

## Taking steps to ensure sex workers' rights

(GS Paper 2, Social Justice)

### Why in news?

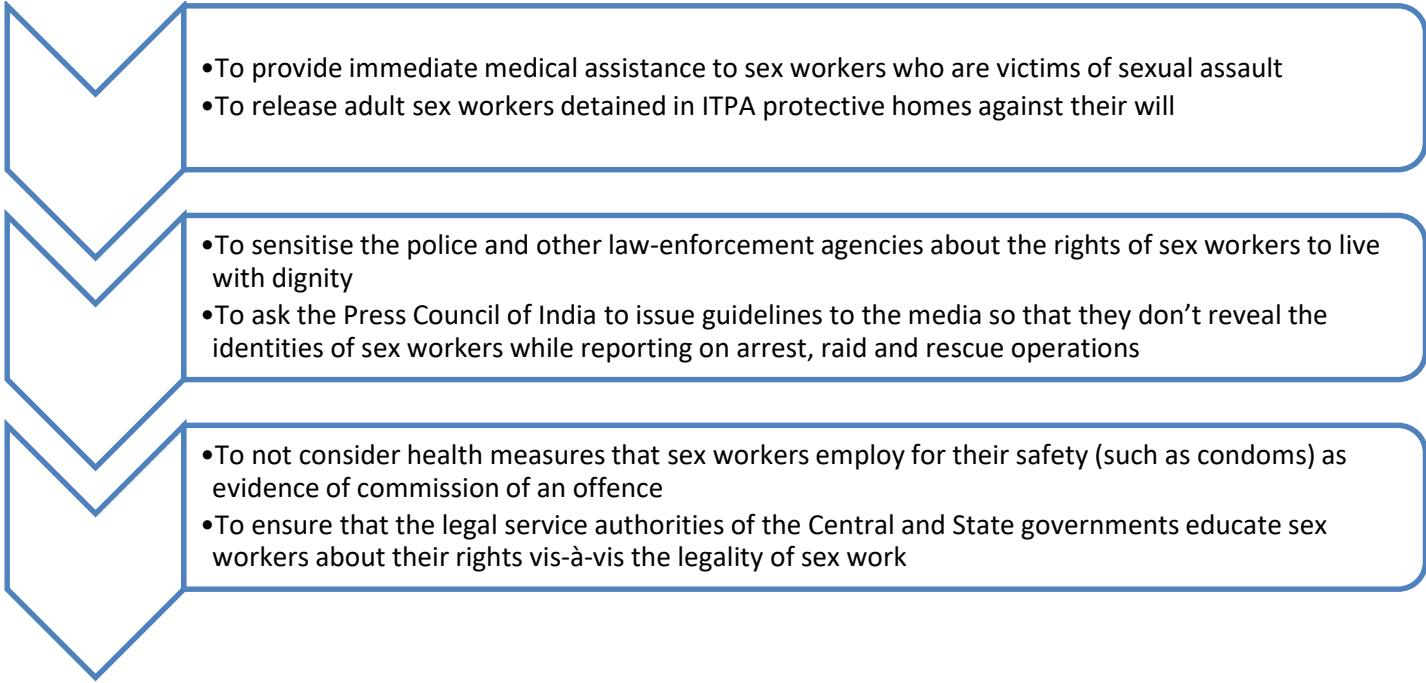
- Recently, in *Budhadev Karmaskar v. State of West Bengal & Ors*, while issuing interim directions to States and Union Territories, the Supreme Court **re-asserted that sex workers and their children cannot be deprived of their right to live with dignity** and human decency.

### Directives by Supreme Court:

- 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 panel constituted by the Supreme Court in July 2011 and headed by a senior advocate, Pradip Ghosh**, with regard to "conditions conducive for sex workers who wish to continue as sex workers to live with dignity in accordance with the provisions of **Article 21 of the Constitution of India**".

### Enforcing directives:

- Since the Government of India had certain reservations about four of the 10 recommendations of the panel, 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**.

