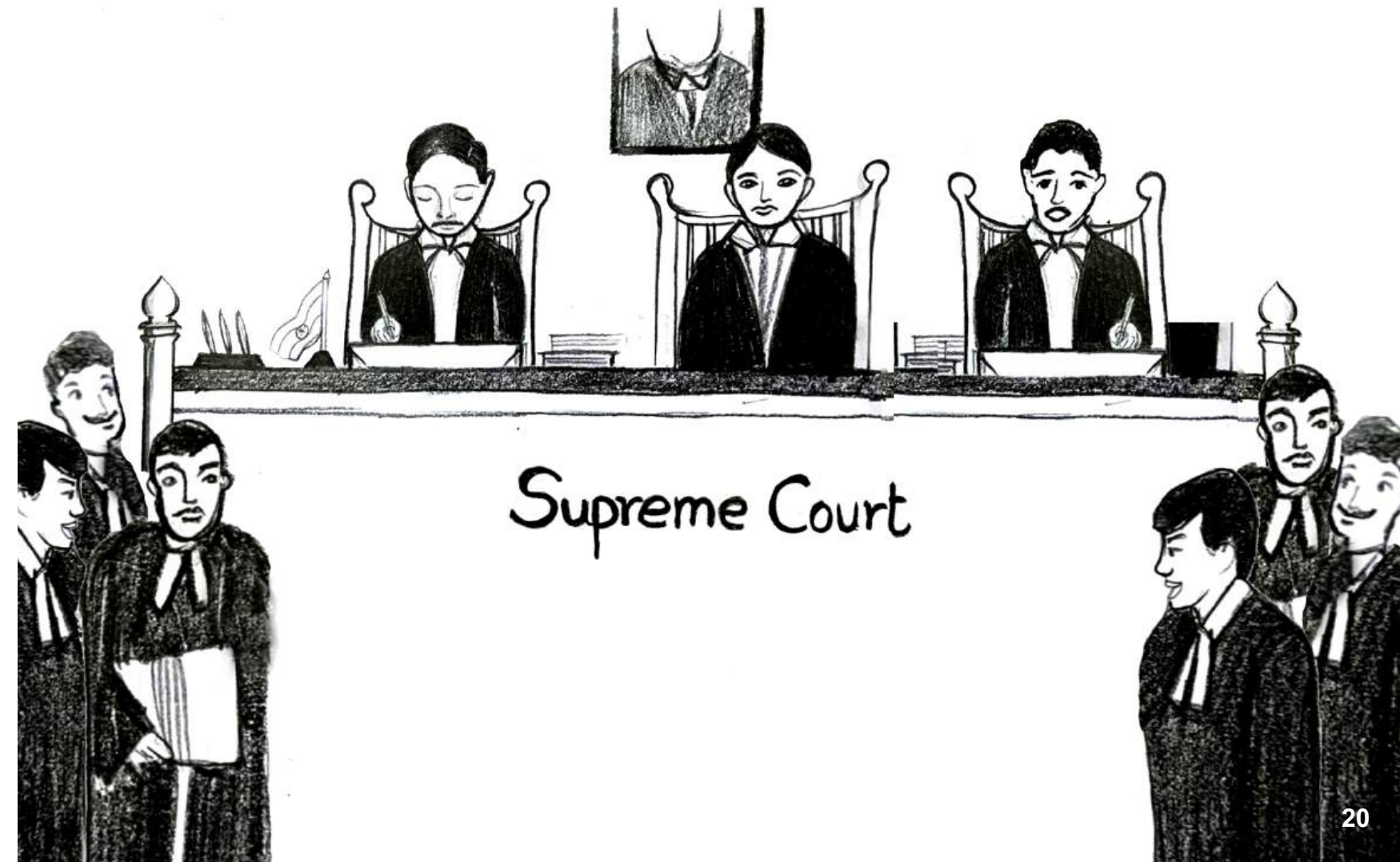
The Supreme Court Panel gave recommendations on how the rights of sex workers could be protected and upheld.

They made 10 recommendations in the 15th Interim Report, which was submitted to the Supreme Court.

In addition, they gave numerous recommendations on how the Immoral Traffic Prevention Act (ITPA) can be amended to prevent its application on adult consenting sex workers.



On May 19, 2022 the Supreme Court gave directions on the panel recommendations.



