

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.135/2010

IN THE MATTER OF:

BUDHADEV KARMASKAR

Appellant (s)

Versus

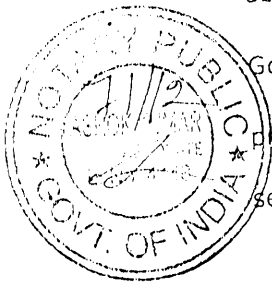
STATE OF WEST BENGAL & ORS.

Respondent(s)

ADDITIONAL AFFIDAVIT ON BEHALF OF UNION OF INDIA IN REPLY
TO THE SIXTH INTERIM REPORT OF THE PANEL

I, Sanjay Kumar Sinha, S/o Shri Ram Lakhan Prasad, aged about 45, working as Under Secretary to the Government of India at present do hereby solemnly affirm and declare as under:

1. That I, in the above noted capacity and as per the records available in the office, am fully conversant with the facts of the case and as such duly authorized to affirm and file this affidavit before the Hon'ble Court.
2. That the Hon'ble Court vide Order dated 14.02.2011 in the above appeal had directed the Union of India and all State Governments/UTs to file their affidavit to frame Schemes to provide technical/vocational training to sex workers and sexually abused women in all cities in India. The Court has



further directed that the Schemes should mention in detail as to who will give the technical/vocational training, provide for proper forward and backward linkages and outline the manner in which these women can be rehabilitated and settled through gainful employment.

3. Further, vide the Order dated 19.7.2011, the Hon'ble Court had constituted a Panel for assisting the Hon'ble Court in the matter. The Hon'ble Court desired the Panel to make suitable suggestions on
 - a) Prevention of trafficking
 - b) Rehabilitation of sex workers who wish to leave sex work, and
 - c) Conditions conducive for sex workers who wish to continue working as sex bworkers with dignity.
4. It is most respectfully submitted that vide Orders dated 24.8.2011 and 15.9.2011, the Hon'ble Court had considered the Second and Third Interim Report of the Panel and *inter-alia* directed the Central Government to consider the recommendations contained therein to the extent they pertained to the Central Government and apprise the Court if there is any difficulty in implementing the directions of the Court.
5. That as per this Hon'ble Court's Order dated the 23.3.2012, the Hon'ble Court observed that the Sixth Interim Report of the Panel contains various ideas which need to be translated into action. It was also observed that



the parties would be at liberty to file their response to the Sixth Interim Report by the next date.

6. The instant affidavit is being filed pursuant to the above observations of this Hon'ble Court in the various Orders mentioned above.

7. It is most respectfully submitted that sex work is intrinsically linked to trafficking. There is also a need to understand and address not only the supply side but also the demand for sex workers as both of them together sustain the sex work and trafficking for commercial sexual exploitation. According to the report published by Gram Niyojan Kendra (GNK) on '**Girls and Women in Prostitution in India**', which was sponsored by the Ministry of Woman and Child Development, trafficking appears to be the main means of entry in prostitution for about 75-77 % of total persons in prostitution. A distinction needs to be made between those who may enter and remain in the trade voluntarily and those who are trafficked through coercion, fraud, deception, false promises of better jobs or marriage and forced to live a life of abuse and humiliation. Further, trafficking is closely linked to migration. While poverty and economic deprivation are the primary push factor for these girls and women, migration in pursuit of better job prospects, marriage etc. further enhance their vulnerability for trafficking.



8. The Immoral Traffic Prevention Act, -1956 (ITPA) seeks to prevent trafficking of persons and prohibits most outward manifestation of sex work including running of brothels. ITPA is the premier legislation for prevention of trafficking for commercial sexual exploitation and prescribes penalties for certain activities relating to prostitution, which includes keeping a brothel, procuring, inducing or taking a person for prostitution etc. Amendments aimed at preventing re-victimisation of victims and enhancing punishments for traffickers are under consideration of the Government.
9. Sex work is not recognised as work in the country. Besides, the Government of India has ratified United Nations Convention against Transnational Organised Crime (UNTOC) and the three Protocols supplementing the Convention which includes the Protocol to prevent, suppress and punish Trafficking in Persons, especially Women and Children. The Convention along with the Protocols came into force in India with effect from 4th June 2011. The Protocol also casts an obligation on the State Parties to undertake measures for prevention of trafficking in persons as also for providing physical, psychological and social recovery of victims of trafficking in persons. Copy of the Protocol to prevent, suppress and punish Trafficking in Persons, especially Women and Children is Annexed and marked as **Annexure A-1**.
10. That this Hon'ble Court in Order dated 14.2.2011 had observed that "a woman is compelled to indulge in



prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body."

