

**Case Commentary - BUDHADEV KARMASKAR
VERSUS THE STATE OF WEST BENGAL & ORS.**

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Abstract

Even though the Indian Constitution guarantees equal rights and powers to every person in the nation, it is repeatedly necessary to reclaim this right to some weaker peoples like sex workers. In the case of Budhadev Karmaskar v State of West Bengal, a sex worker was murdered in brutal manner for denied to have sexual

intercourse with the appellant. So the sex workers are challenged to live in the society. Prostitutes are not considered as a normal people because many of them involved forced sexual intercourse. In this case, Article 21 of the Indian Constitution, 1950 the right to life. This is one of the landmark judgement by the Supreme Court for the protection of the sex workers and give the wide interpretation of the Article 21, right to dignity of the sex workers. The Supreme Court's decision to convert the current Criminal Appeal into a Suo Moto suit was a progressive move toward recognising the rights of India's sex workers. Because the constitution protects their right to practise their profession and live a decent life as they are legally entitled to, it also protects their right to do so similarly to the rights of other citizens.

Keywords: Sex workers, Right to life with dignity, Right to practice profession, right to live a decent life,

Case Title	BUDHADEV KARMASKAR Vs THE STATE OF WEST BENGAL & ORS.
Case No	Criminal Appeal No(s).135/2010
Date Of The Order	19-05-2022
Jurisdiction	Supreme Court of India
Quorum	HON'BLE MR. JUSTICE L.NAGESWARA RAO HON'BLE MR. JUSTICE B.R. GAVAI HON'BLE MR. JUSTICE A.S. BOPANNA
Author Of The Judgement	All Hon'ble Justices
Appellant	Budhadev Karmaskar
Respondent	The State of West Bengal & Ors.
Acts And Section Involved	I. Indian Constitution, 1950

	<ul style="list-style-type: none"> • Article 21 • Article 38, • Article 39(a) • Article 39-A • Article 41 and • Article 42 <p>II. The Code of Criminal Procedure, 1973</p> <ul style="list-style-type: none"> • Section 357C <p>III. The Indian Penal Code, 1872</p> <ul style="list-style-type: none"> • Section 354C <p>IV. The Immoral Traffic (Prevention) Act, 1956</p>
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I. INTRODUCTION:

This case was initially brought against Budhadev Karmaskar [the appellant] in the form of criminal proceedings for the atrocious murder of a prostitute who had refused to have sex with him. The case was concluded by the Calcutta High Court [HC] in 2004 when it issued a ruling declaring the appellant guilty of murder. The appellant had appealed the punishment imposed on him to the Supreme Court [SC] following the announcement of the verdict of conviction. The Criminal Appeal No. 135 was dismissed in 2010 on the grounds that the SC agreed with the decision made by the Calcutta High Court, and the SC adopted the Suo Motto move of converting the appeal into a Public Interest Litigation (PIL). In this paper, we are going to analyse and discuss this verdict.

II. FACTS OF THE CASE:

The sex worker was severely beaten on the head in the red-light area in Calcutta district in 1999 by the appellant, Budhadev Karmaskar, after she refused to engage in sexual activity with him. The injuries experienced by the dead, who had her skull repeatedly slammed on the floor of a room, led to her horrible death for the pitiful purpose of preserving her sanity and self-respect. Due to this deed, the appellant was found guilty of assault causing murder in the horrifying case of the murder of a sex worker. Both the High Court and the Supreme Court affirmed the conviction on the grounds that sex workers should not be degraded and should be allowed to engage in prostitution with dignity and free will, rather than being forced into it or having their identities falsified. By creating a panel with Senior Advocate Mr. Pradip Ghosh as the Chairman, chairing 4 other panel members, and other staff members to support

them, the Apex Court has also taken corrective measures to reinstate the current prostitutes forced to perform the act without their will. The panel has recommended that the SC approve an aid package of Rs. 10,00,000 from the Central Government, Rs. 5,00,000 from the State Government, and Rs. 2,00,000 from the Union Territories to support the teaching of vocational and technical skills to sex workers so they can support themselves and be reintegrated into society with dignity.