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- 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 (such as condoms) 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

### Concerns:

- A provision is already available in the Code of Criminal Procedure (CrPC) on providing medical assistance to sex workers who are victims of sexual assault.
- However, the law is silent about not revealing the identity of sex workers. Similarly, though an order to send the sex worker to a protective home is passed by a magistrate after due inquiry about her need of care and protection, the ITPA and CrPC may be amended suitably to enforce the directions of the Supreme Court. Other directions may be implemented through executive orders by the governments.

### Wider implications:

#### Appropriate amendment for multiple interpretations:

- One of the recommendations which the Central government expressed reservation about is of **preventing the police from taking any criminal action against a sex worker who is an adult** and is participating with consent, on the basis of 'age' and 'consent'.

- The expression ‘sex worker’ is not defined in the ITPA or any other law. According to the ITPA (as amended in January 1987), ‘**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 promiscuous sexual intercourse for hire (as per the definition before 1987); taking unjust and unlawful advantage of trapped women for one’s benefit or sexual intercourse has been brought within its frame.
- The **word ‘abuse’ also has a wide meaning**. It implies that being an adult sex worker who is a sex worker voluntarily is not an offence per se, until exploitation or abuse is reported by her or revealed during investigation.
- It will therefore be appropriate to define ‘sexual exploitation’ and ‘abuse of persons’ as well, through an amendment, to rule out 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.

### **Brothel is unlawful or not?**

- Another recommendation that the government has reservations about notes 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.
- According to the ITPA, ‘brothel’ includes any place which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more sex workers.
- What if willing sex workers have no complaint against the brothel owner or manager? Therefore, 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. This may require wider deliberations to take a considered viewpoint.

### **Child of a sex worker or minor rescued from a brothel:**

- 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**. If a minor is living in a brothel or with sex workers, it should not be presumed that he/she has been trafficked.
- 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. Therefore, keeping in view the child’s welfare, a suitable amendment may be made to accommodate the Supreme Court’s direction.

### **Role of sex workers 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.
- As the purpose of this exercise is to rehabilitate sex workers and improve their living conditions, their involvement in decision-making will surely make the reforms more enforceable.

### **Why allow sexual exploitation?**

- It is noteworthy that **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**.
- The irony is that when the essential ingredient of sex work is ‘sexual exploitation’ or ‘abuse of persons’ for commercial purpose, how can this be allowed anywhere? Therefore, now with the court’s directives on the anvil, it will be apposite for the government to differentiate between prostitution and the work of sex workers and consider banning prostitution per se and allowing voluntary sex work with certain conditions keeping in mind the public interest.

### **Way Forward:**

- It is not disputed that **women in the flesh trade should be viewed more as victims of adverse socioeconomic circumstances** rather than as offenders. However, with all our laws and policies, we as a society have failed to contain prostitution.

- Therefore, the government may now use the Supreme Court's directions as an opportunity to improve the conditions of sex workers and their surrounding environment, facilitate rehabilitation, and remove the various ambiguities and inconsistencies in the applicable laws and bring about clarity.

## The debates around the Surrogacy Act (GS Paper 2, Governance)

### Context:

- Recently, the Delhi High Court issued notice to the Centre on a **petition challenging provisions of the Surrogacy Act and the Assisted Reproductive Technology (ART) Act** on the ground that the laws are discriminatory against a single man desirous of being a father through surrogacy and a **married woman who is desirous of expanding her family through the means of surrogacy**.
- Petitioners in the Delhi High Court **questioned why marital status, age, or gender were the criteria** for being allowed to commission or not commission surrogacy in India.

