

**IN THE SUPREME COURT OF INDIA  
(CRIMINAL APPELLATE JURISDICTION)**

**IN**

**CRIMINAL APPEAL NO(s). 135 OF 2010**

IN THE MATTER OF:

**BUDHADEV KARMASKAR** .. Appellant (s)

**VERSUS**

**STATE OF WEST BENGAL** .. Respondent(s)

AND IN THE MATTER OF:

**DURBAR MAHILA SAMANWAYA COMMITTEE**

Through

Secretary

12/5, Nilmoni Mitra Street

Kolkata 700006 .. Impleaded Respondent

**AFFIDAVIT IN RESPONSE TO THIS HON'BLE COURT'S ORDER**

**DATED 04/05/11 ON BEHALF OF IMPLEADED RESPONDENT: -**

**DURBAR MAHILA SAMANWAYA COMMITTEE**

**MOST RESPECTFULLY SHEWETH:**

I, Bharti Dey, Secretary of the Impleaded Respondent abovenamed, having its office at 12/5, Nilmoni Mitra Street, Kolkata 700006, do hereby solemnly affirm and state as under;

1. That I am the Secretary of the Impleaded Respondent and am duly authorized to affirm and swear this affidavit on behalf of the Impleaded Respondent. A copy of the Resolution to this effect passed by the Governing Board of Durbar Mahila Samanvay Committee is being filed herewith as **Annexure R -1**.

2. That the Impleaded Respondent is a registered society (hereinafter referred to as "Respondent Society") having its office at 12/5, Nilmoni Mitra Street, Kolkata 700006.

3. The Respondent Society has been working with sex workers in Kolkata and other parts of West Bengal since 1993.

4. The Respondent Society was impleaded as necessary party in proceedings in Criminal Appeal No. 135 of 2010 by this Honb'le Court by an order dated 04/05/2011, which reads as follows:

"Mr. Pradeep Ghosh, learned amicus curiae informed us that in the Red Light Areas of Kolkatta, there are some NGOs and Co-operative Societies like Durbar Mahila Samanwaya Committee and Khush Co-operative Society of the Sex Workers in Kolkatta. We direct that they be impleaded as necessary party in this case and service on them be effected through Mr. Tara Chand Sharma, learned Standing Counsel for the State of West Bengal which shall file their response in this case after serving a copy of the same on the learned amicus curiae. No further delay in filing the response will be tolerated."

5. The Respondent Society was directed by this Hon'ble Court to file its response in the said matter in connection with the preparation of scheme for technical/vocational training for sex workers and the manner in which sex workers can be rehabilitated.

6. The Respondent Society is grateful for the opportunity accorded by this Hon'ble Court to present its views on rehabilitation of sex workers, a subject that is of vital interest to it and to the community that it works with.

#### **Brief Background of the Respondent Society**

7. The Respondent is a society registered under the Societies Registration Act, 1860 (Registration no S/87070 of 1997-1998), having its registered office at 12/5 Nilmoni Mitra Street, Kolkata, 700006.

8. The Respondent Society was established because of the need felt by sex workers to set up a unique body of "fallen women" to create solidarity and collective strength among sex workers.

9. The establishment of the Respondent Society was preceded by a Sexual Health and HIV Intervention Programme (hereinafter referred to as "SHIP") in the Sonagachi red light area of Kolkata designed by the All India Institute of Hygiene and Public Health, a Central Government agency whose survey showed high rates of sexually transmitted infections (STIs) and low rates of condom use among sex

workers. SHIP reached out to the community with health services through the 'peer based approach' that is, recruiting sex workers from Sonagachi to contact other sex workers and promote project activities. Over time, the 'peers' felt that mere provision of medical care is inadequate, as most sex workers were unable to access services due to police raids, extortion by goondas and the prejudicial attitude of service providers. They felt that service provision must be accompanied by efforts to enable sex workers to resist violence, stigma and discrimination and claim basic rights for themselves and their children. As a result, 'peers' in SHIP transformed themselves from health educators to trailblazers for empowerment, who would mobilize sex workers to live with dignity and self respect. This, amongst other things, led to the setting up of the Respondent Society.

10. The Board members of the Respondent Society are sex workers themselves, as are majority of staff in projects implemented by it.

11. The Respondent Society represents over 65,000 female, male and transgendered sex workers and their children across West Bengal.

12. Over the last fifteen years, the Respondent Society has extended its activities to include provision of health, education and social security, promotion of culture and art, prevention of entry of minors in sex work, protection of underage and unwilling sex workers and rehabilitation of those seeking alternate sources of livelihood.

