Taking Steps to ensure Sex Workers' Rights

What is the issue?

As the pandemic has hit hard the adults who earn by providing sexual services, it is time to ensure the rights of the sex workers.

What was the recent Supreme Court verdict about?

- Recently, in *Budhadev Karmaskar v. State of West Bengal & Ors*, the Supreme Court re-asserted that sex workers and their children cannot be deprived of their right to live with dignity under Article 21 of the Constitution.
- The court said that notwithstanding the profession, every individual in this country has the right to a dignified life.
- The court's directions are nothing but the recommendations made by the Pradip Ghosh panel constituted by the Supreme Court.

To know more about the SC directions on sex workers, click here

What about the recommendations of the panel?

- The panel has listed 10 recommendations but the Government of India had certain reservations about four.
- The court directed the government to implement the other six recommendations as well as the provisions of the Immoral Traffic (Prevention) Act (ITPA) of 1956.
- The six recommendations are
    - to provide immediate medical assistance to sex workers who are victims of sexual assault
    - to release adult sex workers detained in ITPA protective homes against their will
    - to sensitise the police and other law-enforcement agencies about the rights of sex workers to live with dignity
    - to ask the Press Council of India to issue guidelines to the media so that they don't reveal the identities of sex workers while reporting on arrest, raid and rescue operations
    - to not consider health measures that sex workers employ for their safety as evidence of commission of an offence
    - to ensure that the legal service authorities of the Central and State governments educate sex workers about their rights vis-à-vis the legality of sex work

> *Although, a provision is already available in the CrPC on providing medical assistance to sex workers who are victims of sexual assault, the law is silent about not revealing the identity of sex workers.*

Why has the Central government expressed its reservation against four recommendations?

- **Basis of age and consent**- The government expressed reservation about the provision for preventing the police from taking any criminal action against a sex worker who is an adult and is participating with consent.
- The expression sex worker is not defined in the ITPA or any other law.
- The expressions 'sexual exploitation' and 'abuse' is prone to multiple interpretations and possible misuse by the enforcement agencies, particularly if offering one's body with consent for consideration is kept out of the criminal framework.
- **Legality**- The panel recommended that since voluntary sex work is not illegal and only running a brothel is unlawful, sex workers should not be arrested or victimised during any raid in the brothel.
- The government would need to decide as a policy whether the act of two or more sex workers living together for mutual gain and being managed by themselves or by anyone else is to be criminalised or not.
- **Separation of child**- The third recommendation says that no child of a sex worker should be separated from the mother merely on the ground that the mother is in the sex trade.
- Though the law does not mandate separation of the child from the mother (sex worker), it presumes trafficking if a child is found with any person in a brothel.
- Also, if a child or a minor is rescued from a brothel, the magistrate may place him or her with any child care institute recognised under the Juvenile Justice Act.
- In *Gaurav Jain v. Union of India* (1997), the Supreme Court had held that children of sex workers ought not to be allowed to live in brothels and reformatory homes should be made accessible to them.
- **Representation in decision making**- The fourth recommendation requires the government to involve sex workers or their representatives in the process of decision-making or in the process of drafting reforms in laws relating to sex work.

*Carrying on sex work outside the notified areas or outside a distance of 200 metres of any place of public religious worship, educational institution, hospital, etc. is **not** punishable under the ITPA.*

What is the difference between prostitution and sex as work?

- According to the ITPA, 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes.
- Therefore, the expression 'prostitution' is not just confined to offering the body to a person for sexual intercourse for hire but also taking unjust and unlawful advantage of trapped women for one's benefit.
- The government should consider banning prostitution per se and allowing voluntary sex work with certain conditions keeping in mind the public interest.
- Women in the flesh trade should be viewed more as victims of adverse socioeconomic circumstances rather than as offenders.
- The government may now use the SC's directions as an opportunity to improve the conditions of sex workers, facilitate rehabilitation, and remove various inconsistencies in the applicable laws.

Reference

1. https://www.thehindu.com/opinion/op-ed/taking-steps-to-ensure-sex-workers-rights/article65500037ece

