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FROM CONVICTION TO CONSTITUTION: THE BUDHADEV KARMASKAR CASE AND THE JUDICIAL RECOGNITION OF SEX WORKERS' RIGHTS IN INDIA

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Abstract

Budhadev Karmaskar v. State of West Bengal is a landmark judgment in which the Supreme Court of India transformed a routine criminal appeal arising from the 1999 murder of a sex worker in Kolkata into a suo motu public interest litigation that redefined the constitutional rights of sex workers across the country. This paper provides a comprehensive case analysis, tracing the procedural journey from the original conviction under Section 302 of the Indian Penal Code to the Court's sweeping directions issued on May 19, 2022 under Article 142 of the Constitution. It examines the constitutional architecture deployed by the Court, including the right to life with dignity (Article 21), equality before law (Article 14), freedom of profession (Article 19(1)(g)), prohibition of trafficking (Article 23), and the directive principles under Articles 39(a), 42, and 47. The paper also evaluates the impact of the transition from the IPC and CrPC to the Bharatiya Nyaya Sanhita (BNS), 2023 and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 on the implementation of the Court's directions. While acknowledging the judgment's achievements – including the clarification that voluntary sex work is not illegal, protection from police harassment, and access to welfare benefits – the paper critically assesses the persistent gaps: the continuing criminalisation of brothels and soliciting under the Immoral Traffic (Prevention) Act, 1956, the absence of parliamentary legislation, and the uneven implementation across states. It concludes that the Supreme Court has done its part, but the unfinished revolution requires legislative action, police reform, social sensitisation, and a fundamental shift in societal attitudes to make the constitutional promise of dignity a lived reality for every sex worker in India.

Keywords: *Budhadev Karmaskar, sex workers' rights, Article 21 dignity, Article 142, ITPA, BNS, BNSS, constitutional law, rehabilitation, Supreme Court of India.*

INTRODUCTION

The Constitution of India promises every citizen the right to live with dignity. Yet, for decades, sex workers – one of the most stigmatized and marginalized communities in the country – have been systematically denied that promise. They have been subjected to police brutality, social ostracism, denial of healthcare, and exclusion from welfare schemes, often under the mistaken

belief that their very profession is illegal. The case of **Budhadev Karmaskar v. State of West Bengal** changed that narrative. What began as a criminal appeal against a life sentence for the brutal murder of a sex worker in Kolkata in 1999 transformed, over eleven years, into a suo motu public interest litigation that produced a comprehensive constitutional charter for sex workers across India.

This paper provides a detailed case analysis of that journey. It examines how the Supreme Court, in its 2011 order, first recognized that poverty, not choice, drives most women into sex work, and how it directed the government to prepare rehabilitation schemes. It then traces the Court's appointment of a high-level panel, the panel's comprehensive 2016 report, the government's subsequent inaction, and finally the Court's landmark directions of May 19, 2022, issued under Article 142 of the Constitution. The paper analyses the constitutional provisions that the Court invoked – Articles 14, 19(1)(g), 21, 23, 39(a), 42, 47, and 142 – and explains how the Court wove together fundamental rights and directive principles to declare that voluntary sex work is not illegal and that sex workers are entitled to dignity, equal protection, healthcare, and welfare benefits.

The paper also critically evaluates the judgment's achievements and limitations. While the Court succeeded in clarifying the legality of voluntary sex work, creating enforceable protections against police abuse, and unlocking access to identity documents and public health measures, significant gaps remain. The brothel prohibition under Section 7 of the Immoral Traffic (Prevention) Act, 1956, and the soliciting ban under Section 8 have not been struck down. No parliamentary legislation has been enacted to give statutory force to the Court's directions. Implementation across states remains uneven. Moreover, the transition from the Indian Penal Code and the Code of Criminal Procedure to the Bharatiya Nyaya Sanhita (BNS), 2023 and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 has renumbered provisions but not altered the underlying legal framework, leaving the core challenges intact.

This paper proceeds in five parts. Part 1 recounts the factual and procedural history of the case, from the murder of Chayay Rani Pal to the 2022 directions. Part 2 unpacks the constitutional architecture deployed by the Court. Part 3

summarises the key directions issued in 2022. Part 4 offers a critical evaluation of the judgment's achievements, gaps, and implementation challenges under the new criminal codes. Part 5 concludes by reflecting on the unfinished revolution and the path forward. Through this analysis, the paper argues that while the Supreme Court has done its part, the full realisation of sex workers' constitutional rights depends on legislative action, police reform, social sensitisation, and a fundamental shift in societal attitudes.

