

# The Real Impact of the Swedish Model on Sex Workers

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**Sex Work and Arbitrary  
Interference with Families**

## Sex Work and Arbitrary Interference with Families

**IN SOME COUNTRIES, SEX WORKERS CAN FACE LOSING CUSTODY OF THEIR CHILDREN JUST BY VIRTUE OF BEING SEX WORKERS, A SITUATION THAT IS OFTEN BASED ON MORAL JUDGMENTS.**

“After one year and three months, to finally see her standing in front of me. The feeling when she runs into my arms and hugs me, to sniff her hair which immediately becomes soaking wet with my tears, stroke my finger along her little nose and chin, stroking her little hand and hold her tiny body in my firm embrace and kiss her eleven thousand times on the forehead. To finally get to look into her eyes and tell her seventeen thousand times how missed and loved she is. And never want to let go again, but must. Created by my body, the two of us are part of each other forever. The love for my children is indescribable. (And the justice system has said joint custody and half the time, where were you when everything was going on?).”<sup>1</sup>

(Excerpt from Petite Jasmine’s blog after she was allowed to see her daughter)

“Sex workers lose custody of their children through social services or family courts solely because of their occupation, and not based on any specific evidence of harm or incapacity to parent, violating their right to be free from arbitrary interference with their family life and non-discrimination.”

(Case study from Portugal)<sup>2</sup>

“If you want to be 100% safe, you should not have any children in Sweden if you are a prostitute.”

(Swedish sex worker cited in Levy and Jakobsson)<sup>3</sup>

### Introduction

All persons – men and women – have the right to establish and/or create a family. Everyone also has a right to protection from arbitrary interference with his or her family and privacy. Furthermore, the right of children to enjoy the protection of their parents is well established in human rights law.

Judged by society and the state, sex workers around the world face stigma and discrimination as parents. In some countries, sex workers can face losing custody of their children just by virtue of being sex workers, a situation that is often based on moral judgments. The extreme measure of taking children away from their biological parents is prevented in most places by rigorous requirements of evidence of misdeeds or incapacity of the parents. Moral judgments should not be substituted for that evidence. In countries such as Sweden, law and policy based on a conceptualisation of sex workers as victims who lack agency can contribute to the idea of sex workers as unfit parents.

This paper firstly explains international human rights law related to parental rights and highlights standards relevant to the rights of sex workers as parents. Secondly, it explains ways in which these rights are violated. Some remedies for these violations are also suggested.

1 Jasmine, P., 2013, ‘Äntligen!’, available online at <http://www.njutningtillsalu.com/2013/05/antligen.html> (last accessed 23 November 2013; translation via Google Translate).

2 International Committee on the Rights of Sex Workers in Europe, 2005, *The Declaration of the Rights of Sex Workers in Europe*, available online at <http://www.sexworkeurope.org/sites/default/files/userfiles/files/join/default-brussels2005.pdf> (last accessed 25 September 2014).

3 J Levy, P Jakobsson. Sweden’s abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden’s sex workers. *Criminology and Criminal Justice* 14(5): pp 593–607, 2014.



**THE RIGHT OF CHILDREN TO ENJOY THE PROTECTION OF THEIR PARENTS IS AN IDEA THAT PERMEATES THE MOST WIDELY RATIFIED HUMAN RIGHTS TREATY IN THE WORLD, THE CONVENTION ON THE RIGHTS OF THE CHILD.**

## International human rights law and standards

The widely ratified International Covenant on Civil and Political Rights (ICCPR) is one of the main pillars of the global human rights system. The Covenant guarantees all persons ‘of marriageable age’ the right to ‘found a family’ as well as the right to marry.<sup>4</sup> The Covenant also guarantees the right of every person to be free from ‘arbitrary or unlawful interference with his privacy, family, home or correspondence’ and from ‘unlawful attacks on his honour and reputation,’ as well as the right of legal protection in the case of such interference or attacks.<sup>5</sup> In its commentary relating to the right to establish a family, the UN committee overseeing compliance with the ICCPR notes that spouses are assumed to have equal rights and responsibilities with respect to the family, and that therefore in child custody or divorce proceedings, discrimination against either party is prohibited.<sup>6</sup>

A body of reproductive rights norms and law also benefits all people. For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) guarantees the equal right of men and women to ‘decide freely the number and spacing of their children’.<sup>7</sup> The notion of autonomy is particularly crucial to women’s equality in reproductive decision-making.<sup>8</sup>