**BILL EXCLUDES MANY**

- Women must either be divorced or widow to be able to opt for surrogacy
- Women only between 23-50 years can go in for IVF or surrogacy
- Overseas Citizens of India or foreigners cannot go in for this procedure
- Only married Indian couples and NRIs can opt for surrogacy

**COST DISPARITY**

- Surrogacy procedure in India costs ₹15-18 lakh
- In other countries like US, South America, Russia \$50,000- \$1,50,000

**FOR RENT**

It is very unfortunate that the bill is not inclusive. While we understand the need for regulation, it should have considered people from all sections of society. It is likely that many people will now travel abroad to have a child through surrogacy – **Nayana Patel** | RENOWNED IVF AND SURROGACY SPECIALIST FROM ANAND, GUJARAT

### Background:

- As per the Surrogacy Act that commissioned in from January 2022, a **married couple can opt for surrogacy only on medical grounds**.
- Additionally, **the couple should not have a child of their own**. Though the law allows single women to resort to surrogacy, she should either be a widow or a divorcee, between the age of 35 to 45 years. Single men are however, not eligible.

### What is the Surrogacy Act?

- The Surrogacy (Regulation) Bill was introduced in Parliament in November 2016, and passed in the winter session of Parliament in 2021.
- The Act sought to **regulate the surrogacy part** of a rather flourishing infertility industry in the country.
- Defining 'surrogacy' as a practice where a woman undertakes to give birth to a child for another couple and agrees to hand over the child to them after birth, **it allows 'altruistic surrogacy'**, wherein only the medical

expenses and insurance coverage is provided by the couple to the surrogate mother during pregnancy. No other monetary consideration will be permitted.

### **Why is there a need for a Surrogacy Act in India?**

- **India has emerged as a hub for infertility treatment**, attracting people from the world over with its state of the art technology and competitive prices to treat infertility.
- Soon enough, due to prevailing socio-economic inequities, **underprivileged women found an option to ‘rent their wombs’** and thereby make money to take care of their expenses often to facilitate a marriage, enable children to get an education, or to provide for hospitalisation or surgery for someone in the family.
- Once information of the availability of such wombs got out, the demand also picked up. Due to arrival of unscrupulous middlemen into the scene and **exploitation of these women began**. Several instances began to emerge where women, in often desperate straits, started lodging police complaints after they did not receive the promised sum.
- Other issues also began to crop up. For instance, in 2008 a Japanese couple began the process with a surrogate mother in Gujarat, but before the child was born they split with both of them refusing to take the child.
- In 2012, an Australian couple commissioned a surrogate mother, and arbitrarily chose one of the twins that were born.
- The time therefore, was ripe for proper regulation.

### **Who all are allowed to make use of the services of a surrogate mother?**

- Any **couple that has ‘proven infertility’** are candidates. The ‘intending couple’ as the Act calls them, will be eligible if they have a **‘certificate of essentiality’ and a ‘certificate of eligibility’** issued by the appropriate authority.
- The former will be issued if the couple fulfils three conditions: One, a certificate of infertility of one or both from a district medical board; Two, an order of parentage and custody of the surrogate child passed by a Magistrate’s court; Thirdly, insurance cover for the surrogate mother.
- An eligibility certificate mandates that the couple fulfil the following conditions: They should be Indian citizens who have been married for at least five years; the female must be between 23 to 50 years and the male, 26 to 55 years; they cannot have any surviving children (biological, adopted or surrogate);
- However, this would not include a ‘child who is mentally or physically challenged or suffers from life threatening disorder or fatal illness.’

### **Who can become a surrogate mother?**

- Only a close relative of the couple can be a surrogate mother, one who is able to provide a medical fitness certificate. She should have been married, with a child of her own, and must be between 25 and 35 years, but can be a surrogate mother only once.

### **What are the controversies behind the Act?**

- Even at the Bill stage, while there was a general murmur of appreciation, and some strident approval from infertility experts, there was some apprehension about the too restrictive regulations. For instance, it does not allow single women, or men, or gay couples to go in for surrogacy.
- Others, primarily those involved in organ transplantation, pointed out how despite a similar, stringent law, the Transplantation of Human Organs Act, organ commerce continues to thrive in the country.
- Brokers continue to operate, though with less temerity and more covertly, sometimes with hospital authorities, to pull wool over the eyes of the appropriate authority and law enforcement officials. Clearly the issue will have to be handled with a stern visage, even as sensitivities of people are factored in.

