



To
Justice H.L Dattu
Chairperson
National Human Rights Commission (NHRC)
Delhi

17 October 2020

Re: Status of Sex Workers in Law and Policy

Hon'ble Justice Dattu,

At the outset, we from **Sampada Grameen Mahila Sanstha**, would like to place on record our appreciation for the National Human Rights Commission for the Advisory "**Human Rights Advisory on Rights of Women in the Context of COVID-19**" issued under your leadership on 7th October 2020. It is deeply heartening to see the jurisprudence, policy formulations, court opinions and government directives in our country take note of the lives and work of sex workers at this historic moment of the global Covid 19 pandemic.

We write in response to attempts by some organisations to muddy the waters and create misinformation around the status of sex workers in policy and law, globally and in India. Sex work is a dignified choice of livelihood pursued by lakhs of females, trans people and men of their own volition. The emerging articulation and direction given to sex worker rights in International and national law and policy is extremely clear and progressive. The obfuscation attempted by a few organisations, in the face of the of visionary courts and commissions in India and globally is unfortunate.

The following are recognised as principles in India and globally through Government of India advisories, state government advisories, court judgments, government and court appointed committees, international treaty body observations and recommendations, panels, UN agencies amongst others.

#1 Sex work is not an offence and neither are sex work criminals or victims of Trafficking. The continued conflation between sex work and trafficking prevents either groups from accessing justice and their rights

1. Sex work **must not be conflated** with trafficking; which is an offence under law. Sex work is the consensual provision of sexual services in a commercial context. This definition has been globally accepted by UN agencies, Ministry of Health and Family Welfare in India. Sex work is a form of livelihood and all female, trans and male sex workers consider themselves as unorganised workers.
 - 1.a In a recent judgement in September 2020 the Hon'ble High Court of Mumbai has observed the following about Immoral Traffic Prevention Act (ITPA),

"It is interesting to note the relevant provisions of the said Act, which go to show that the purpose and the object of the Act is not to abolish prostitution or the prostitute. There is no provision under the law which



*makes prostitutions per se a criminal offence or punishes a person because he indulges in prostitution. What is punishable under the Act is sexual exploitation or abuse of person for commercial purpose...*¹

Conflation of sex work with the offence of trafficking and the use of anti -trafficking laws and provisions against sex workers and their clients

- 1.b. The offence of trafficking has been very clearly defined under Section 370 IPC in 2013. In 2013, the Criminal Law Amendment defined the offence of trafficking. Sexual exploitation of a person for commercial purposes is criminalised. Justice Verma in a letter clarified the intent of the new trafficking law as follows

“The members of the Committee wish to clarify that the thrust of the intention behind recommending the amendment to Section 370 was to protect women and children from being trafficked. The Committee has not intended to bring within the ambit of the amended Section 370 sex workers who practice of their own volition. It is also clarified that the recast Section 370 ought not to be interpret to permit law – enforcement agencies to harass sex workers who undertake activities of their own free will and their clients.” [copy of letter attached]²

The continued conflation between sex work and trafficked victims harms both sex workers and the victims of trafficking who are in need of assistance.

- 1.c. In April 2014, the Special Rapporteur on Violence Against Women in her India report to the UN General Assembly has observed as below

“In her discussion with interlocutors, the Special Rapporteur noted a tendency to conflate sex work with trafficking in persons and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs” [para 20]

The Special Rapporteur recommends

“Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalises sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.” [para 78 e]³

- 1.d. In July 2014, the CEDAW Committee in Concluding Comments for the India State report, observed that on the use of anti- trafficking laws against sex workers as under

“The Committee is also concerned at the persecution of women in prostitution as a result of measures taken to address trafficking such as raid and rescue operations.” (para 22)

“The Committee recommends that the State party (a) Review the Immoral Traffic Prevention Act...” (para 23 a)⁴

- 1.e. In July 2012 the Global Commission on HIV and the law has drawn attention to the conflation and recommended as follows

¹ Kajal Mukesh Singh and ors. Versus The State of Maharashtra, Crim W.P No. 6065 of 2020, High Court of Bombay

² Clarification from Justice Verma Commission on intention of Section 370, IPC, 8 Feb2013

³ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 1 April 2014

⁴ Concluding observations on the combined fourth and fifth periodic reports of India, CEDAW/ C/ IND/ CO/ 4-5, 18 July 2014



“Ensure that the enforcement of anti – human trafficking laws is carefully targeted to punish those who use force, dishonesty or coercion to procure people into commercial sex, or who abuse migrant sex workers through debt bondage, violence or by deprivation of liberty. Anti -human trafficking laws must be used to prohibit sexual exploitation and they must not be used against adults in consensual sex work.”
[Para 3.2.4, Page 43,]⁵

#2 Pernicious practice of forced raid and rescue and its impact on deterring sex workers from claiming worker rights

For years, sex workers have highlighted the continued attempt by abolitionists, to forcibly raid and rescue them, incarcerate them in rescue and rehabilitation homes against their wishes.