The right of children to enjoy the protection of their parents is an idea that permeates the most widely ratified human rights treaty in the world, the Convention on the Rights of the Child. The main article in the Convention that discusses separation of children from their parents notes that the state can intervene to separate parents and children only in rare cases when the best interests of the child are clearly served as determined by ‘competent bodies subject to judicial review.’<sup>9</sup> This extreme measure might happen, according to the Convention, in cases ‘involving abuse or neglect of the child by the parents, or...where the parents are living separately and a decision must be made as to the child’s place of residence.’<sup>10</sup> The article then refers to situations of ‘detention, imprisonment, exile, deportation or death’ and identifies these as factors that lead to separation of children from their parents.<sup>11</sup> Clearly, the separation of children from their parents is seen in the Convention as not to be taken lightly.

Other provisions of the Convention are relevant to this issue. The Convention highlights the responsibility of the state to make its ‘best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child’ and that both parents be given ‘appropriate assistance’ by the state to enable them both to take on this responsibility.<sup>12</sup> The Convention also makes clear that adoption of children, for example, must never be the result of coercion on the parents, and should be undertaken only if other measures are clearly unable to ensure the child’s best interests.<sup>13</sup>

4 International Covenant on Civil and Political Rights. UN General Assembly, 1966, art. 23(2).

5 Ibid., art. 17.

6 Human Rights Committee. General comment no. 19: Article 23 (the family). Geneva, 1990.

7 Convention on the Elimination of All Forms of Discrimination Against Women, UN General Assembly res. 34-180, 1979, art. 16.1(e).

8 Center for Reproductive Rights and UNFPA. *ICPD and human rights; 20 years of advancing reproductive rights through UN legal bodies and legal reform*. New York, 2013. At: [http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr\\_ICPD\\_and\\_Human\\_Rights.pdf](http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/crr_ICPD_and_Human_Rights.pdf).

9 Convention on the Rights of the Child, UN General Assembly, 20 November 1989, Article 9(1).

10 Ibid.

11 Ibid., Article 9(4).

12 Ibid., Article 18.

13 Ibid., Article 21.



**...JASMINE'S CHILDREN WERE PLACED WITH HER EX-PARTNER WHO HAD A DOCUMENTED HISTORY OF ABUSE. HE LATER KILLED JASMINE.**

Indeed, the letter and spirit of the Convention's provisions on the issue of separation of children from their parents are clearly based on the fundamental idea that such separation is an extreme measure, and one that should never be undertaken in any way that could be regarded as discriminatory, or arbitrary. As noted by the Committee on the Rights of the Child, which oversees compliance with the Convention:

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[G]iven the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child.<sup>14</sup>

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Several provisions of the Convention on the Rights of the Child also guarantee children – according to their age and maturity – the right to express their viewpoint and to participate in decision-making concerning their situation and interests. Similar protections of the right of children to enjoy family life with their parents are also found in regional human rights treaties in Europe, Africa, and the Americas.

### **Arbitrary separation of children from parents in sex work**

In 2005, sex worker organisations in Europe came together to compose a declaration of their rights. One of the provisions they highlighted was that 'current or former engagement in sex work should not be considered grounds for challenging a person's fitness to

be a parent or have custody of his or her children.'<sup>15</sup> Although there is no global data on this particular point it is clear – as evidenced from anecdotal accounts from around the world – that sex workers are routinely judged to be unfit parents. It is also clear that this judgment is not based on the careful consideration of the best interests of the child and the rights of parents mandated by international human rights norms, but rather it is based on arbitrary moral judgments as well as unjustified attacks on the honour of sex workers.

In places where sex work is criminalised, criminalisation is a clear contributing factor to such judgments. Yet even where sex work is not criminalised as such – as in countries that criminalise the purchase but not the sale of sex – sex workers still are at risk of losing custody of their children. For example, to justify the policy of criminalising clients to 'protect' sex workers in Sweden, the state portrays sex workers as traumatised victims who are unstable and unable to exercise agency.<sup>16</sup> This depiction contributes to the viewpoint that sex workers are 'traumatised' persons with no agency and who are not fit to be parents. Furthermore, if in Sweden sex workers themselves refuse to condemn sex work – work which is legal – this is seen as a character deficiency. Sex workers are thus put in an impossible position: they are forced to lie about, or outright reject, their means of livelihood. In this regard, the case of Petite Jasmine is shocking but unfortunately not unique. Her refusal to condemn sex work was part of the state's justification for removing her children from her custody, and in this very sad instance, Jasmine's children were placed with her ex-partner who had a documented history of abuse. He later killed Jasmine.<sup>17</sup> In Sweden, even though sex work itself is not illegal, police and social service agents collude in order to target sex workers for child custody proceedings.

