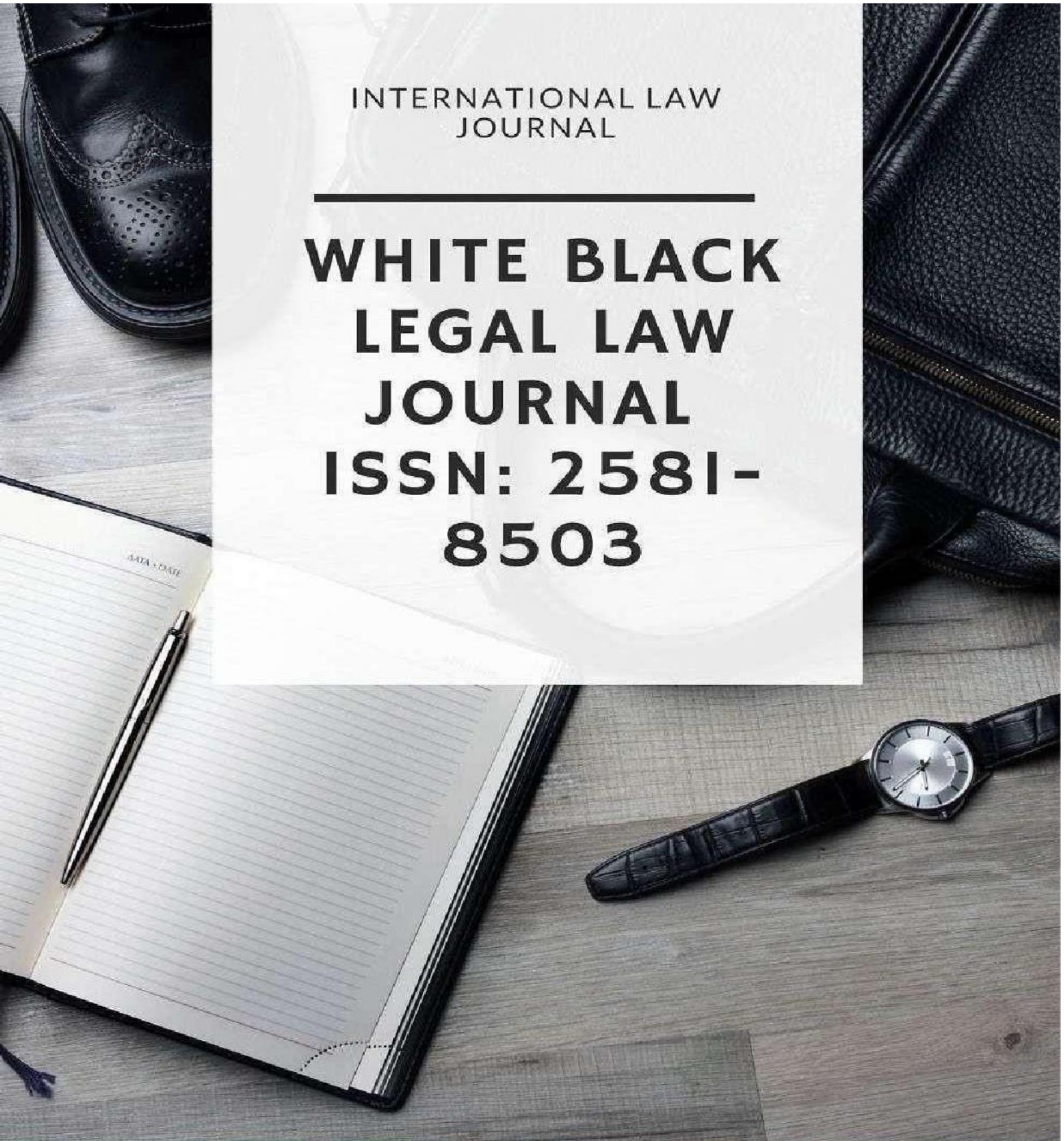




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SEX WORKERS RIGHT TO DIGNITY; CASE COMMENTARY ON BUDDHADEV KARAMSKAR

