

**CASE COMMENT: BUDHADEV KARMASKER v THE STATE OF WEST
BENGAL-EMPOWERING DIGNITY: SUPREME COURT'S RECOGNITION OF
SEX WORK AS A PROFESSION & SAFEGUARDING THE RIGHTS OF
PROSTITUTES**

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INTRODUCTION

Every person in India has fundamental rights that are guaranteed in the Indian Constitution but due to social stigma, discrimination, and exploitation of some sectors in the society, their rights are violated as they need to be reclaimed with the help of judiciary intervention. The dignity of sex workers has attracted conscious attention in recent years. Prostitution is regarded as one of the oldest professions as a prolonged cruel or regular practice in India. The Criminalization of sex workers falls outside the wall of judiciary protection. Although they encounter “venereal disease” and “source for other crimes” that becomes the core point of criminalizing sex work. It is based on moral and social belief that sex work should not be practiced without emotions. This is controversial due to a behavioral gap between the generations. The view on prostitutes was changed in the case of Budhadev Karmaskar vs the State of West Bengal is a specific instance of this. In this case¹, Criminal appeal no.135 was initiated in the High Court of Calcutta in 2004 for the murder of a prostitute. The Supreme Court took Suo-moto² and converted the issue into Public Interest Litigation to address the problems faced by the workers. This became the landmark judgment for the protection of sex workers, and prostitutes giving a wider scope of interpretation to Article 21 of the Indian constitution. Sex workers and their offspring's right to live with dignity was interpreted and A constitutional panel was constructed and directed a few recommendations to safeguard and rehabilitate the sex worker's life.

FACTS OF THE CASE

On September 17th, 1999, Chayay Rani Pal Alias Buri was a 45-year-old sex worker living in a red-light area in Calcutta. Budhadev Karmasker who was an appellent kicked and battered her head with fists and legs³ and she fell to the first floor for her refusal to have sexual

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¹ State of west Bengal vs Bhudhadev karmaskar MANU/SC/0881/2011

² Budhadev Karmaskar vs state of west Bengal on 19 may 2022 (n 3)

³ Bhudhadev karmaskar vs state of west Bengal on 14 February ,2011

intercourse with him while she was sleeping near the staircase on the second floor of her residence.

The appellant brutally attacked her by dragging her hair and banging her head against the floor and the wall multiple times. This led to bleeding from the ear, nose, and head and 11 injuries in her body and resulted in the brutal death of Buri sparse reason of protecting her dignity.

The brutal incident was eye-witnessed by Abida, Pa Parvati, and Asha. Abida saw the appellant while he dragged her hair against the wall and she shouted for help and informed police but Budhadev pushed and assaulted her and escaped from the place.

Parvati and Asha saw the victim being brutally beaten by the accused in a barbaric manner. Then Buri was brought to hospital by Asha and others where she was found to be dead on arrival. The accused was arrested within 5 hours of the incident and convicted of murdering a sex worker.

ISSUES RAISED

1. How the scope of Article 21 and the meaning of 'life' be interpreted to ensure that the right to a dignified existence is available to sex workers and that their offspring have access to the right to live with dignity?
2. Is it possible for the accused to be charged under section 302 of the Indian Penal Code?
3. What is the Constitutional validity of Section 8 of the West Bengal Prevention of Immoral Trafficking Act, 1950?
4. How to safeguard the sex workers, and rescue and rehabilitate them into safer environments?

OBSERVATION OF THE COURT:

The defendant was sentenced to life imprisonment by the high court of Calcutta under section 302 of IPC.⁴ The appellant denied all the charges in the prosecution as the Asha, the eye witness's statement cannot be admissible under section 164 of the Criminal Procedure Code, 1973.⁵ because she did not appear for the cross-examination. It explains the recording of confession and statement as mentioned in the case of Raghubir Singh vs the High Court of

< <https://indiankanoon.org/doc/1302025> > accessed on 13 December 2023

⁴ Indian Penal Code, 1860, section 302.

⁵ Criminal Procedure Code, 1973, section 164

Uttarakhand.⁶ The Court considered reasonable weight to the statement of Asha that there are often quarrels between them showing that the enmity and the severe injuries caused by the accused in the post-mortem report have sufficient evidence to cause the death of the deceased. The appeal was dismissed by the Supreme Court and converted into PIL by Suo-moto for safeguarding the lives of sex workers.

