



Recognition of Sex Work as a Profession

For Prelims: Supreme Court, Article 142, Article 21

For Mains: Recognition of sex Work as a Profession, Rights of Sex worker, Government Policies & Interventions

Why in News?

Recently, in a significant order, [Supreme Court](#) has recognised sex work as a “profession” and observed that its practitioners are entitled to dignity and equal protection under law.

- The court invoked its special powers under [Article 142 of the Constitution](#). Article 142 provides discretionary power to the Supreme Court as it states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.
- In 2020, the [National Human Rights Commission \(NHRC\)](#) recognised sex workers as informal workers.

What are the Highlights of the Supreme Court Judgment?

- **Criminal Law:**
 - Sex workers are **entitled to equal protection of the law and 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**.
 - [Article 21](#) declares that **no person shall be deprived of his life or personal liberty** except according to procedure established by law. This right is available to both citizens and non-citizens.
 - **Sex workers should not be “arrested or penalised or harassed or victimised”** whenever there is a raid on any brothel, “since voluntary sex work is not illegal and only running the brothel is unlawful”.
- **Right of Child of a Sex Worker:**
 - A child of a sex worker **should not be separated from the mother merely on the ground that she is in the sex trade**.
 - Basic protection of human decency and dignity extends to sex workers and their children.
 - Further, **if a minor is found living in a brothel or with sex workers**, it should not be presumed that the child was 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.
- **Medical Care:**
 - Sex workers who are victims of sexual assault **should be provided every facility including immediate medico-legal care**.
- **Role of Media:**

- **Media should 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.

What are the Related Provisions/Supreme Court Views in India?

▪ **Immoral Traffic (Prevention) Act:**

- The legislation governing sex work in India is the **Immoral Traffic (Prevention) Act**.
 - The Suppression of Immoral Traffic in Women and Children Act was enacted in 1956.
- Subsequent amendments were made to the law and the name of the Act was changed to **Immoral Traffic (Prevention) Act**.
- The **legislation penalises acts** such as keeping a brothel, soliciting in a public place, living off the earnings of sex work and living with or habitually being in the company of a sex worker.

▪ **Justice Verma Commission (2012-13):**

- The Justice Verma Commission had also **acknowledged that there is a distinction between women who are trafficked** for commercial sexual exploitation and adult, consenting women who are in sex work of their own volition.

▪ **Budhadev Karmaskar Vs State of West Bengal (2011) Case:**

- The Supreme Court, in Budhadev Karmaskar v. State of West Bengal (2011), opined that sex workers have a right to dignity.

What are the Challenges Faced by Sex Workers?

▪ **Discrimination and Stigmatisation:**

- The **rights of sex workers are non-existent**, and those doing such work face discrimination due to their criminalised status.
- These individuals are **looked down upon and have no place in society**, and most times are treated harshly by their landlords and even the law.
- Their fight to be given the **same human, health, and labour rights as others**, continues as they are not deemed as falling under the same category as other workers.

▪ **Abuse and Exploitation:**

- Most times, **sex workers are exposed to a slew of abuses** that range from physical to mental attacks.
- They would **face harassment from clients, their own family members**, the community, and even from people who are supposed to uphold the law.

Way Forward

- It is time to recognise sex work as work and assign morality to their work.
 - Adult men, women and transgender persons in sex work have the right to earn through providing sexual services, live with dignity, and remain free from violence, exploitation, stigma and discrimination.
- It is time we **rethink sex work from a labour perspective**, where we recognise their work and guarantee them basic labour rights.
- **Parliament must also take a re-look at the existing legislation** and do away with the ‘victim-rescue-rehabilitation’ narrative.
 - During these times of crisis especially, this is all the more important.

[Source: TH](#)