III. ARGUMENTS FAVOUR OF APPELLANT:

- A. The counsel on behalf of the petitioner argued that the girls are compelled and forced into the sex worker by family members, peddlers, traders, etc. So we need a successfully rehabilitating mission to rescue them.
- B. It is difficult to rescue the people unless the nexus between the traffickers, the brothel owners and the family members of the victims is broken.
- C. In addition, the petitioners said that the State Legal Services Authority should make it easier for NGOs and government agencies to provide a helpline number to the victims of the sex trade who are being forced to work in the industry without their choice and consent. Additionally, this would aid them in pursuing any legal action against their offenders or in seeking legal counsel for corrective measures should they decide to stay in that line of work.
- D. The petitioners further argued that only states that engage in sexual activity or states with red-light districts and active prostitution there must be required to provide the panel with the funding it needs to operate.

IV. ARGUMENTS FAVOUR OF RESPONDENT:

- A. The respondent has claimed that in order for the panel to effectively reinstate the victims of sex trade, the cash necessary for its operation should be properly deposited with the panel as soon as possible.

- B. The council also argued on the respondent's behalf that the collection of funds was essential in order to conduct workshops and meetings and to enable experts from various fields to engage in disseminating information about vocational and skill-based training not only in well-known cities like Mumbai, Delhi, and Calcutta but also in less well-known locations that are in urgent need of help and assistance.
- C. The attorney further argued that a reasonable portion of the money given to the panel would also be utilised for publications and advertising in an effort to normalise the stigma of reintroducing sex workers into society and make hiring additional experts easier.

V. ORDER OF THE COURT:

- A. The prostitutes too being a human by virtue have a right to live their life with dignity. The court observed that India has most cases dealing with forced prostitutes not for pleasures it's only for abject poverty or trafficking, etc
- B. In the result of taking a suo moto action to provide the opportunity to vocational training for earning. Also the court held that to reinstate the victims into this society. Also directed the Central Government to constitute a panel for the said activities.
- C. Directed that the Central, State government and Union Territories to come with the schemes and policies relating to the vocational and skill based training with the constituted panel.
- D. To rehabilitating the sex workers with the help of various NGO's. Then the court directed 3 major concerns that are (i) how to prevent Sex Trafficking, (ii) to rehabilitate the sex workers who wish to discontinue to be a part of the trade and (iii) to ensure that the sex worker who wish to continue with the trade, do so with dignity and in dignified conditions.
- E. Hon'ble Court's directions to State Governments to extend dry ration support and access to ration

cards , aadhar cards and voter ID cards to Sex workers.

[personal-liberty-sex-workers-right-to-live-with-dignity.html](#)

VI. CONCLUSION:

Sex workers are also the human beings and citizens. So they have human rights and fundamental rights. Their rights should be protected. Through we try to destroy the prostitutes, it will not be reduced. It will happen in some areas due to poverty, trafficking and other reasons. "Where there is a will there's a way", so It is important to note that we have to give legal status to them. Then their rights to be protected and to rescue them. We should reinstate and give rehabilitation to the sex workers.

VII. Related Case Laws:

1. Maneka Gandhi v. Union of India (1978) 1 SCC 248
2. Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608
3. Kajal Mukesh Singh And Ors vs The State Of Maharashtra on 30 September, 2020
4. Manoj Kumar Sah @ Shaw vs State Of West Bengal on 26 August, 2013
5. Fateh Chand vs State Of Haryana on 29 May, 2009

REFERENCE

1. https://www.google.com/url?sa=t&source=web&rc=j&url=https://www.livelaw.in/pdf_upload/37388200752035996order19-may-2022-419223.pdf&ved=2ahUKEwjBz77Or5L7AhUI1HMBHU6UD8UQFnoECBEQAQ&usg=AOvVaw3THIcptOLHifsiBfqnlzfx
2. <https://indiankanoon.org/doc/99194/>
3. <https://www.casemine.com/judgement/in/5609af15e4b01497114158b4/amp>
4. <https://www.google.com/amp/s/m.indialegallive.com/article/prostitution-voluntary-sex-work-human-trafficking/283825/amp>
5. <https://www.legalserviceindia.com/legal/article-8764-a-new-dimension-of-right-to-life-and->