

## **Recognition of Sex Workers' rights by the Supreme Court of India**

The Supreme Court on 19th May 2022 passed a judgment recognizing the profession of sex workers. A three-judge bench consisting of Justice Nageswara Rao, Justice B R Gavai, and Justice Bopanna delivered the judgment in the case of Buhadev Karmaskar vs. The State of West Bengal and Others. The Supreme Court in its judgment advanced upon the absence of legislature to protect Sex Workers and by the use of the powers conferred by Article 142 of the Constitution of India passed this order highlighting the importance of fundamental rights of sex workers and prohibiting their treatment as second-class citizens by the police.

The recent Sanjay Leela Bhansali film Gangubai Kathiawadi based on the life of Ganga Harjivandas a social activist and a brothel owner, who fought for the rights of sex workers showed us the plight of Sex workers. The way sex workers are treated as outcasts by society and the stigma attached to the whole community leads to their mistreatment by almost everyone in the society including the police. Police officers who are supposed to be guardians of every individuals right and safety treat sex workers very poorly and give no regard to their rights as citizens of this country. In fact, this mistreatment of sex workers is not only restricted to police officers but extends to almost every government entity. So much so that sex workers did not have any means to acquire any kind of government identification such as Aadhar card, Voter ID, ration cards, etc. this abysmal working of the system of governance was never corrected by the government. It is since 2016 that a bill for the protection of rights of Sex workers has been pending thereby leaving every worker in the profession wholly without any rights or official recognition by the State. It is this order and a series of previous judgments by the Supreme Court that finally gave protection and reinstated the rights of these workers.

The Supreme Court in its order dated 19-05-2022 in the case of Budhadev Karmaskar versus the State of West Bengal and Others, a case where a sex worker was brutally murdered for refusing to have intercourse with the appellant, issued an order highlighting various aspects of fundamental rights and protection of sex workers. Firstly, the supreme court restated the stance on human rights jurisprudence by breathing full potential into Articles 14, 19, and 21 of the Constitution of India since Maneka Gandhi v. Union of India. The right to life guaranteed under Article 21 is extended beyond the protection of limb or faculty as concluded in the case of Francis Coralie Mullin v. Administrator, Union Territory of Delhi to include the right to live with human dignity and all that goes with it, such as the bare necessities of life such as adequate nutrition, clothing, and shelter, etc. this basic protection of basic rights is guaranteed to every citizen and certainly extends to Sex Workers and their children, who are removed from the

fringes of the society, deprived of their right to live with dignity and opportunities to provide the same to their children owing to the stigma attached to their profession. It must be noted that almost a decade ago a committee was set by the supreme court for the purpose of prevention of trafficking, rehabilitation of sex workers who wish to leave sex work, and conditions conducive for sex workers who wish to continue working as sex workers with dignity in accordance with the provisions of Article 21 of the Constitution of India. The recommendations made by the panel were considered by the government of India and a draft of legislation was published incorporating the recommendations of the panel. But to date, no such legislation has been passed by the Government of India. Therefore owing to the severity of the situation and in the exercise of the power granted by Article 142 of the Constitution of India the supreme court passed the order to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. The supreme court issued a ten-point judgment and directions to the police and UIDAI.

The ten points are as follows-

1. The Supreme Court stated that sex workers are entitled to equal protection of the law as guaranteed under Article 21 of the Constitution of India. It was held that Criminal law must be applied equally in all cases, on the basis of 'age' and 'consent'. When an adult sex worker is participating with consent, the police must refrain from interfering or taking any criminal action. The police were further directed to view complaints of criminal or sexual or any made by sex workers must be taken seriously and police must act in accordance with the law.
2. It was further held that any sex worker who is a victim of sexual assault must be provided with all facilities available to a sexual assault, such as medical assistance in accordance with Section 375C of the code of criminal procedure read with "Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence", Ministry of Health and Family Welfare (March 2014).
3. In case of a raid on a brothel, since voluntary sex work is not illegal sex workers should not be arrested or penalized or harassed, or victimized.
4. State Governments were directed to do a survey of all ITPA Protective Homes so that all adult women who are detained against their will be reviewed and processed for release in a time-bound manner.
5. The attitude of the police to a sex worker is brutal and violent, and their treatment as a class whose rights were not recognized was noticed. The court directed for sensitization of police and other law enforcement agencies for proper treatment of sex workers by

recognizing their fundamental rights and prohibiting them from abusing verbally and physically, subjecting them to violence or sexual activity.

6. The press council was directed to issue appropriate guidelines to respect the right to privacy of sex workers under article 21 of the constitution of India and to abide by the newly introduced Section 354C, IPC which makes voyeurism a criminal offense while telecasting photos of sex workers with their clients in the garb of capturing the rescue operation
7. It was held that the measures that sex workers employ for their health and safety, such as the use of condoms, etc. must neither be construed as offenses nor seen as evidence of the commission of an offense
8. It mandated the central and state governments to include sex workers and/or their representatives in all decision-making processes including planning, designing, and implementing any policy or program 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
9. The Central and State Governments through the Legal Services Authority were directed to carry out workshops for educating the sex workers about their rights vis-a-vis the legality of sex work, the rights and obligations of the police, and what is permitted/prohibited under the law.
10. No child of a sex worker should not be separated from the mother. If a child is found living in a brothel and is claimed to be a child of a sex worker, the child should not be separated instead tests to conclude the relationship must be conducted.

Along with these, the court directed the UIDAI to issue Aadhar cards to sex workers by waiving the requirement of proof of residence for the sex workers. The sex workers who are not on NACO's list and who apply for Aadhar cards but cannot submit proof of residence can be issued Aadhar Cards provided a 'proforma certificate' is submitted by a Gazetted Officer at NACO or State Health Department certifying the particulars of the applicant. It was also mentioned that while issuing such an ID card, no code should be assigned in the Aadhar enrolment number that identifies the cardholder as a sex worker in order to protect their privacy and prohibit breach of confidentiality.

## SYNOPSIS

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