## **Overview of Respondent Society's activities**

### ***Health***

13. The Respondent Society operates the largest 'Targeted Intervention' for prevention of HIV among sex workers and their clients in 12 districts in Kolkata and 30 districts in West Bengal, with support from the West Bengal State AIDS Control Society, Ministry of Health and Family Welfare, Government of West Bengal and the National AIDS Control Organisation, Ministry of Health and Family Welfare, Government of India.

14. As part of the abovementioned intervention, the Respondent Society runs 42 clinics, which offer counseling and treatment for STIs and other common ailments as well as referral to government health facilities like Integrated Counseling and Testing Centres for HIV and anti-retroviral treatment. The Respondent Society reaches over 35,000 sex workers and 1 lakh clients of sex workers annually.

### ***Education***

15. Recognising that education is indispensable to the empowerment women and children in sex work, the Respondent Society has been running various formal and non formal educational programmes since 1993.

16. The Respondent Society implements an adult literacy programme through 34 centres in Kolkata and neighbouring districts. Currently,

1,000 sex workers are enrolled in these centres, where they learn how to read, write and do basic Maths. A class for 'English speaking' has recently been introduced at some such centres.

17. Besides literacy, the Respondent Society has started courses in higher education for sex workers keen to pursue further studies in collaboration with the Indira Gandhi National Open University, (hereinafter "IGNOU") Kolkata.

18. The Respondent Society runs a full fledged educational programme for children of sex workers, named "Berebhenge" (meaning "breaking the fence"). The said programme covers children of different ages and learning needs through the following components:-

- (i) pre-school care,
- (ii) academic support for junior school going children,
- (iii) educational centres for school drop outs,
- (iv) special coaching classes for senior school children
- (v) vocational training for teenage children.

A total of 353 children are enrolled in this programme.

19. The Respondent Society also assists older children to pursue graduate studies and correspondence courses at IGNOU, Kolkata.

20. The Respondent also runs two hostels for children of sex workers - one in Baruipur, 24 Parganas, South and the other in Ultadanga,

Kolkata. Presently, 110 children are residing in these hostels and pursuing their studies in neighbourhood schools.

### ***Promotion of culture and performing arts***

21. The Respondent has set up a cultural wing named “Komal Gandhara”, which fosters talent among sex workers and their children in music, theater, and performing arts. “Komal Gandhara” members have performed at many local, national and international cultural events including at *the* inaugural ceremony of the 12th International AIDS Conference held in Geneva, Switzerland in 1998.

### ***Support to other marginalized groups***

22. The Respondent Society encourages children of sex workers to collectivise and articulate their rights through “Amra Padatik” (meaning “We, the foot soldiers”). The group confronts issues that children of sex-workers face in their everyday lives, such as inequality and discrimination. “Amra Padatik” currently has 14 branches in districts with red lights areas in West Bengal.

23. The Respondent Society lends support to women living with HIV through the “*Mamata Network*”, which focuses on treatment, counseling and care. The group supports HIV positive women to access anti-retroviral therapy, promotes treatment adherence through counseling, nutritional supplements and follow up and provides social and legal aid to women in distress.

24. The Respondent Society also extends support to – “Anandam”, a network for male and transgender sex workers and, “Saathi Sanghathan”, a support group for regular partners of sex workers.

25. As is evident, the Respondent Society is an organization of, for and by the sex workers, having deep roots in the community and addressing a range of needs of women and children in sex work.

### **Respondent Society’s work on rehabilitation**

26. The Respondent Society has first-hand experience in aiding rehabilitation of women, who are forced to engage in sex work.

27. Concerned with induction of minor girls and unwilling women in sex work, the Respondent Society formed a Self Regulatory Board (hereinafter referred to as “SRB”) in 1999 to monitor entry and facilitate exit of such persons from sex work.

28. The SRB relies on the awareness, knowledge and ingenuity of sex workers, who live and work in sex work sites and are therefore, uniquely positioned to identify girls and women who have been newly recruited into brothels. Sex workers are also specially placed to reach out to the new recruit, gain trust, inquire into her circumstances and discuss options for rehabilitation for those who wish to leave sex work.

29. Underage girls as well as adult women who want to give up sex work are produced before the SRB, which operates in districts with ‘red light’ areas. The SRB comprises local representatives, which includes MLA, Councilor or Member of Panchayat, who preside over



the Board in their respective district, doctor, lawyer (if available) and other community leader or an influential person, besides sex workers themselves. The SRB interacts with the girl or woman who wants to leave sex work and deliberates on rehabilitation options that are viable for and acceptable to her.

30. Thereafter, the Respondent Society coordinates with the Police and various government departments to realize the option chosen by the concerned girl/woman. This includes facilitating return to the family, securing accommodation in a government run hostel and supporting enrollment in education or employment.

31. Till date, the Respondent Society has removed 755 persons from sex work, of which 671 are minors and 84 unwilling adult women.