**Let Us Understand
What the
Supreme Court Said
on 19th May 2022.**

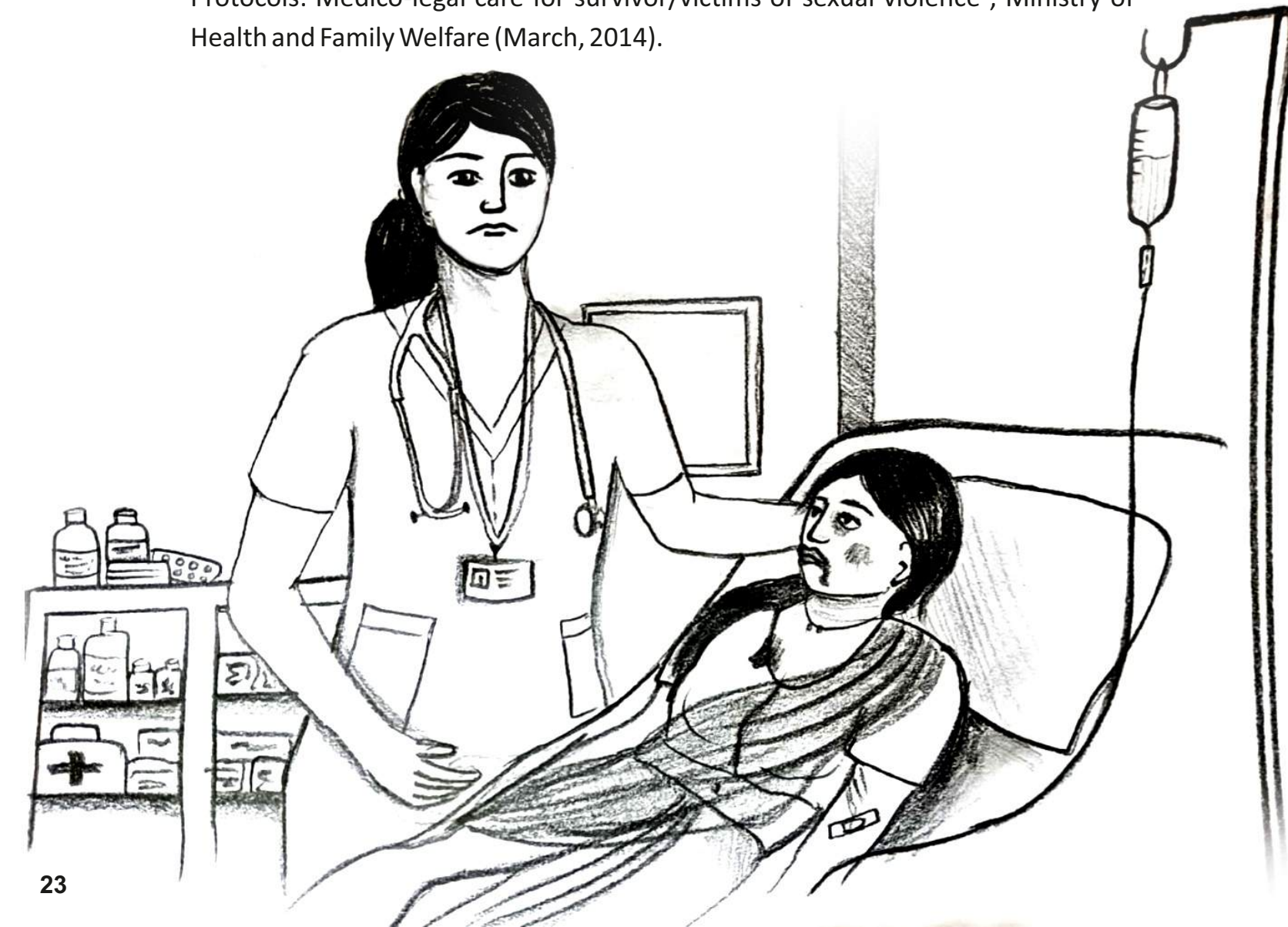
Supreme Court stated “The State Governments/ UTs are directed to act in strict compliance of the recommendations made in paras 2,4,5,6,7,9. The competent authorities under the Immoral Traffic (Prevention) Act, are directed to comply with the provisions of the Act 1956. It need not be gainsaid that notwithstanding the profession, every individual in this country has a right to a dignified life under Article 21 of the Constitution of India. The Constitutional protection that is given to all individuals in this country shall be kept in mind by the authorities who have a duty under Immoral Traffic (Prevention) Act, 1956.