These organisations have used the current anti trafficking laws to incarcerate adult women in sex work for long periods of time in rescue homes, a practice that has been called out by Special Rapporteur on Violence Against Women, the CEDAW Committee, the High Court of Mumbai most recently (mentioned above). Despite this, the practice continues unchecked and NGOs continue to forcibly rescue women against their consent disregarding clear guidelines. The Constitution of India guarantees every citizen the right to be protected from arbitrary arrests, violence, coercive action. However, in the case of sex workers this remains a distant dream. The brutality of forced raid operations robbing sex workers of their dignity has found no remedial action and deterrence under law.

This pernicious practice continues to deter sex workers from accessing rights and entitlements, and from advocating for their inclusion as informal workers in the labour economy.

The Global Commission on HIV and the Law made the following recommendations on detention centres
“Shut down all compulsory detention or “rehabilitation centres for people involved in sex work.. Instead provide sex workers with evidence based, voluntary, community empowerment services.” (3.2.7, p 43⁶)

A research “Raided” released in 2018 has highlighted very aptly the upheaval and human rights violations caused by these organisations in the lives of sex workers.

77% of the women in the study returned to sex work, despite facing brutal raid and rescue operations. (p 56)

Many women narrated how they were forced into greater situations of vulnerability because of facing debts after being picked up in raids and forced to pay police and lawyers for release, or because their families had taken huge loans from private money lenders when the women were incarcerated by NGOs. (p 80)⁷

#3 Sex work as Work

Denying sex workers the dignity of being workers, is to expose them to violence, deny them access to justice, prevent them from claiming their rights when violated and eventually rendering them most vulnerable to exploitative practices. Organising as informal sector

⁵ Risks Rights and Health, Global Commission on HIV and the Law, July 2012

⁶ Ibid.

⁷ Raided, how anti -trafficking strategies increase sex workers vulnerability to exploitative practices, March 2018.
<http://sangram.org/resources/RAIDED-E-Book.pdf>



workers gives them the much -needed recognition, dignity and space to claim rights, access government support, access justice when faced with violence.

2.a In 2002, the second report of the National Commission on Labour gave a recommendation for the recognition of sex workers as self -employed workers. They observed

“... They have to be considered as self – employed workers. They should therefore, have the facility to be registered as self – employed workers with access to health policies, insurance etc. that all self – employed workers will be entitled to under the schemes that we have recommended” [Para 7.55; P 614]

“We therefore recommend that sex workers should have the right to register themselves as self – employed workers, and should be entitled to benefits of all schemes that we are recommending for self - employed workers, including welfare, medical benefits etc. [Para 7.58, Page 615]⁸

2.b. In 2010, the International Labour Organisation has recommended that sex work be recognised as an occupation so that it can be regulated in ways that protect workers and customers. The ILO’s labour standard on HIV/AIDS, adopted in 2010, includes non- discriminatory access to health services and occupational safety for sex workers, including empowerment to insist on safe and protected paid sex in their workplaces.⁹

2.c. In 2012, UNDP made the following recommendation on sex worker’s right to enjoy legally enforceable rights to occupational health and safety as under

Governments should apply the ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) to sex work. Sex workers should enjoy legally enforceable rights to occupational health and safety. Sex workers should be supported to participate in the process of developing workplace health and safety standards. Recognising that sex work is legitimate work provides a framework within which sex workers can benefit from the same rights and protections as other workers, including access to services and freedom from discrimination and exploitation. (1.1, p 35)¹⁰

#4 De-criminalisation has been recognised as a principle for protecting the rights of sex workers globally and in India

3.a. In 2015, a **panel appointed by the Supreme Court of India** recommended that the provisions of the Immoral Traffic Prevention Act 1956 including clauses referring to brothel keeping, living off the earnings etc, must be read down in the context of consenting sex workers.¹¹ (15th interim report in its entirety)

3.b. In 2012, the World Health Organisation, UNFPA and UNAIDS called for decriminalisation of sex work as under

“All countries should work towards de-criminalisation of sex work and elimination of unjust application of non – criminal laws and regulations against sex workers.” [recommendation 1]

⁸ Second report of the National Commission on Labour, 2002

⁹ ILO, 2010, Recommendation concerning HIV and AIDS and the World of Work (No.200)
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R200

¹⁰ Sex work and the law, In Asia and the Pacific, UNDP, UNFPA, UNAIDS 2012.