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Abstract

sex work in India has long been seen as an immoral act. It has always been hanged between criminal regulation and constitutional guarantees of dignity. When we talk about Immoral Traffic Prevention Act 1956, it reflects control-oriented framework from sex work in India. While Article 21 has gradually expanded the rights of sex workers in a way that says they have the right to live with dignity, have the right to privacy and equal protection in our society. In this context, Buddhadev Karamskar versus State of Bengal marked a significant intervention by acknowledging that sex workers do have equal rights in the Constitution irrespective of their occupation or moral judgment of our society. Supreme Court through a series of directions, especially in May 2022, ordered that consensual sex work is not illegal, so police cannot harass sex workers or force them into institutional on the basis of their occupation. They should not marginalize the judgment also stressed that sex workers have right to make identity documents, also they have right to protection from violence and have right to basic social and economic benefits.

This commentary argues that Supreme Court decision is a positive step because it moves from a moral view to a right-based view, but still in fact is limited because law still focuses on rehabilitation and there is no proper legal reform to recognize sex work as a legitimate work. Supreme Court judgment to do support dignity, but it does not remove the deeper legal issue that affects the daily lives of sex workers.

Introduction

Sex work in India exists in a confusing and social-legal situation. For example, sex between two adults who give consent to each other in exchange of money is not illegal, but many activities related to it are criminalized under the Immoral Traffic Prevention Act, 1956¹ in our society. This law has been shaped by a moral approach that always sees sex workers as a victim

¹ The Immoral Traffic (Prevention) Act, No. 104 of 1956, INDIA CODE (1956).

or the one who needs to be rescued. Our society always sees them as a problem for public order. This whole situation leads to the police monitoring, discrimination and marginalization of sex workers in India. They even don't have the basic welfare benefits, which makes them excluded from society. Although the law claims to provide protection, but it has often increased stigma for sex workers and made them invisible in government systems. Idea of Fundamental Rights under Indian Constitution has also expanded through time. Article 21² now includes right to dignity, personal freedom, privacy and livelihood. This constitution is no longer limited to just basic or mere survival, but it also focuses on the life which will live with dignity. But when we talk about sex workers, the right to dignity is rarely been applied in practice. Their work still seen as a crime and always linked to judgment of our society as a morally wrong profession and hence constitutional rights of sex workers have been overridden.

In this context, the *Buddhadev Karmaskar v. State of Bengal*³ case becomes very important. When we talk about *Buddhadev Karmaskar* case, the case began as a criminal appeal about a brutally murder of a sex worker and this case later turned into as a public interest matter where Supreme Court examined the large problems faced by sex worker in a day-to-day life. And through several orders, the Supreme Court gave important direction in May 2022. The Supreme Court stated that sex workers also have the right to equal protection of law, freedom from police harassment, access to welfare schemes, and the right to live with dignity as any member of the society, regardless of their profession, their gender, or their place. By using Article 21 and its special power under Article 142, the court tried to connect constitutional rights with their actual implementation in our society.

We cannot deny that this decision is an important step in the constitutional treatment of sex workers where the judgment moves away from moral values and adopts a rights-based approach, but the Supreme Court still focuses on rehabilitation, welfare, and protection, which reflects a continued paternalistic attitude. Although the judgment speaks about dignity and protection, but it does not fully recognize sex workers as independent workers or with the proper labour rights in our society. Thus, the judgment shows the constitutional shift, but it still limits the full recognition of their autonomy and their work as a legitimate occupation which is important for them in our societies.

² INDIA CONST. art. 21.

³ *Buddhadev Karmaskar v. State of W.B.*, (2011) 10 S.C.C. 283.

Background and legal framework

As we discussed, the legal status of sex work in India is very confusing because law does not say it is illegal, but also places many restrictions to the sex work. Sex between consenting adults in exchange for money is not illegal, but many related activities are punishable under the Immoral Traffic Prevention Act 1956. These including running a brothel, living on earnings of sex work, soliciting in public places, or working near schools, temples, or other places, institutions. Because of these restrictions, sex workers are often pushed into hidden and unsafe conditions, where even though their work is technically legal, they still face the risk of eviction, exploitation, and frequent police action, which makes them excluded from our society and makes them marginalized.