Supreme Court

Order#1. Emergency Medical Assistance

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.

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).



Order#2. Survey of ITPA Protective 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 they can be processed for release in a time-bound manner.

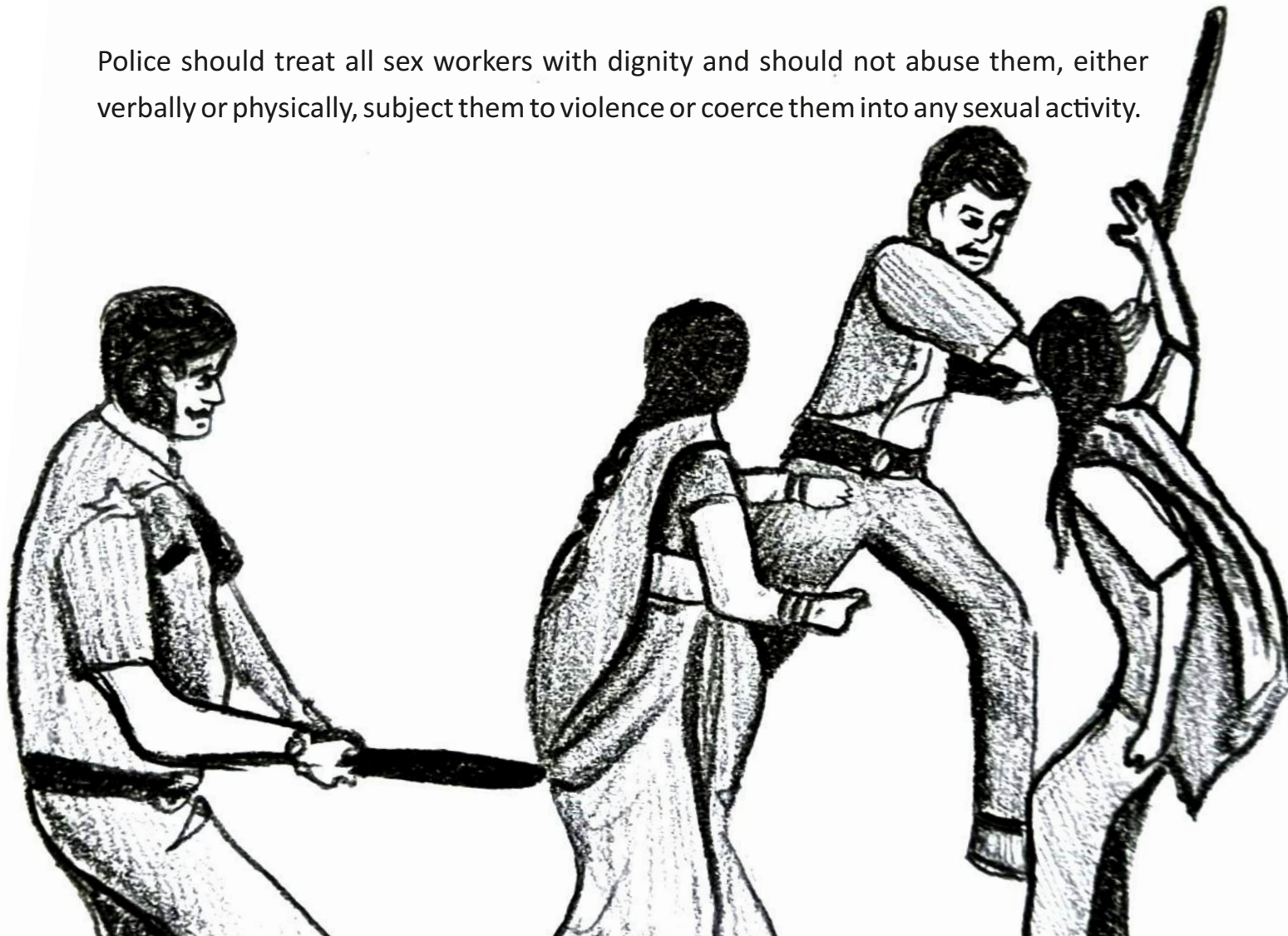


Order#3. Sensitisation of Police

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, either verbally or physically, subject them to violence or coerce them into any sexual activity.



Order#4. Media Ethics

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.

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.



Order#5. Condom as evidence

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.



Order#6. Sensitisation and awareness building

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.





