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COMMITTEE FOR MANAGING GENDER ISSUES



Reaffirming and Clarifying the Rights of Sex Workers

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A recent speaking order by the Supreme Court of India in the case of Budhadev Karmaskar v. State of West Bengal and Ors passed directions protecting sex workers – mainly reiterating that sex workers were to be accorded all constitutional and legal protections – similar to what was bestowed upon normal citizens.

This order was much celebrated by many for various reasons. Importantly, the court acknowledged that sex workers were consigned to the fringes of society and often faced institutional abuse and neglect and started the process to remedy such a situation.

The legality of sex work

Although sex work was always legal, it operated in a murky legal framework, often clubbed and riddled with criminal activities – which were then generalised and misunderstood to be a part of sex work. For instance, prostitution, defined by the Immoral Traffic Prevention Act (hereinafter “the Act”) as “sexual exploitation or abuse of persons for commercial purpose” was never legal.

Similarly, running a brothel, recruiting persons for sex work, living on the wages of a sex worker (and aiding, abetting or compelling the person to engage in sex work to benefit off their wages) are also prohibited by the Act. Another restriction posed on sex workers under the Act is that they cannot operate in public places or close to public places. Such vague restrictions posed on sex workers while not outlawing sex work made it nearly improbable to practice the profession without Government intrusions.

The legal framework under which sex workers operate was further complicated due to the lack of a clear law regulating sex work – something which the order noted was being promised by the Government since 2016. Hence, the Court felt the need to exercise its power to do complete justice and provide for directions to clarify the legal framework sex workers operate under.

The Court’s order

The Court acknowledged that “(sex workers) were removed to the fringes of the society, deprived of their right to live with dignity and opportunities to provide the same to their children.” In doing so, the Court provided ten directions to clarify the legal framework and remedy the deprivation of basic rights the sex workers faced.

The Court, in those directions also stated – “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”. The Court further remarked – “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.” However, these directions were objected to by the Government.

Some other directions the Court also passed were – sex workers were to be treated and protected equally under the law, were not to be mistreated, abused or ignored by the police, were not to be forcibly rescued and kept in protective homes.

In total, four of the ten directions were objected to by the Government. The Court granted the Government six weeks to file a response detailing those objections. However, of the six directions to which the Government did not object- the Court directed the Government to comply - passing the order under its extraordinary power to do justice.

The ramifications of the order

The order, while reiterating the law, also clarified that - sex work should be treated like any other profession and sex workers were to be given basic human and constitutional rights. Further, if a consenting adult wanted to engage in sex work - they should not be forcibly rescued.

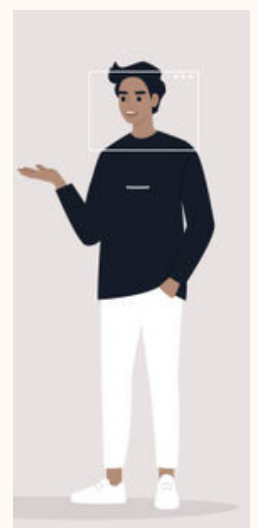
While discussions and debates regarding the reforms are needed - the Court order has wisely directed - sex workers and relevant stakeholders have to be consulted with regard to bringing about any change in the laws related to sex work.

The order is merely the start of a dialogic process between the Court and the Government. The Court asked the Government to file a detailed reply with indications of what would be desirable. Overall, this is a small step in a long process for the realisation of the rights bestowed to sex workers under the Indian constitution.