When we talk about the Immoral Trafficking Prevention Act (ITPA)⁴, this Act was originally made to prevent trafficking and sexual exploitation and also This Act follows a protective approach and also gives authority and power to conduct raids, remove people from workplace, and also place them in protective homes for rehabilitation. Although these actions are presented as rescue measures, but they have often led to forced detention and strict control of sex workers in our society. When we talk about this Act, especially for adult women who are engaged in sex work by choice, the law often fails to clearly distinguish between trafficking and voluntary sex work that makes it difficult to practice sex work in India. This act focuses more on welfare and control rights of Sex workers.

At the same time, our Indian Constitution provides a broader concept of protection of individuals' rights, where Article 14⁵ guarantees equality before the law, and Article 21 protects the dignity, personal liberty, and the right to livelihood. And Article 19(1)(g)⁶ also recognizes the freedom to choose any profession. Of course, there is a subject to reasonable restriction, but these constitutional protections support the idea that sex workers should be treated as rightful citizens who should have dignity and autonomy. But law and our society always treat them as individual or agency who needs moral regulation.

Before the Buddhadev Karmaskar case, court mostly focuses on rescue and rehabilitation of sex workers, especially when it comes to women and children. They treated sex workers as an

⁴ The Immoral Traffic (Prevention) Act, No. 104 of 1956, INDIA CODE (1956).

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. Art. 19(1)(g).

individual or agency who need rehabilitation and rescue, and often treated them as a victim. And they treated sex workers as a social problem. They ignored important issues like concern, choice, and occupational rights, which make this agency vulnerable. But the Buddhadev case marked as a shift by moving away from purely protecting approach to the recognition of sex worker as an individual who also have equal rights and dignity and legal protection under the constitution of India in our society.

Facts and procedural history

In the case of Buddhadev Karmaskar vs state of Bengal, was a criminal case related to a murder, where a person brutally murdered a sex worker in Kolkata in 1999. The trial convicted the accused and later on the Kolkata High Court also confirmed the conviction of that accused. The matter then reached to the Supreme Court through a criminal appeal and while hearing this case, the Supreme Court also took note of the larger issue faced by sex workers in our society, including their social stigma, marginalization, unsafe working conditions, and lack of legal protection of sex workers in our Indian society.

The Supreme Court realized the fact that this case reflects a wider social problem. Then the court expanded the scope of the proceedings beyond the individual criminal matter. The court examines that living and working conditions of sex workers is not safe across the country. It expresses concern about the exposure to violence, lack of access to welfare schemes, and their absence of identity and frequent harassment by the law enforcement authorities, which leads to exploitation, exclusion, and marginalization of the sex workers and their agency.

In 2020, the Supreme Court formed an expert panel committee that included representatives from various government bodies, like civil society organizations, and also sex worker groups. The Supreme Court then asked the panel to study the problems faced by sex workers in their day-to-day life, and they are being asked to suggest the solution for these all issues and problems. This committee focuses on three main areas. The first one is prevention from trafficking. The second was rehabilitation for those who wanted to leave sex work. And the third, the better living and working conditions for those who choose to continue to be in that profession. Based on the panel's recommendation, the court issued a series of directions over the following years, which finally led to comprehensive protective guidelines issued in 2022⁷.

⁷ *Budhadev Karmaskar v. State of W.B.*, (2022) 6 S.C.C. 1.

Issue before the court

The court had to decide several important questions and they also have to look into various aspects of the case. When Supreme Court examined the condition in which sex workers live and work and they also see that whether adult consensual sex work should be protected under constitutional rights or not. The court also considered whether sex workers have the right to dignity, privacy, personal liberty, and access to welfare benefits or not. Another issue was the personal responsibility of the state to support the individual, those who want to leave sex work. And the court also looked at police practices and whether the action like rape, detention, and forced rehabilitation should be limited. It further examined that just because sex worker profession is morally judged, the children should be separated from their parents or not. These all-various aspects the court have to see before giving any judgment.

Judgment and the direction of the court

As we have discussed earlier, that the Supreme Court went beyond deciding the criminal case of an individual, but it created a guideline to protect the rights of sex workers. Supreme Court uses the recommendation of the expert panel that they created, Under Article 142⁸, the Court issued direction to ensure sex workers' constitutional rights. The judgment aimed at two things, mainly protecting sex workers from abuse by authorities, and also improving their access to welfare and social support so that they cannot be excluded in our society, or rather they cannot be marginalized.