Additional Order

Aadhar cards shall be issued to sex workers
Based on a proforma certificate issued by the UIDAI

Submitted by the Gazetted Officer of NACO, Project Director of State AIDS
Control Society.

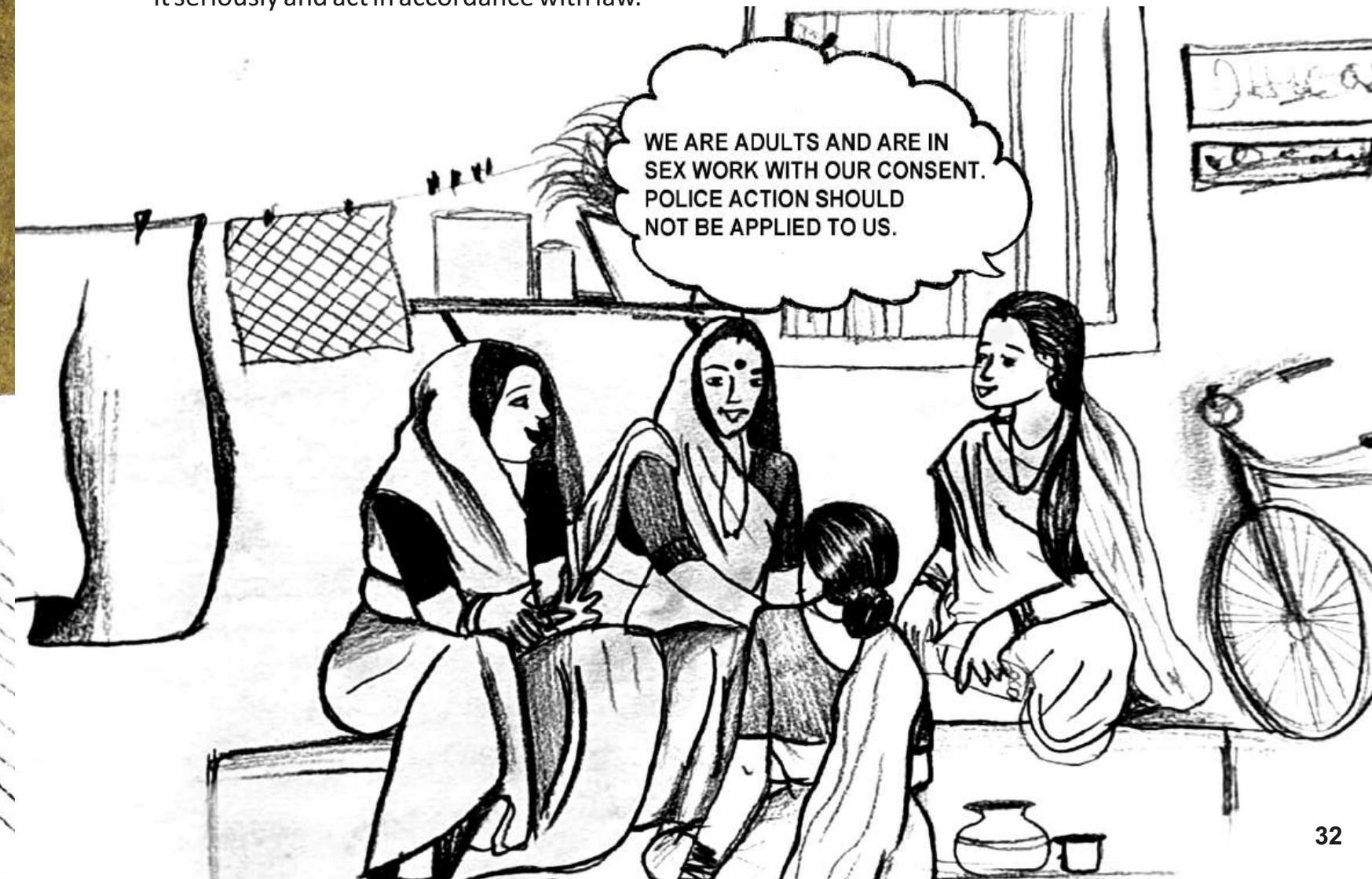
There shall be no breach of confidentiality, including by assignment of a code
in the enrolment numbers that would identity the card holder as a sex worker.



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.

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.



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.



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.

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.



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.

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.



**Sex Workers have Rights.
Recognize and Respect Them.!**