<sup>14</sup> UN Committee on the Rights of the Child, 29 May 2013, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration* (art. 3, para. 1), CRC/C/GC/14, para 61

<sup>15</sup> International Committee on the Rights of Sex Workers in Europe, 2005, *The Declaration of the Rights of Sex Workers in Europe*, available online at [http://www.sexworkereurope.org/sites/default/files/userfiles/files/join/dec\\_brussels2005.pdf](http://www.sexworkereurope.org/sites/default/files/userfiles/files/join/dec_brussels2005.pdf).

<sup>16</sup> Global Network of Sex Work Projects. *The real impact of the Swedish model on sex workers: an advocacy tool kit. Part 4: Impacts of other legislation and policy – The danger of seeing the Swedish model in a vacuum.* Edinburgh, 2014. At: <http://www.nswp.org/resource/the-real-impact-of-the-swedish-model-sex-workers-advocacy-toolkit>.

<sup>17</sup> Ibid.



**...SWEDEN'S  
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It is somewhat ironic and disheartening that Sweden played such an important role in the development of the Convention on the Rights of the Child,<sup>18</sup> but now has policies that, in relation to sex workers and their families, seem to disrespect the foundational principles of this treaty. Throughout the development of the CRC, Sweden frequently advocated what were, at the time, ground-breaking ideas about children having the chance to participate in decision-making about state policies and practices that concern them.<sup>19</sup> However, Sweden's decision-making regarding state 'protection' of sex workers' children fundamentally appears to lack meaningful participation of both parent and child.

Sex workers are cavalierly disparaged as parents, but it is often the law itself that undermines sex workers' ability to be parents. Provisions of some national laws are in direct contradiction to the human rights mandate of states, which aims to support people in carrying out their parental responsibilities. In India, for example, sex workers are unable to register the birth of their children if they cannot prove the definitive identity of the father of the child, and no birth registration means the child is unable to enter school and receive other public benefits.<sup>20</sup> In Canada, alarmingly, an overly broad definition of the term 'bawdy house' (brothel) in the law could justify removing children living in the home of a sex worker even if they were never present when sex work occurred, and possibly even if sex work did not take place in that particular location.<sup>21</sup>

It is undoubtedly true that children of sex workers face discrimination at school and in other social situations. Yet this is not inherently a consequence of sex work: rather it is more often the result of unjust and arbitrary criminalisation. When sex workers are able to organise – for example, in a number of collectives in India – they have made great progress working with communities and amongst themselves to minimise discrimination against their children in school or otherwise, and to ensure good educational opportunities.<sup>22</sup> In Sonagachi, Kolkata, home of the well-known sex work collective Durbar Mahila Samanwaya Committee (DSMC), the children of sex workers have organised themselves to fight for their rights and those of their parents.<sup>23</sup> In this case, the children asserted their desire to be with their mothers and supported their mothers' capacity to be good parents. This response was also a reaction to an Oscar-winning documentary called 'Born into Brothels' which portrays DSMC members as uncaring parents.<sup>24</sup>

18 Office of the UN High Commissioner for Human Rights. *Legislative history of the Convention on the Rights of the child*, vol. 1. New York and Geneva, 2007. At: <http://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf>.

19 Ibid.

20 J Godwin. *Sex work and the law in Asia and the Pacific: laws, HIV and human rights in the context of sex work*. Bangkok: UNAIDS, UNFPA and UNDP, 2012, p. 3.

21 G Betteridge. *Sex, work, rights: reforming Canadian criminal laws on prostitution*. Toronto: Canadian HIV/AIDS Legal Network, 2005, p. 70.

22 See, e.g., SANGRAM/VAMP Team. *The VAMP/SANGRAM sex workers movement in India's southwest* (Changing the World series). Toronto: AWID, 2011.

23 O Sircar, D Dutta. Beyond compassion: children of sex workers in Kolkata's Sonagachi. *Childhood* 18(3): 333–349, 2011.