Recognition of dignity and equal protection

The Court clearly stated that sex workers are equal citizens and they also have the right to protection, right to live with dignity. And it said that consensual sex work by adults is not illegal, and no one should face discrimination and marginalization because just because of their profession. The Court stated that sex workers have the right to dignity, equality, and respect, like any other person in our society. This case marked an important shift from earlier approaches that treated sex worker mainly as an object of moral concern, rather than an individual with full constitutional rights.

Restriction for police action

The most important part of the judgment was when the Supreme Court addresses the problem

⁸ INDIA CONST. Art. 142.

of harassment and violence by police against the sex workers. And Supreme Court stated that adult sex workers should not be arrested or punished or harassed simply because they are engaged in voluntary sex work. Whenever police authority rescue or lead any operation, if an adult is found to be working willingly, no criminal action should be taken against them. The court also asked police officers to act with sensitivity and respect for dignity towards the sex worker. It further clarified that carrying health and safety items like condoms should not be treated as evidence of a crime.

The protection for family life and protection

The court stated that when we discriminate sex workers from our society or when we take any discriminatory action against sex workers, they also affect their families. The court stated that children of sex workers should not be separated from their parents only because of their mother's occupation. Any decision about custody or institutional care must be based on child's welfare and not on social stigma or moral judgment of the society. The court also emphasized that the identity and privacy of sex workers should be protected when we specially talk about media reporting and it should be prevented so that it should be prevented the social discrimination.

Access to social welfare and social integration

Again, an important part of the court's direction was that sex workers should ensure that sex workers can access government welfare scheme as any member of the society. The court directed authorities to help sex workers to obtain identity documents, food security benefits and health care and other social services. It also clarifies that adult sex workers living in protective home should be allowed to live if they choose to continue their work. At the same time, the court supported rehabilitation program for those who wish to leave sex work. These all measures aim to promote social inclusion and reduce marginalization of sex workers in our Indian society.

Critical Analysis:

Positive constitutional shift

The decision in Budhadev Karmaskar vs State of Bengal shows an important change where we can see that how the Constitution looks at sex workers. Before this case, sex workers are being seen mainly through the lens of morality and they being treated the individual who need to be

controlled to maintain the social order. But in this case, the court recognized that sex workers are also leads and also entitled to dignity, privacy and equal protection under Article 21 of Indian Constitution. This shift from victims to right barrier is important because it treats them as a right-bearing citizen rather than as a people who need to be controlled.

The court's direction against police harassment shows that this change is very crucial and needful for the agency of sex workers. By stating that adult consensual sex work should not be treated as a crime, the court tried to end the everyday harassment faced by sex workers. This judgment supports that constitutional idea of dignity, bodily autonomy and personal liberty must be protected and any person's occupation should not be reason for discrimination or degrading treatment in our society.

Rehabilitation Vs Autonomy: Protection Without Agency

When we talk about the Supreme Court judgments of how progressive steps have taken by the Supreme Court towards the sex worker and their agency, it still shows some discomfort in fully accepting a sex worker as a legitimate form of work in our society. The court's approach continues to focus heavily on rehabilitation, welfare and helping the people who want to exit the profession. This action suggests that sex worker is still seen something that people should ideally leave rather than valid occupational choice in our Indian society.

This approach of the Supreme Court limits the recognition of autonomy. The judgment does not clearly recognize sex worker as a profession or any labourer act which can be protected under article 19.1.g nor does it fully treat sex worker as an independent economic actor in our society but instead the state is placed in a supervisory role through welfare and rehabilitation measures which says that a protective but paternalistic attitude of our legal system.

As a result, the decision can be described as protection without agency. While sex workers are recognized as deserving dignity and human treatment, their right to define their work as legitimate labour remains unclear and unresolved. The issue the judgment represents a compromise, we can say that this Supreme Court judgment is kind of compromise between constitutional rights and social concern but it stops short of fully adopting a right-based labour perspective.