The Union of India enacted a bill in 2016. Since the Constitutional panel recommendations have not been carried out. So, SC issued an order for implementation by anticipating that the Central government would dissent. The rescued victims of sex trafficking had to deal with the managers and sex rackets are alerted of their rescue mission in advance which makes them attentive to their visit. The Petitioners argued that their families by the involved traders, peddlers, and traffickers forcefully enter the girls and women into the business of sex workers. The victims are agonized mainly by the brothel owners and their family members. This makes the rehabilitation mission very difficult and unsuccessful. The petitioners also contended that the State Legal Services Authority can provide a helpline number to the NGOs and the state machinery to safeguard and rescue the victims of the sex trade who are compelled to exist in the profession against the consent and acceptance and by providing remedial measures to them. The panel that indulges in sexual activities in states that have red-light areas seeks the funds.⁷ The respondents argued that the accumulation of funds was to carry out workshops, and meetings, and the counsel contended that the fair share received by the panel would be used for advertising and for publications to normalize the reinstating of sex workers in society.

LEGAL ASPECTS OF THE CASE:

Article 21 of the Indian Constitution:⁸

The fundamental right to live with dignity is incorporated in the constitution that every human being should be respected with individual dignity and not survive in a mere vegetative state unless the procedures are established by the law.

Immoral Traffic (Prevention) Act, 1956:

Section 3- Brothel is illegal and punishable under law.

⁶ Raghuvir Singh & others vs State of Uttarakhand and Anr (C-482) no.2324 of 2019

⁷ Budhadev Karmaskar vs State of west Bengal, 2022 SCC online SC 704

⁸ Constitution of India, 1950, art 21.

Section 4 – Earning money by prostitution is illegal

Section 8- Seducing people in public places for prostitution is illegal.⁹

Section 164 of Criminal Procedure Code, 1973 – The witness is asked any question during the cross-examination to check the credibility of the statement.¹⁰

JUDGEMENT OF THE COURT:

The judgment held both the High Court of Calcutta and The Supreme Court of India sentenced the accused to life imprisonment. The Supreme Court also took Suo-moto for addressing the problems of sex workers by converting the suit into Public Interest Litigation. A Commission under the senior advocate Mr. Pradip Ghosh as the Chairman was formed to address the issue. The Constitutional panel has recommended the SC approve an aid package of 10 lakhs from the Centre and 5 lakhs from the State and 2 lakhs from Union territories for teaching technical skills and supporting the sex workers and their progeny to live with dignity. The court interpreted Article 21 of the constitution to include life with dignity as the judgment states “no matter of the profession, every individual in this country has a right....under Article 21”¹¹. They also pointed out that women in India are compelled and pushed into prostitution because their economic conditions are down and they are easy targets for the traffickers for sexual acts that are against their will and become a Fateful job. To eradicate it needs progressive steps to become successful and for the rehabilitation of sex workers. So, the 3-judges bench consisting of L. Nageswara, B.R . Gavai, and A.S. Bopanna issued an order on 19th May 2022 by Article 142 of its discretionary power to Centre and state¹² to follow these recommendations¹³ on 19th May 22 as stated below:

1. Quick medical remedial measures to be provided to sex workers, if any sexual assault happens to them as per section 357C of Crpc.
2. Duty of the State to survey all types of Immoral trafficking under Immoral Traffic (Prevention) act 1956.
3. Rescued women from the field should be provided protective homes.

⁹ Immoral Traffic (Prevention) Act, 1956, section 3, section 4, section 8.

¹⁰ Criminal Procedure code, 1973, section 164.

¹¹ Budhadev Karmaskar vs the state of west Bengal, (2022) criminal Appeal No(s).135/2010.

¹² Constitution of India,1950, art 142

¹³ Budhadev Karmaskar vs State of west Bengal,2022 SCC online SC 704

4. The police officers and other government bodies should be sensible to the sex workers and not harass them during raids and investigations.
5. The Press Council is directed to follow the guidelines because their identities should be private.
6. Criminal action is not made if consent is given by sex workers.
7. The use of contraceptives by them must not be considered a crime or evidence for any commission of crime.
8. Only the brothel owner can be arrested not the sex worker.
9. A recommendation committee is to be constructed to prevent child sex workers.
10. The transgender community can also work as sex workers to earn money.

This Judgement paved the way for sex workers to live with dignity, it is their fundamental right, and if it is deprived, they can claim their right for violation.