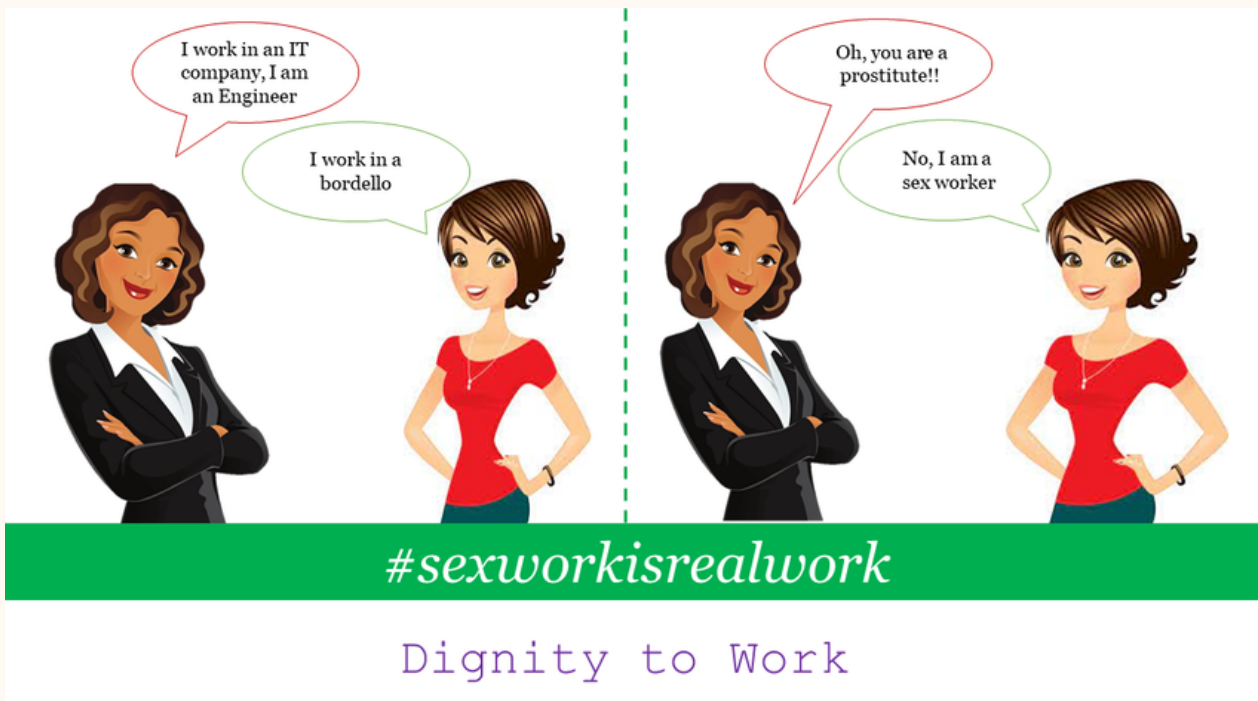
COMMUNITY SPEAKS



Now that sex work is a profession, one of the many questions in people's minds is -will this legalisation of sex work result in the actual upliftment of the individuals engaged in this profession? The answer is in the short run, we might not see the effect, but in the long term, it will uplift them. But one thing is certain; the sex workers will gain respect in the society, which they were deprived of even after 75 years of independence. And I believe it is a huge achievement for sex workers and India as a whole.



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If women are forced into sex work for money, it is the failure of society as a whole. Address the economic aspect of it first and then cry about the moral fabric of the society being ruined. The state needs to step in and ensure there is no coercive element to it. In all other cases, it is a woman's body and her right to decide if she wants to engage in sex work. In that sense, the Court has taken the right decision.

IIMA community member (anonymous)

If you feel you have been subjected to sexual harassment or if you would like to make any suggestions to us regarding curbing sexual harassment or gender bias on campus, please reach out to us at:

Email: chr-cmgi@iima.ac.in

Phone: 97129 15533

Please note that any communication with the CMGI is strictly confidential.

The monthly newsletter from the Committee for Managing Gender Issues (CMGI) is an attempt to initiate conversations on discrimination, gender bias, sexual harassment, and related issues. We would love to have the community participate. Please reach out to Therese Abraham at theresea@iima.ac.in for submissions, queries, and/or feedback.