11. It is most respectfully submitted that in the subsequent orders of this Court, particularly the Order dated 19.7.2011 which set up the panel with three stated terms of reference, a tacit extension of concern for those women who voluntarily opt for sex work and do not wish to leave that work and be rehabilitated has happened.

12. It is further submitted that facilitating and creation of conditions conducive for sex workers who wish to continue working as sex workers with dignity indirectly imply recognising sex work as a legal occupation. This implies legalisation of prostitution which goes against the law of the land. It is respectfully submitted that while we strive for prevention of trafficking and rehabilitation of all sex workers, providing simultaneously conditions conducive for work for those who wish to continue in prostitution will lead to perpetuation of prostitution and trafficking.

13. The efforts towards rehabilitation can work only if the inflow of more and more women and children in prostitution can be stopped. There is a need for simultaneous emphasis on a strong and comprehensive prevention strategy and rehabilitating sex workers in other



gainful occupations. However providing conditions conducive for work particularly for those who wish to continue in prostitution and do not wish to be rehabilitated will be detrimental for these efforts.

14. The Hon'ble Court had directed the Central Government to consider the suggestions made by the Panel in its Third Interim Report. It is respectfully submitted that Ministries and Departments of the Central Government concerned with the suggestions have been consulted in the matter, and leave of this Hon'ble Court is sought for making submissions on some of the recommendations made in the Third Interim Report of the Panel.

15. The Third Interim Report of the Panel had recommended issuing ration cards and Voter ID Cards to sex workers without the rigorous verification of address and relaxing the requirement of proof of address, and also not mentioning the profession in official documents. In this regard it is most respectfully submitted that while the recommendation with regard to the Voter ID card has been suitably modified by this Hon'ble Court vide order dated 27.01.2012 on the basis of the fourth interim report of the Panel, the recommendation regarding issuing the Ration card by relaxing the requirement regarding verification of their address still stands. It is also submitted that while not mentioning of the profession is not a big issue and can be accepted, many of the sex-workers who are victims of commercial sexual exploitation are nationals of other



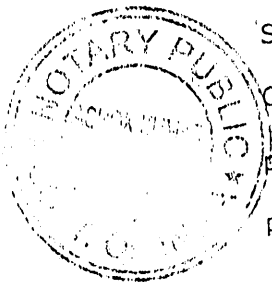
countries, predominantly from Bangladesh and Nepal who are in India as a result of cross border trafficking. It is respectfully submitted that according to the Gram Niyojan Kendra (GNK) study on '**Girls and Women in Prostitution in India**' information about the number of prostitutes can only be an estimation because of the secrecy that surrounds the practice of prostitution, constant process of inclusion and withdrawal of girls and women in and from prostitution as well as vastness and diversity of the country. The study estimates that there are about 3 million women in prostitution, and foreign nationals including Bangladeshi, Nepali etc. constitute at least about 5% of total prostitutes. The prostitutes of foreign nationals of Bangladesh and Nepal have a tendency to lie about their nationality. Providing ration card by relaxing the rigors of requirement regarding verification of the address of prostitutes will have both economic and security related implications for India. Thus in the light of submissions in the paragraph above the Hon'ble court may kindly consider suitably modifying the recommendation with regard to the issuing of ration card by relaxing the requirement regarding verification of their address as suggested by the Panel.