32. Besides girls and unwilling adult women, the Respondent Society is also pursuing rehabilitation for ailing and/or aged sex workers, who are unable to support themselves through earnings from commercial sex. Such women desperately seek income and social security, as many of them have no family or savings to fall back on in their old age. The Respondent Society arranges to train and absorb them in health and educational projects that it runs.

### **Existing legal framework for rehabilitation**

33. The legislative basis for rehabilitation of sex workers is the Immoral Traffic (Prevention) Act, 1956, (hereinafter referred to as "ITPA") which provides rehabilitation in and through "Corrective Institutions" and "Protective Homes". The following table compares

the nature and procedure for rehabilitation in Corrective Institutions and Protective Homes under the ITPA.

**Rehabilitation in Corrective Institution and Protective Home  
under ITPA**

	<b>Definition</b>	<b>Meant for</b>	<b>Procedure for admission</b>	<b>Duration of stay</b>	<b>Procedure for release</b>
<b>Corrective Institution</b> [Sections 2(b), 10A, 19(3), 21 and 23]	“an institution, by whatever name called (being an institution established or licensed as such under section 21), in which persons, who are in need of correction, may be detained under this Act, and includes a shelter where undertrials may be kept in pursuance of this Act”	<ul style="list-style-type: none"> <li>Female offenders found guilty of carrying on prostitution in public places or soliciting, whose character, health, and circumstances, is, in the opinion of the Court, conducive to correction</li> </ul> <p>or,</p> <ul style="list-style-type: none"> <li>A person who is carrying on is being made to carry on prostitution and makes an application to the local Magistrate for protection</li> </ul>	The Court may, <u>in lieu of a sentence of imprisonment</u> , pass an order detaining a female offender in a Corrective Institution after, (i) hearing the offender, (ii) considering her representation and, (iii) the report of the Probation officer and, (iv) recording its satisfaction that the character, health, mental condition and other circumstances of the offender is likely to benefit from instruction and discipline	Min of 2 yrs and Max of 5 yrs	<ul style="list-style-type: none"> <li>Upon completion of detention period or,</li> <li>By securing discharge from State Govt after 6 months of expiry of the detention order, upon satisfaction of the State Govt that the offender will lead a useful and industrious life, with or without condition, which may include residence and supervision of her activities and movements</li> </ul>
<b>Protective Home</b> [Sections 2(g), 17(4), 19(1), 19(3), 21 and 23]	“an institution, by whatever name called (being an institution established or licensed as such under section 21), in which persons,	<ul style="list-style-type: none"> <li>Persons removed from premises searched by the Police on suspicion of commission of offence punishable</li> </ul>	The Magistrate may, upon completion of inquiry by the Probation Officer with respect to a person removed by the police during a search or rescued on the	Min of 1 yr and Max of 3 yrs	<ul style="list-style-type: none"> <li>On appeal and setting aside order of detention</li> <li>On completion of detention period</li> </ul>

	<p>who are in need of care and protection, may be kept under this Act and where appropriate technically qualified persons, equipment and other facilities have been provided, but does not include –</p> <p>(i) a shelter where under trials may be kept in pursuance of this Act, or</p> <p>(ii) a corrective institution”</p>	<p>under ITPA</p> <ul style="list-style-type: none"> <li>• Persons living in, or carrying on or being made to carry on prostitution in a brothel, who is removed by the Police under orders of a Magistrate</li> <li>• A person who is carrying on is being made to carry on prostitution and makes an application to the local Magistrate for protection</li> </ul>	<p>orders of a Magistrate, who, in the opinion of such Magistrate is in need of care and protection, order such person to be detained in a protective home or other custody</p>		<ul style="list-style-type: none"> <li>• On release by State Govt under ITPA Rules??</li> </ul>
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34. Under ITPA, the Court can order rehabilitation for– i) female offenders, ii) persons removed from brothels and, iii) persons engaging in, or being compelled to engage in sex work, who seek protective custody from the Magistrate.

35. Rehabilitation under ITPA means keeping sex workers in corrective institutions or protective homes, for a period ranging from one to five years.

36. The responsibility for establishing and maintaining as well as authorizing other persons or agencies to set up corrective institutions and protective homes vests with the State Government (Section 21, ITPA)

**Government Schemes for Rehabilitation**

37. The Ministry of Women and Child Development (hereinafter “MWCD”), Government of India focuses on institutionalization of sex workers or women who are trafficked. All of its schemes for women in prostitution, namely - 1) SWADHAR (as amended in September 2002), 2) UJJAWALA, for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation (December 2007) and, 3) the Central Social Welfare Board (autonomous institution of the MWCD) provide “homes” for rehabilitation of sex workers.

**Respondent Society’s observations on existing programmes for rehabilitation of sex workers**

38. The Respondent Society has been striving to enable sex workers improve the quality of their lives. It has also endeavored to enable children of sex workers to enjoy equal rights and opportunities, unaffected by their mothers’ occupation.