¹¹ 15th interim report, Consolidated list of amendments to the Immoral Traffic (Prevention) Act, 1956 recommended by the Supreme Court Panel, 2015



“Governments should establish anti -discrimination and other rights – respecting laws to protect against discrimination and violence, and other violations of rights faced by sex workers in order to realise their human rights and reduce their vulnerability to HIV infection and the impact of AIDS. Antidiscrimination laws and regulations should guarantee sex workers right to social, health and financial services.” [recommendation 2]¹²

3.c. In July 2012, the Global Commission on HIV and the Law made far reaching recommendations on sex work and the law. It recommended as follows:

“Countries must reform their approach towards sex work. Rather than punishing consenting adults involved in sex work, countries must encourage safe working conditions and offer sex workers and their clients access to effective HIV and health services and commodities. Countries must:

Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against “immoral” earnings, living off the earnings of prostitution and brothel – keeping. Complementary legal measures must be takes to ensure safe working conditions to sex workers.”¹³

3.d. In October 2012, UN agencies (UNDP, UNAIDS and UNFPA) recommended the decriminalisation of sex work as under

“Laws that criminalise sex work and the sex industry should be reviewed, taking into account the adverse impacts of punitive laws on HIV responses and the human rights of sex workers. To enable sex workers to fully enjoy rights to health and safety in the workplace requires decriminalisation.” (1.2 p 36)¹⁴

#5 Sex workers entitled to support during the COVID pandemic

4.a. On 23 July 2020, the Department of Women and Child issued a circular calling on district administration and WCD to support sex workers and those rescued under ITPA making a clear distinction between the two groups.

“with reference to the COVID -19 pandemic and the lockdown since March 2020, we want to inform you that, women who have been rescued under ITPA and those who are in sex work are finding it difficult to survive and take care of their families.... The women in sex work (Veshya Vyavsay) and the women who have left sex work have lost their income generation options. Due to lock down they are not able to get other jobs either which leads them and their families to starve. You should provide free ration and all essential services to the above mentioned women.”¹⁵[Translation of Letter dated 23 July 2020, Women and Child Department, Government of Maharashtra]

4.b. On 29 September 2020, the Supreme Court of India has passed directives for sex workers to receive dry rations and other benefits without insisting on their identity.

¹² Prevention and Treatment of HIV and other sexually transmitted infections for sex workers in low and middle -income countries, Recommendations for a Public health approach, December 2012, WHO, UNAIDS, UNFPA

¹³ Risks, rights and health, Global Commission on HIV and the Law, July 2012

¹⁴ Ibid.

¹⁵ WCD, Maharashtra Letter, 23 July 2020. Translation of Letter dated 23 July 2020, Women and Child Department, Government of Maharashtra



“Covid -19 has caused severe disruption in the normal life. Sex workers have been badly affected due to loss of earnings during the pandemic. Various schemes floated by the Union Government and State Governments to help the destitutes have not reached the sex workers. The reason for sex workers not having access to the schemes in the lack of proof of identity. It is incumbent on the Central Government and the State Governments/ Union Territories to rescue the sex workers who are in dire straits. Starving sex workers are entitled to be provided with dry rations. Therefore we direct the State Governments and the Union Territories to provide dry rations to the sex workers who are identified by National Aids Control Organisation (NACO) without insisting on proof of identity. The District Legal Services Authorities are directed to take active steps in assisting the distribution of dry rations to the sex workers without insisting on proof of identity.” [page 11, Budhadev Karmaskar versus Union Of India]¹⁶

We look up to your continued leadership and support to strengthen the human rights of sex workers in India.

Thanking you


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ⁱ Sampada Grameen Mahila Sanstha [SANGRAM] is a health and human rights NGO based in the rural districts of western Maharashtra and north Karnataka that works to address social inequality and to promote justice amongst marginalized communities, discriminated against because of sexual preference, sex work, HIV status, gender, caste and religious minority. It focuses on building solidarity amongst diverse and marginalized communities by using a rights centered approach to self-determination that organizes the voiceless to collectivize as a key strategy. In 1992, SANGRAM began its work with female sex workers, wrongly portrayed as vectors of spread of HIV. SANGRAM responded to this by starting a peer-based program from the ground up. Soon after, this became the independent collective Veshya Anyay Mukti Parishad [Veshya (Sanskrit for Prostitute) against injustice, VAMP]. In 1997 a harm reduction campaign on violence against women and responsible safe sex among youth in Sangli district emerged, This campaign works in the 730 villages of Sangli District with rural women and young people. In 2000, male and transgender persons in sex work joined the team and SANGRAM now reaches sex workers and married women, clients, husbands and lovers, teenagers and truck drivers, migrants and men who have sex with men, transgender persons and children of sex workers, orphans and widows, panchayat heads and policemen.

Sexuality minorities, sex workers, people living with HIV, religious minorities, especially women and orphans are being pushed to the margins by a society that has condemned their very existence. This marginalization has led to a total denial of the right to lead a life free of discrimination, inequality and violence. SANGRAM builds solidarity amongst diverse and marginalized communities through a gradual process of inclusion, engaging and understanding exclusion.

¹⁶ Budhadev Karmaskar versus The State of West Bengal, Order dated 29, September 2020 in IA 80140/2020 in Cr Appeal No (s) 135 /2010, Supreme Court of India