### **What lies ahead?**

- These apprehensions and perceived hitches due to the exclusionary criteria, have already come to the forefront in the short period that the Act has been operational.
- A path of litigation is possibly the course ahead, and if a critical mass builds up, amendments might have to be resorted to in order to resolve the grievances and ensure access for all categories of parents.

## A Single Nodal Agency (SNA) (GS Paper 2, Governance)

### Why in news?

- Given the federal structure of our democracy, bringing in reforms that actually translate into better results for the states and the Centre equally has always been a challenge.
- One such reform that has benefitted the states and the Centre alike has been the **introduction of the State Nodal Agency bank account model** for transferring funds for implementation of centrally-sponsored schemes.

### Capital expenditure in India:

- Amidst the uncertainty caused by a host of factors, ranging from the **Ukraine war to the Covid-19 pandemic**, the government is focussed on tapping future opportunities by going all guns blazing on capital expenditure.
- The impressive strike rate of **98.5% on capital expenditure**, as evident from the Revised Estimates for FY22, is a testimony to the concerted efforts of the government on streamlining processes and bringing in crucial public-finance management reforms.

### Effective monitoring by SNA:

- The single nodal agency (SNA) model has significantly **streamlined the disbursement of funds for Centrally Sponsored Schemes (CSS)**, which comprise nearly 20% of the total fiscal transfers and amount to nearly Rs 3.8 trillion.
- The initiative has brought down the float available in the CSS fund flow mechanism to a minimum, and improved the monitoring system when it comes to utilisation of funds.
- The government can now see financial activity via SNA, which is helping in effective monitoring of the expenditure by down-the-ladder agencies.

### Working model:

- The SNA model requires the states to notify an SNA for each CSS which will open a unique bank account at a commercial bank responsible for all transactions related to the implementation of the particular CSS.
- All other implementation agencies will either use the SNA's account or open a zero-balance subsidiary account, with drawing limits set by the SNA.
- This has led to funds for CSS now being transferred to just 3,072 bank accounts instead of the 9.77 lakh accounts previously.

### How it is beneficial for state governments?

The state governments, in particular, are set to benefit immensely from the shift to SNAs. **By providing data on unspent balances**, state government departments can now see the **state-wise float available for a CSS before initiating the proposal for the fund** released.

Similarly, the state can also **monitor and prioritise releasing new installments of funds** to districts, blocks, and gram panchayats based on their utilisation of the previously allocated funds.

The ability to see the **transaction process end-to-end can improve the efficiency of the delivery mechanism**. This will lead to faster and timely utilisation of funds on the ground.

Since the expenditure on the CSS is made from a single account now, the submission process for utilisation certificates has become much easier for the states.

### **Real-time resolution of the inefficiencies in the banking process:**

- The states can now monitor the interest credited by the banks and can transfer the state-share of the interest into the consolidated fund of the state. Before the new procedure, no such mechanism was available.
- Also, the new mechanism today enables capturing of end-to-end transaction processes, and **the performance of banks can be evaluated through key performing indicators (KPIs)**; SNAs can provide real-time resolution of the inefficiencies in the banking process.
- For states like Assam, the **introduction of zero-balance accounts** has eliminated delays and ensured ‘in time’ availability of funds for the implementing agencies. This system has particularly benefitted the remotely-located implementing agencies with restricted access to the bank branches.
- The cumbersome process of handling cheques and bank drafts has been dispensed with; statutory deductions like payments of direct and indirect taxes by the agencies, not efficiently captured earlier are now being fully complied with, thereby ensuring transparency and accountability.
- SNAs will be instrumental in **fast-tracking work-related schemes** that entail infrastructure development on the ground, viz. the Jal Jeevan Mission. Accountability and accessibility to the status of funds released are much higher now.