16. In its Third Interim Report The Panel had also suggested modifying the Ujjawala Scheme, as the Panel had felt the Scheme does not fully meet the requirement of sex-workers who wish to come out of sex-trade and who do not wish to live in a shelter while they are being trained in



vocational occupation as part of rehabilitation outside sex-work. In this regard it is most respectfully submitted that the Ministry of Women and Child Development is also implementing a Scheme for Support to Training and Employment Programme for Women (STEP), and is also providing micro credit facilities to poor asset less women through the Rashtriya Mahila Kosh (RMK). Under the STEP scheme, women are mobilized by the implementing agencies in forming viable Self-help groups (SHG), their skills are improved, access to wage employment/ productive assets and creating backward and forward linkages / support services are sought to be provided. Further, providing access to credit, awareness generation, etc. are also part of the scheme. The scheme advocates an integrated package of inputs aiming at self-reliance and empowerment of women. If aware and empathetic Civil Society Voluntary Organisations come forward and facilitate forming viable groups of sex workers for their rehabilitation out side sex-work, the STEP scheme and the RMK schemes can provide such rehabilitation opportunities as well. It is also pertinent to mention herein that these schemes do not have any requirement of the beneficiaries being housed in shelter homes.

17. It is respectfully submitted that as per the Seventh Schedule, 'Public Order' is a State subject under the Constitution, and as such the primary responsibility of prevention, detection, registration, investigation and prosecution of crimes, including crimes like trafficking and



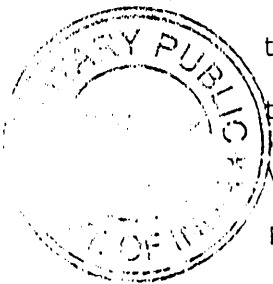
sexual exploitation lies with the State Governments and Union Territory Administrations. The Central Government lays down the broad policy, issues advisories for consideration of the States, and provides modest financial support through its various Schemes. Different Schemes of the Government address felt needs of the target beneficiaries, and convergence of benefits available under different Schemes is also admissible according to the Scheme norms.

18. It is further respectfully submitted Ujjawala is a comprehensive Central Scheme for women and girls who are vulnerable to trafficking as well as those who are victims of trafficking for commercial sexual exploitation. However, it is respectfully submitted that the Scheme does not exclude sex workers who wish to be rehabilitated. While the Scheme offers assistance for prevention of trafficking, and assistance for rescue of the trafficked, the rehabilitation and reintegration components of the Scheme do not distinguish between the women who are trafficked and rescued and women who wish to voluntarily leave sex work. The rehabilitation component comprises an integrated package of services including shelter with food, clothing, counseling, medical care, legal aid as well as vocational training leading to income-generating activities. The initiative of partnering with the Central Government for Ujjawala Scheme primarily rest with the aware and empathetic civil society voluntary organisations to the menace of trafficking for commercial sexual exploitation.



The Voluntary Organisations, though the State Government concerned, apply for assistance under the Scheme. Ujjawala was launched in 2008 and till 31.3.2012, total number of projects comprising one or more components sanctioned for Ujjawala are 188 across 17 States, of which 96 projects have rehabilitation component also. Recently, the first Ujjawala Rehabilitation home proposal for the NCT of Delhi by STOP organisation has been approved.

19. It is further submitted that the Ministry of Women and Child Development is administering the **Swadhar-Greh Scheme** for women in difficult circumstances. Earlier the Ministry was implementing a Swadhar Scheme and a Scheme of Short-Stay Home was being administered by the Central Social Welfare Board. As the objective of the two schemes was similar for women in distress, these have been merged into Swadhar-Greh Scheme last year with better financial norms. So far 317 Swadhar Homes and 353 Short Stay Homes are functioning across the country. In Delhi, 2 Short-Stay Homes are functioning at present. In these shelter homes free food, medical aid and vocational training for their rehabilitation are provided. Any women in difficult circumstances including the trafficked women can get shelter in these homes. Under the Swadhar-Greh Scheme, provisions have been made for training of the women beneficiaries through certified Vocational Training Providers of the Ministry of Labour & Employment for their rehabilitation. It is further



respectfully submitted that such mothers who wish to leave sex work and want to be rehabilitated, could stay in Swadhar as well as in Ujjawala Homes with their children. The children living in Swadhar Homes could avail all existing nearby facilities such as creche services, anganwadi services etc.