39. Based on its experience, the Respondent Society believes that rehabilitation is much needed for three categories of sex workers – 1) minor girls, 2) adult women compelled to engage in sex work against their will and, 3) aging or infirm women, who are unable to support themselves through earnings from sex work. Unfortunately, existing programmes do not target or prioritise these persons in offering rehabilitation.

40. In the experience of the Respondent Society, the needs and aspirations of underage, adult and elderly sex workers are quite

different. Often, young sex workers have a family to return to and do not want their association with sex work to be known. Therefore, family support and protection of confidentiality are their main concerns with rehabilitation. Adult sex workers are primarily worried about maintaining children and other dependents. Therefore, their decision to seek alternate livelihood is influenced by comparative earnings, which must be higher or at least equivalent to the income from sex work. Older sex workers, on the other hand, do not have a family and hence require assistance in the nature of shelter, pension, or income support. In order to be meaningful, rehabilitation plans for sex workers must be sensitive and responsive to individuals and not rigidly standardized.

41. Current schemes for rehabilitation do not permit flexibility or adjustment. Nor does the programme allow for inquiring into the individual sex workers' background and other circumstances. The existing framework does not accord an opportunity to the individual, who is adult and of sound mind, to decide what could be the best option for her. Under the ITPA, all sex workers removed from brothels are lumped in 'homes', without due consideration of their age, willingness and circumstances and in violation of their dignity, and individuality.

42. In the Respondent Society's experience, institutionalization, or detention in 'homes' is not conducive to rehabilitation of sex workers. Members of the Respondent Society who have been in State run corrective institutions or protective homes have expressed their

resentment at being segregated from their children and families. Inmates of corrective institutions and protective homes have complained of isolation and loss of freedom experienced in the name of rehabilitation. For most sex workers, these institutions are worse than jails, for it is easier to get released from prison than from a protective home.

43. State policy on rehabilitation, as contained in the ITPA and MWCD schemes is narrowly focused on institutionalization, to the exclusion of other services and facilities. The Respondent Society is of the opinion that sex workers wish to be integrated in society and hold rights and responsibilities, like any other citizen. This requires efforts to assimilate rather than alienate sex workers from the wider community. Detention in corrective institutions or protective homes worsens estrangement of sex workers, erodes social ties and weakens the realization of genuine rehabilitation.

44. The Respondent Society has also observed that schemes that single out sex workers are improper and ineffective. For instance, a woman staying in a SWADHAR home will be easily identifiable as belonging to a 'red light' area. Such association will stifle her chances of making a life outside sex work.

**Respondent Society's suggestions on the nature and manner of rehabilitation**

45. The Respondent Society considers the following technical and professional skills to be of relevance in planning rehabilitation:

A. For young sex workers:

- a) Those with some education may be offered training in Computer skills or Beautician courses, along with skills to market their services;
- b) Those without education but wanting to pursue studies, may be enrolled in schools with full scholarship and free hostel facility

B. For aged sex workers

- a) Provision of monthly pension, free health care and social security;
- b) Linkage with NREGA and other Central and State welfare schemes

46. The Respondent Society asserts that in preparing and providing rehabilitation to sex workers, the following principles be observed:

- a. voluntary and with full respect for dignity and autonomy of the individual
- b. prioritization of underage and aging sex workers
- c. flexibility and sensitivity to individual need and circumstances
- d. offered discreetly; with protection of confidentiality
- e. provision of a range of services and options
- f. alternatives to be effective and sustainable

- g. parity in earnings; income from alternative livelihood to be higher or atleast equivalent to remuneration from sex work
- h. requisite government support, calculated, costed and budgeted per capita in plans

47. The Respondent Society believes that in order to be effective, it is imperative that the Government conduct a quantitative and qualitative survey of sex workers who need rehabilitation across the country.

48. For the State of West Bengal, the Respondent Society is willing to carry out the abovementioned survey with support from the concerned Ministry/Department.

49. Further, in the State of West Bengal, the Respondent Society suggests that vocational training facilities be introduced in collaboration with the SRBs that are operational in 20 red light areas. The Respondent Society offers to have its SRBs operate and monitor such facilities, which will improve uptake of rehabilitation schemes by sex workers.

50. That the Impleaded Respondent craves leave of this Hon'ble Court to file additional affidavits, and documents, if the need arises.

**DEPONENT**

**VERIFICATION**

I, Bharti Dey, the deponent above-named and the authorised signatory for the Impleaded Respondent above named do hereby



state on solemn affirmation that whatever stated hereinabove is true and correct to the best of my knowledge and information, and I believe the same to be true.

Verified at New Delhi on 15<sup>th</sup> day of July 2011.

**DEPONENT**