Limited structural reforms

When we talk about limitation of the judgment, one of the major limitations of the judgment is that it does not bring structural legal form. That means that the Immoral Traffic Act still criminalizes many conditions under which sex workers actually take place, such as brothel

management, shared workplace and place, public solicitation. Because of these things, sex workers still face difficulties in working safely. The court did not question or changes the restriction, which limits the real impact on the sex worker and their working conditions. The judgment also does not address labourer protection, such as workplace safety, the right to organize, access to social security as workers. Without these structural changes, sex workers remain dependent on administrative support and government goodwill. This all makes the implementation of rights uncertain and difficult in practice for sex workers and their agency in our Indian society.

Between Recognition and Reality

another important concern is whether the Supreme Court judgment will actually make improvement to the daily lives of sex workers. As we all know, real change depends on how the decision is implemented in everyday interaction with police, healthcare system, banks and welfare authorities. Even when courts give protective direction, there is still discrimination and harassment which is being continued by others and there are still marginalization and exclusion faced by sex workers and their agency in our society.

The gap between legal recognition and real experience remain very significant because social stigma, informal discrimination and fear of harassment still prevent many sex workers from accessing housing, healthcare and banking services or any welfare schemes of government. This shows the distance between constitutional promises and everyday reality of sex workers. As we talk about, dignity cannot be achieved only through legal recognition. It must be experienced in daily life through safe working conditions, social acceptance and equal access to public services without fear or shame.

The Buddhadev case the court judgment moves the law in positive direction and expands the constitutional thinking, but it does not fully remove the deeper structure of stigma, insecurity and regularity controls that continue to shape the everyday life of sex workers in our society. We cannot change the fact that even there is still legal provision exist for dignity and respectability of sex workers, but through a night or through a small period of time, we cannot change the moral judgment, moral values of our society.

Comparative constitutional perspective

The decision in Buddhadev Karmaskar can be better understood when we see it along with other important Supreme Court judgments on privacy, autonomy, and dignity. We have cases like

*Justice K.S. Puttaswamy v. Union of India*⁹ and *Navtej Singh Johar v. Union of India*¹⁰, where the Court held that personal autonomy, dignity, and privacy are essential parts of Article 21. These cases also made it clear that individual choices should be respected, even if they go against social morality. Together, these judgments show that personal liberty and individual choice are protected under the Constitution of India.

When we see in this context, the Budhadev decision partly supports the idea of autonomy. The Court accepted that consensual adult sex work should not be treated as a crime and that sex workers should not face harassment. But unlike the strong language of autonomy used in privacy and sexuality cases, we see that the judgment does not clearly recognize sex work as a fully protected occupational choice. The focus remains more on welfare and rehabilitation and does not give preference to practice as a right full profession.

A comparison can also be made with a livelihood case such as *Olga Tellis v. Bombay Municipal Corporation*¹¹, where the Court held that the right to livelihood is part of the right to life. As we discussed that Budhadev recognizes dignity and protection, but it does not fully extend the idea of livelihood protection to sex work. Therefore, the judgment takes a middle position moving toward dignity and autonomy, but not fully recognizing sex work as a protected profession under constitutional principles.

Conclusion

The decision in *Budhadev Karmaskar v. State of West Bengal* is an important step in the constitutional protection of sex workers' rights. The way court stated that dignity under Article 21 applies to sex workers regardless of their profession, and the way court gives clear directions against police harassment and administrative discrimination, it shows that Court moved the legal approach away from moral judgment toward a rights-based perspective. The judgment recognizes that protection from violence, access to welfare, and the right to live without stigma are matters of constitutional rights, not charity.

At the same time, this judgment has some limitations. The Court's continued focus on rehabilitation and social reintegration clearly shows the discomfort where they cannot fully recognize sex work as a legitimate form of labour. The lack of structural reform of the Immoral Traffic (Prevention) Act means that many restrictive conditions affecting sex workers still remain the same.

⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1

¹⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

¹¹ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545.

Because of this, deeper problems of sex workers such as unsafe working conditions, lack of labour protection, and lac of in implementation continue to exist in our society.

The way forward lies in moving beyond a welfare-based approach toward a rights-based labour framework that recognizes sex workers' agency, economic choice, and workplace protections. Real change will require legislative reform, institutional sensitivity, and a shift in social attitudes. Without such structural changes, the promise of constitutional dignity may remain symbolic rather than fully transformative.

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