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Sex Work as Profession Legal: Supreme Court Weighs In

Mrinaal Datt · 27 May 2022

A Supreme Court Panel made a slew of directions yesterday recognising that sex work as profession should not be illegal. The three judge panel headed by Justice L Nageswara Rao also comprises of Justices BR Gavai and AS Bopanna.

Responding to a plea which highlighted the destitution faced by sex workers, especially in light of Covid-19, the Supreme Court panel made these recommendations. The plea also seeks relief for over 9 lakh women and transgenders engaged in sex work in India.

The Supreme Court, while exercising its powers bestowed under Article 142 of the Constitution made the following directions:

1. Sex workers are entitled to equal protection of the law. This is mandated by Article 21 of the Constitution of India. Criminal law must apply equally in all cases, on the basis of age and consent and according to the provisions of the Immoral Traffic (Prevention) Act, 1956.
2. When a sex worker makes a complaint to the police relating to any criminal, sexual, or any other type of offence, the police must take it seriously and act in accordance with law. Further, any sex worker who is a victim of a sexual assault should be treated in the same manner and provided with the same facilities as any other victim. This is also includes proper medical assistance.
3. The police should also treat all sex workers with dignity and should not abuse them, both verbally and physically. They should also not be subjected to violence, or coerced into performing any sexual activity.
4. Whenever there is a raid on any brothel, sex workers should not be arrested or penalised, harassed, or victimised. This is because voluntary sex work is not illegal in India. What is illegal is running a brothel.
5. Measures that sex workers employ for their health and safety, like the use of condoms, must neither be construed as offences nor seen as evidence of commission of an offence by the

police.

6. Media should also not publish pictures or reveal the identities of sex workers while reporting rescue operations. The panel is also of the view that the charges of the offence of voyeurism under Section 354C of the Indian Penal Code should be formulated if this guideline is not followed.
7. Any child of an individual engaged in sex work should not be separated from the mother solely on the ground of her profession.
8. 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 reform in the laws relating to sex work. They should also conduct workshops for educating these individuals about their legal rights and obligations.

While the recommendations were originally made in 2016, the corresponding legislation is pending. As a result, the Supreme Court through its powers conferred under Article 142 enforced these directions, especially those relating to the welfare of sex workers.

The topic of sex work as profession is important from CLAT point of view. This is because it explores various powers of the Supreme Court and relates to fundamental rights.

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