I. THE FACTUAL AND PROCEDURAL GENESIS: A MURDER IN KOLKATA THAT BECAME A NATIONAL PIL

On the night of September 17, 1999, in the narrow lanes of Jogen Dutta Lane, a redlight district in Kolkata, a young woman named Chayay Rani Pal – also known as Buri – was brutally murdered.⁹³⁹ She was a sex worker, living in Room No. 8 at Premises No. 19. Her assailant, Budhadev Karmaskar, kicked her to the floor, caught her by her hair, and smashed her head repeatedly against the floor and a wall.⁹⁴⁰ Four eyewitnesses – Abida (PW2), Maya (PW4), Asha (PW7), and Parvati (PW8) – witnessed the attack. The victim bled profusely from her ears, nose, and mouth and was declared dead on arrival at the hospital. The postmortem report revealed eleven external injuries, eight of which were on the face and forehead. The cause of death was craniocerebral damage due to blunt force trauma.

The trial court convicted Budhadev Karmaskar under Section 302 of the Indian Penal Code, 1860 (IPC), which then prescribed punishment for murder, and sentenced him to life imprisonment.⁹⁴¹ The conviction was affirmed by the Calcutta High Court on July 25, 2007. The appellant then approached the Supreme Court of India in Criminal Appeal No. 135 of 2010. Before the Supreme Court, the appellant's counsel argued that the eyewitness testimony was unreliable, that the witnesses – being sex workers – were of questionable credibility, and that the

⁹³⁹ Budhadev Karmaskar v. State of West Bengal, (2011) 11 S.C.C. 538, 539 (India).

⁹⁴⁰ Id. at 540.

⁹⁴¹ Id. at 539.

prosecution had failed to prove the case beyond reasonable doubt.⁹⁴² The Court, however, rejected these arguments firmly. It observed that sex workers are also human beings and that no one has a right to assault or murder them. "The fact that the deceased was a prostitute does not mean that her life was of less value," the Court wrote.⁹⁴³ The appeal was dismissed and the life sentence was confirmed.

But the Court did not stop there. In the same order dated February 14, 2011, a bench of Justice Markandey Katju and Justice Gyan Sudha Misra converted the criminal appeal into a suo motu public interest litigation.⁹⁴⁴ This procedural move – transforming a criminal matter into a PIL – is rare. It is reserved for situations where the Court realises that the narrow dispute between the parties conceals a much larger systemic issue. The Court explicitly stated: "Although we have dismissed this Appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes."

What triggered this concern? The Court pointed to a simple but profound sociological fact: poverty. "A person becomes a prostitute not because she enjoys it but because of poverty," the Court wrote.⁹⁴⁵ Society, the Court added, must have sympathy towards sex workers and must not look down upon them.⁹⁴⁶ To drive home the point, the Court invoked literature and poetry. It referred to the novels of Sharat Chandra Chattopadhyaya, where characters like Rajyalakshmi in *Shrikant and Chandramukhi* in *Devdas* are depicted as women of high character despite their profession. It quoted Sahir Ludhianvi's poem 'Chakle' and reminded the reader of Sonya Marmeladov in *Dostoyevsky's Crime and Punishment* and Fantine in *Victor Hugo's Les Misérables* – women

driven to sex work by circumstances, not by choice, and retaining their essential humanity.

The Court then issued its first set of directions. It asked the Central and State Governments to prepare, within six months, schemes for providing technical and vocational training to sex workers – tailoring, embroidery, computer literacy, and other skills – so that they could earn a livelihood through dignified means rather than through the sale of their bodies.⁹⁴⁷ The Court made it clear that any rehabilitation must be purely voluntary; no sex worker was to be forced to leave her profession against her will. Following this, on July 19, 2011, the Court appointed a highlevel panel headed by Senior Advocate Pradip Ghosh, along with Senior Advocate Jayant Bhushan and representatives from three NGOs that had long worked with sex workers: Usha Multipurpose Cooperative Society, Durbar Mahila Samanwaya Committee, and Roshni Academy.⁹⁴⁸ The panel was tasked with examining three areas: prevention of trafficking; rehabilitation of sex workers who wished to leave the profession; and conditions that would allow sex workers who wished to continue working to do so with dignity.

The panel worked for five years, conducting consultations across the country, meeting sex workers, police officers, social workers, and government officials. It submitted its final report on September 14, 2016.⁹⁴⁹ The report was comprehensive. It recommended, among other things, the decriminalisation of consensual adult sex work, the repeal of provisions in the Immoral Traffic (Prevention) Act, 1956 (ITPA) that criminalise voluntary sex work, the creation of a central fund for rehabilitation, and the establishment of grievance redressal mechanisms for sex workers.⁹⁵⁰ Then nothing happened. The Union Government received the report but did not act on it. No legislation was introduced in Parliament. State governments,

⁹⁴² Id. at 541.