### **SNA dashboard:**

- The SNA dashboard, to be released by the Finance Minister as part of the Azadi ka Amrit Mahotsav, is going to enhance transparency in the whole process.
- The dashboard will use the extensive data to make easy comparisons among states, districts, blocks, etc, decide future releases, analyse and monitor timely release of central and state share of SNAs, study the expenditure pattern, and track the utilisation of funds at the click of a button.
- This will enable data-driven and better-informed decision-making.

### **Way Forward:**

- Efforts made by the Centre and the state governments have firmly established the SNA model, which has been adopted by all the states. Reforms like these are among the primary factors driving a paradigm shift in utilisation of funds across states.
- So far, systemic reforms like the SNA are on the right path to bring in a bottom-up approach in the public-funds disbursal system. With time, it seems the model will be able to bring more transparency and efficiency to citizen-centric delivery mechanisms.

## **Solar energy potential in the North East Region of India**

**(GS Paper 3, Environment)**

### **Context:**

- India’s northeastern region (a collection of eight states, constituting 3.8% of the Indian population and 8% of her area) is **crucial for achieving the India’s Paris Accord obligations** as well as the **COP26 Glasgow commitments** (India to be carbon neutral by 2070, 50% of electricity capacity from non-fossil fuels and reduction of 1 billion tonnes of cumulative carbon emissions from business-as-usual by 2030).
- **With just 8% of the area**, the North East Region (NER) **contributes 24% to the national forest area**. In addition, while India has 22% of its total area under forests, this statistic is 65% for NER. So, what Amazon is to the world, NER is to India.

### **Why North East Region (NER) is economically weaker?**

- However, **with about two-thirds of its area under forests**, there is very little land available for productive economic activities, which results in **below average per-capita incomes and widespread poverty** in the region.

### **Low level of per-capita power consumption:**

- One index to measure this is the low level of per-capita power consumption in the region, which is a third of the national average. Other similar statistics are that NER accounts for only 1.1% of total electricity sales and 1.5% of the installed capacity in the country.
- It is nobody’s case to make way for productive economic activities by reducing the forest area in the region. But, low level of power consumption in the region is a binding constraint to the economic prosperity of the region.



- In this scenario, an attractive option would be to **exploit the vast untapped renewable energy (RE) potential of the region**. As per ministry of new and renewable energy (MNRE) data, **the total RE potential of the region is 129 GW**, of which the realized potential is less than 4%.

## Renewable Energy (RE) potential of NER

As against a potential of about 62,300 MW of solar power in NER, the **realized potential is only 176 MW (less than 0.3% of potential)**.

Though the solar intensity in the North East is less than in say, Rajasthan, but the high average cost of supply of electricity in the region, would be able to absorb this constraint, to be able to supply RE power in a financially viable manner.

As solar power is intermittent, the **vast hydro potential of the region** would help in providing Round the Clock (RTC) RE power in the region.

### Scope of Solar power in NER:

- **Solar power is land-intensive** and land is a highly contested resource given the vast forest resource of the NER.
- However, **as per International Renewable Energy Association (IRENA)**, solar power now accounts for almost a third of global renewable energy capacity, partly because of the many unconventional ways in which solar power can be generated: it is estimated that Germany could house around 20 GW of solar energy on water and this can be replicated in NER given the numerous water bodies in the region, as per World Economic Forum, **floating solar power systems** are also regarded as sustainable and are quicker to install.

### Way Forward:

- Renew Power has recently won a tender for 400 MW of RTC RE power at a first year tariff of Rs 2.90 per unit of power.
- As already stated, the high average cost of supply in NER (as high as Rs 7.49 per unit of power in Nagaland in 219-20) leaves enough margin to address the issue of low solar intensity in the region to provide solar power in a financially viable manner.
- To **make the NER the hotspot of solar energy in India**, there may be a need to think differently—maybe a **solar water park** is the answer for putting up solar panels across widespread water bodies in the region. Utilization of more solar power in NER is necessary for the sake of the world, the country and the North Eastern Region.