

TAKING STEPS TO ENSURE SEX WORKERS' RIGHTS

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

Survivors of trafficking at a meeting in Canning village in South 24 Parganas district of West Bengal. | Photo Credit: MANOB CHOWDHARY

Recently, in *Budhadev Karmaskar v. State of West Bengal & Ors*, while issuing interim directions to States and Union Territories, the Supreme Court re-asserted that sex workers and their children cannot be deprived of their right to live with dignity and human decency. The court said that notwithstanding the profession, every individual in this country has the right to a dignified life. The court's directions are nothing but the recommendations made by the panel constituted by the Supreme Court in July 2011 and headed by a senior advocate, Pradip Ghosh, with regard to "conditions conducive for sex workers who wish to continue as sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India".

Since the Government of India had certain reservations about four of the 10 recommendations of the panel, the court directed the government to implement the other six recommendations as well as the provisions of the Immoral Traffic (Prevention) Act (ITPA) of 1956. These are: to provide immediate medical assistance to sex workers who are victims of sexual assault; to release adult sex workers detained in ITPA protective homes against their will; to sensitise the police and other law-enforcement agencies about the rights of sex workers to live with dignity; to ask the Press Council of India to issue guidelines to the media so that they don't reveal the identities of sex workers while reporting on arrest, raid and rescue operations; to not consider health measures that sex workers employ for their safety (such as condoms) as evidence of commission of an offence; and to ensure that the legal service authorities of the Central and State governments educate sex workers about their rights vis-à-vis the legality of sex work.

A provision is already available in the Code of Criminal Procedure (CrPC) on providing medical assistance to sex workers who are victims of sexual assault. However, the law is silent about not revealing the identity of sex workers. Similarly, though an order to send the sex worker to a protective home is passed by a magistrate after due inquiry about her need of care and protection, the ITPA and CrPC may be amended suitably to enforce the directions of the Supreme Court. Other directions may be implemented through executive orders by the governments.

One of the recommendations which the Central government expressed reservation about is of preventing the police from taking any criminal action against a sex worker who is an adult and is participating with consent, on the basis of 'age' and 'consent'. The expression 'sex worker' is not defined in the ITPA or any other law. According to the ITPA (as amended in January 1987), 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes. Therefore, the expression 'prostitution' is not just confined to offering the body to a person for promiscuous sexual intercourse for hire (as per the definition before 1987); taking unjust and unlawful advantage of trapped women for one's benefit or sexual intercourse has been brought within its frame.

The word 'abuse' also has a wide meaning. It implies that being an adult sex worker who is a sex worker voluntarily is not an offence per se, until exploitation or abuse is reported by her or revealed during investigation. It will therefore be appropriate to define 'sexual exploitation' and 'abuse of persons' as well, through an amendment, to rule out multiple interpretations and possible misuse by the enforcement agencies, particularly if offering one's body with consent for

consideration is kept out of the criminal framework.

Another recommendation that the government has reservations about notes that since voluntary sex work is not illegal and only running a brothel is unlawful, sex workers should not be arrested or victimised during any raid in the brothel. According to the ITPA, 'brothel' includes any place which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more sex workers. What if willing sex workers have no complaint against the brothel owner or manager? Therefore, the government would need to decide as a policy whether the act of two or more sex workers living together for mutual gain and being managed by themselves or by anyone else is to be criminalised or not. This may require wider deliberations to take a considered viewpoint.

The third recommendation says that no child of a sex worker should be separated from the mother merely on the ground that the mother is in the sex trade. If a minor is living in a brothel or with sex workers, it should not be presumed that he/she has been trafficked. Though the law does not mandate separation of the child from the mother (sex worker), it presumes trafficking if a child is found with any person in a brothel. Also, if a child or a minor is rescued from a brothel, the magistrate may place him or her with any child care institute recognised under the Juvenile Justice Act. In *Gaurav Jain v. Union of India* (1997), the Supreme Court had held that children of sex workers ought not to be allowed to live in brothels, and reformatory homes should be made accessible to them. Therefore, keeping in view the child's welfare, a suitable amendment may be made to accommodate the Supreme Court's direction.

The fourth recommendation requires the government to involve sex workers or their representatives in the process of decision-making or in the process of drafting reforms in laws relating to sex work. As the purpose of this exercise is to rehabilitate sex workers and improve their living conditions, their involvement in decision-making will surely make the reforms more enforceable.

It is noteworthy that carrying on sex work outside the notified areas or outside a distance of 200 metres of any place of public religious worship, educational institution, hospital, etc. is not punishable under the ITPA. The irony is that when the essential ingredient of sex work is 'sexual exploitation' or 'abuse of persons' for commercial purpose, how can this be allowed anywhere? Therefore, now with the court's directives on the anvil, it will be apposite for the government to differentiate between prostitution and the work of sex workers and consider banning prostitution per se and allowing voluntary sex work with certain conditions keeping in mind the public interest.

It is not disputed that women in the flesh trade should be viewed more as victims of adverse socioeconomic circumstances rather than as offenders. However, with all our laws and policies, we as a society have failed to contain prostitution. Therefore, the government may now use the Supreme Court's directions as an opportunity to improve the conditions of sex workers and their surrounding environment, facilitate rehabilitation, and remove the various ambiguities and inconsistencies in the applicable laws and bring about clarity.

R.K. Vij is a former Special DGP of Chhattisgarh. Views are personal

[Our code of editorial values](#)

END

CrackIAS.com