ANALYSIS OF THE JUDGEMENT:

This judgment gave a way to uplift the life of sex workers in the whole of India but still, there is social stigma and discrimination among the societies that should not be forgotten. They are also human beings, are entitled to dignity, and must be respected. Article 21 of the Indian constitution protects the right to live with dignity and not the life of an animal. They are often affected by 'sexually transmitted diseases' (STD) and tortured by brothel owners and customers to red-light areas that give them earnings. If they are given vocational or technical training, they could be able to exit from sex work and develop the skills to earn in other ways because they are just selling their bodies for their livelihood.¹⁴ Supreme Court directed the Centre and State to constitute training programs for the rehabilitation of sex workers. The Constitutional panel directed 10 recommendations to protect the interests of prostitutes. It refers to the Prevention of sex trafficking and rehabilitation of the persons leaving sex work and prostitution is also a profession and condition laid down for the workers to live with dignity. Many sex workers are still without voter IDs cannot cast their vote and are treated in a bad manner. There is a taboo on the prostitution profession that they profess. In many cases, traffickers trade women for sexual activities without their will and consent due to poverty. Immoral Trafficking (Prevention) Act, 1956 prohibits prostitution as illegal and penalizes the law who practice it which restricts their freedom of trade. In the case of **Kausalya vs state of**

¹⁴ State of west Bengal vs Bhudhadev karmaskar MANU/SC/0881/2011

Uttar Pradesh (1964), the Allahabad High Court held Section 20 of the Immoral Traffic Prevention Act violates Article 14, Article 14(d), and Article 19(1(e)) of the Indian constitution. The Act was held valid since the difference between a public and sex worker's nuisance is observable and obvious.¹⁵ The defect of the law is seen in this act so the Provisions of this act need to be updated, and amended. Section 8 of the Immoral Trafficking (Prevention) Act, of 1956 violates the fundamental right of the Indian constitution that gives punishment for professing this profession. In the case of **Kajal & Ors vs State of Maharashtra (2020)**, the Bombay Court held that sex work is not illegal and a crime under the Immoral Traffic (Prevention) Act of 1956¹⁶ and the woman has the right to choose her profession. The formation of a panel to recommend safeguarding the rights of prostitutes by progressive steps that are directed to central and state governments to provide proper education and vocational training.¹⁷ The UJMALA scheme was discussed in the judgment that is applied to rescue women from traffickers' peddlers.¹⁸ Aadhar IDs and voter IDs should be provided to them so that they can claim their rights. The Supreme Court ordered the UIDAI to issue Aadhar cards without pointing out their proof of residence to them. The order issued by the Supreme Court focuses on the rehabilitation of sex workers to live with dignity under Article 21. The court ordered these reforms under Article 142 of the Indian constitution that provides a special power to the Supreme Court to give 'complete justice'. Thus, Prostitution is legal in India, and sex workers have the right to profess their job with their consent and live with dignity.

CONCLUSION

The Accused Bhudhadev Karmaskar was convicted to life imprisonment for the murder of a sex worker in this case. The Supreme Court through Public interest litigation addressed various issues related to problems faced by the sex workers and The Constitution panel was framed under the direction of the Supreme Court and ordered the Centre and State to look after the sex workers by various reforms. Abolishing prostitution practices would not eradicate the plight of sex workers but only worsen their conditions of them variously. This judgment is eye-opening for sex workers and prevention of trafficking is discussed in the panel. The constitution panel referred to significant factors to protect the interest of sex workers such as prevention of sex

¹⁵ Kausalya vs state of Uttar pradessh, 1964 AIR 416

¹⁶ Kajal Singh and ors vs state of maharashtra, 2020 SCC 954

¹⁷ Budhadev karmaskar vs state of west Bengal

<[https:// corpbiz.io](https://corpbiz.io)> accessed on 15 December 2023

¹⁸ Parinaz Fanibanda, Case Analysis of Bhudhadev Karmaskar vs state of west Bengal, Pro-Bono India, Accessed 14 December 2023.

trafficking and rehabilitation for those who unlike sex work and prostitution also have a profession and condition laid down for the workers to live with dignity. Some provisions of the Immoral Traffic (Prevention) Act, of 1956 need to be amended as to the current society. Sex work is recognized as a profession and women have the right to choose their profession and live with dignity. Legalizing prostitution gives both negative and positive consequences but rules and regulations that govern proper administration are needed for the protection of sex workers and, their offspring. Safeguarding, rescuing and, rehabilitation of workers who are leaving the profession allows the women to live without fear of the traffickers. They should be respected in the society. Through this case, the voice raised the voice was heard by the court, and justice was provided.