24 Ibid.





**...SEX WORKERS WERE ONCE AGAIN PORTRAYED AS NEEDING PITY AND RESCUE, RATHER THAN AS RESPONSIBLE PERSONS WITH THE AGENCY TO MAKE RATIONAL DECISIONS AND TO GUIDE AND PARENT CHILDREN.**

DSMC also joined the case of *Budhadev Karmaskar v. West Bengal* (2011), which was prompted by the brutal murder of a sex worker. While the murderer was convicted and the court upheld the right of sex workers to have official documents – including ration cards and registration of the birth of their children – it also concluded that ‘a person becomes a prostitute not because she enjoys it but because of poverty’. The court therefore declared that ‘society must have sympathy toward sex workers and not look down on them.’<sup>25</sup> The court also instructed the formation of a panel to guide India on the ‘rehabilitation’ of sex workers, including vocational training to allow them to escape sex work. Even with this small recognition of their status as human beings and as parents, sex workers were once again portrayed as needing pity and rescue, rather than as responsible persons with the agency to make rational decisions and to guide and parent children.

A study of street-based sex workers in New York City indicated that the city’s policy did not regard either sex work or drug use inherently as causes for removing children from a parent. However, sex workers who lost custody of their children reported that they knew that they would have to demonstrate an end to their drug use in order to regain custody.<sup>26</sup>

While in many countries HIV responses have prompted some attention to health services for sex workers, it is rare that health facilities where sex workers receive care offer crèches or other child care, or offer the possibility of integrated paediatric care along with services for working parents.

<sup>25</sup> Supreme Court of India, Criminal Appellate Jurisdiction, Criminal appeal no. 135, *Budhadev Karmaskar v. State of West Bengal*, 2011.

<sup>26</sup> J Thukral, M Ditmore. *Revolving door: an analysis of street-based prostitution in New York City*. New York: Urban Justice Center, 2005.



## Conclusions and recommendations

Sex workers face many forms of discrimination, but among the most extreme is the removal of their children from them on the basis of arbitrary and moral judgments, or by unjustified depictions of sex workers as irresponsible and lacking agency. Unjust criminalisation of sex work or of activities associated with sex work makes it easy for state authorities to portray sex workers as unfit parents. Where, as a matter of policy, sex workers are portrayed as traumatised victims, it is also easy to make the case that they are incapable of being good parents.

International legal protections and standards on this issue are clear:

- ▶ Children must not be removed from the care of their parents except as a measure of last resort, where there is a well-evidenced justification based on the best interests of the child (subject to judicial review) and never on the basis of arbitrary moral judgments.
- ▶ Judging sex workers as incapable of being parents solely on the grounds of a moral judgment against sex work is contrary to human rights norms.
- ▶ All people have the right to be free from arbitrary interference with their family life and privacy and from arbitrary, discriminatory, and unjust attacks on their honour.

It is clear that many countries grossly violate these basic standards. Unsupported judgments of moral character and negativity towards the parental capacity of sex workers flourish due to policy, law, and social mentality. Connecting sex work to unfit parenting is not only discriminatory: it is an unjust attack on the honour, rights, and dignity of sex workers. International leadership is called for because this is an area where countries

still have much to accomplish in order to rectify such policies and practices. In particular:

- ▶ As part of decriminalisation of all aspects of sex work, national governments should urgently review their laws, policies, regulations, programmes, and social services to ensure that actions taken supposedly to protect the children of sex workers do not violate the rights of the sex worker or the children involved, and that the actions reflect the best interests of the child. Child protection services, judges, prosecutors, and police should be made aware – preferably with the help of sex worker organisations and human rights leaders – that sex work in itself is not grounds for judging a person to be an unfit parent. Countries should also review their policies and practices relating to sex work with reference to the human rights commitment they have made to support all parents in fulfilling their parental responsibilities.
- ▶ International organisations should provide guidance for the review of national laws, policies, and practices described in the previous point.
- ▶ National and international human rights bodies should make public statements about the injustice of using sex work as the reason for removing children from their parents. These bodies should also advocate and facilitate the review of cases in jurisdictions where sex workers have lost child custody rights.
- ▶ Sex workers should be allowed to form organisations and collectives like any other group in civil society. They should be supported by the state to use their collective capacity to fulfil their responsibilities as parents.

**UNSUPPORTED  
JUDGMENTS OF  
MORAL CHARACTER  
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TOWARDS THE  
PARENTAL CAPACITY  
OF SEX WORKERS  
FLOURISH DUE TO  
POLICY, LAW, AND  
SOCIAL MENTALITY.**



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