20. It is further submitted that there are schemes which focus on enhancing livelihood security in rural and urban areas and have the potential to address the livelihood issues at their doorstep. The Schemes like Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGA), Rural Livelihood Mission, Swarna Jayanti Shahri Rozgar Yojna (SJSRY) etc., if implemented by the States/UTs on priority in the vulnerable districts, can bring about a dramatic change in levels of out-migration and can significantly reduce the possibility of trafficking for commercial sexual exploitation.

21. In view of what is stated at para 16 to 20 above, it is respectfully submitted that the existing Scheme of Ujjawala, supplemented with the other Schemes of the Government, amply meet the concern for rehabilitating the sex-workers who wish to be so rehabilitated and that there is no need to change the norms of the Scheme.

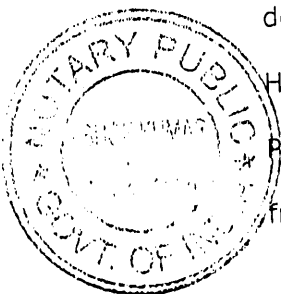
It is respectfully submitted that the recommendations contained in the Sixth Interim Report of the Panel, viz. providing day and night shelters, and crèche facilities for



the children while maintaining that the mothers would continue with sex work will hamper the efforts of the Government to rehabilitate the sex workers in other economically gainful activities. Further, sex-work is not legal in India and therefore there is no policy or affirmative action by the Government exclusively for facilitating sex-workers to continue with commercial sex work.

23. Further it is respectfully submitted that children living in areas which are predominately inhabited by sex workers are highly vulnerable and even if their basic needs for food shelter, education etc. are met, there is a high likelihood of their being trafficked or abused or victimised for commercial sex if they continue to live in that environment. Further such children are exposed to situations and information which is inappropriate to their age, which might result in mental trauma, and a distorted, unifocal understanding of relationships.

24. It is respectfully submitted that the Hon'ble Court may, while making any decision regarding the child of a women in prostitution keep the best interest of the child as the primary guiding principle. It is most respectfully submitted that these children need to be brought up in an environment that is conducive to their growth and development. For this, if required, they could be placed in Homes set up under the Juvenile Justices Care and Protection of Children Act, 2000, within which children from varied circumstances are provided services thereby



facilitating mainstreaming and preventing isolation. So far, 810 such homes have been assisted under the Integrated Child Protection Scheme (ICPS) till 2011-12 across the country. Such children could also be placed in residential Schools under Sarva Shiksha Abhiyan (SSA).

25. It is further submitted that if the children of the sex workers are to be protected from the destabilising and traumatic experiences that are part and parcel of the environment in which prostitution is practised, and it is to be ensured that they do not get into the trade and that they have a potentially bright future, it is perhaps best for the children being brought up outside this environment. This will be possible only if the mother herself is willing to move out of the Sex Work. However, the other suggestions contained in the Sixth Interim Report about counselling the sex workers to leave the trade and providing them with emotional support are worthy of acceptance.

26. In the Sixth Interim Report it has been also stated that the official accommodation provided to the Panel has not been handed over to the Panel. It is respectfully submitted that the accommodation provided by the Directorate of Estates at CGO Complex, New Delhi for use of the Panel has been appointed with furniture, telephone and computer and can be used by the Panel at its discretion. A Personal Secretary and a Class IV official have also been deputed to assist the Panel in its work.



27. That in light of the foregoing submission it is most respectfully submitted that the Government of India is fully committed in prevention of trafficking, rescue, rehabilitation and reintegration of victims of trafficking for commercial and sexual exploitation and rehabilitation of sex workers who want to willingly come out of sex trade. Leave of this Hon'ble Court is also sought for making supplementary submissions on the other suggestions made by the Panel in its Interim Reports.


Deponent

Verification

Verified that the contents of Para 1 to 27 of the above affidavit are true and correct to the best of my knowledge, based on the information derived from official record. No part of it is false and nothing material has been concealed therein.

Verified at New Delhi on this 17th day of April, 2012 .


Deponent

Drawn by:

Gaurav Sharma

Advocate

Settled by:

Mr. P.P. Malhotra

Additional Solicitor General of India

ATTESTED

Filed by:

Ms. Sushma Suri