⁹⁴³ Id. at 542.

⁹⁴⁴ Id. at 543.

⁹⁴⁵ Id. at 541.

⁹⁴⁶ Id. at 542.

⁹⁴⁷ Id. at 544.

⁹⁴⁸ *Budhadev Karmaskar v. State of West Bengal*, (2011) 10 S.C.C. 277, 278 (India) (order dated July 19, 2011).

⁹⁴⁹ Panel Report submitted to the Supreme Court in *Budhadev Karmaskar* case, Sept. 14, 2016 (on file with the Supreme Court Registry).

⁹⁵⁰ Id. at ch. 5 (Recommendations).

with a few exceptions, did not roll out rehabilitation schemes. The case languished. Activists filed applications before the Supreme Court seeking implementation. The Court issued reminders, but without legislative backing, progress was glacial.⁹⁵¹

Finally, on May 19, 2022, a bench of Justices L. Nageswara Rao, B.R. Gavai, and A.S. Bopanna decided that the waiting had to end. In a detailed speaking order, the Court noted that more than a decade had passed since the first directions, that the panel had reported six years earlier, and that no law had been enacted. “In the absence of any legislation being enacted by Parliament,” the Court said, “we are left with no other option except to issue directions under Article 142 of the Constitution of India.”⁹⁵²

2.THE CONSTITUTIONAL ARCHITECTURE: WEAVING FUNDAMENTAL RIGHTS, DIRECTIVE PRINCIPLES, AND PLENARY POWER

The 2022 directions in Budhadev Karmaskar were not invented in a vacuum. They were anchored in a careful reading of multiple constitutional provisions, and they reflect a sophisticated attempt to weave together fundamental rights, directive principles, and the Court’s extraordinary power to do complete justice. This section unpacks that constitutional architecture in detail, while also noting the transition from the old criminal codes to the Bharatiya Nyaya Sanhita (BNS), 2023 and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

Article 21 – The Right to Life with Dignity. Article 21 of the Constitution states that “no person shall be deprived of his life or personal liberty except according to procedure established by law.”⁹⁵³ Over the decades, the Supreme Court has expanded the meaning of “life” to include the right to live with human dignity. In *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248, the

Court held that Article 21 is not a mere procedural guarantee but a substantive right that cannot be violated by arbitrary state action.⁹⁵⁴ In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608, 618, the Court elaborated that the right to life includes “the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter.”⁹⁵⁵ In *Budhadev Karmaskar*, the Court applied this logic directly to sex workers. The 2022 directions repeatedly emphasise that sex workers are entitled to a life of dignity – that they cannot be beaten, abused, or arbitrarily arrested, that they must have access to healthcare and housing, and that the state must treat them as rightsbearing citizens rather than as criminals or outcasts.⁹⁵⁶ The Court also addressed a specific dignity violation that had long plagued sex workers: the refusal of hospitals to treat them. The directions require that any sex worker who is a victim of sexual assault be provided immediate medical assistance in line with Section 357C of the Code of Criminal Procedure, 1973 (CrPC), which mandates free treatment for rape survivors.⁹⁵⁷ Under the new *Bharatiya Nagarik Suraksha Sanhita (BNSS)*, 2023, this provision is now codified in Section 397, which requires every hospital – whether government or private – to provide free firstaid or medical treatment to a rape survivor.⁹⁵⁸

Article 14 – Equality Before Law and Equal Protection. Article 14 commands the state not to deny to any person equality before the law or the equal protection of the laws.⁹⁵⁹ The Supreme Court has long held that Article 14 prohibits not only express discrimination but also arbitrary and unreasonable state action. In the context of sex work, the most blatant violation of Article 14 was the selective enforcement of criminal laws. The ITA does not make voluntary sex work between consenting adults a crime.⁹⁶⁰ Yet, for

⁹⁵¹ *Budhadev Karmaskar v. State of West Bengal*, No. Crim. App. 135 of 2010, slip op. at 4 (India, May 19, 2022) (unreported) (speaking order).

⁹⁵² *Id.* at 5.

⁹⁵³ India Const. art. 21.

⁹⁵⁴ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248, 279 (India).

⁹⁵⁵ *Francis Coralie Mullin v. The Adm’r, Union Territory of Delhi*, (1981) 1 S.C.C. 608, 618 (India).

⁹⁵⁶ *Budhadev Karmaskar*, slip op. at 3 (Direction No. 1).

⁹⁵⁷ Code of Criminal Procedure § 357C (1973) (India).

⁹⁵⁸ *Bharatiya Nagarik Suraksha Sanhita* § 397 (2023) (India).

⁹⁵⁹ India Const. art. 14.

⁹⁶⁰ Immoral Traffic (Prevention) Act, 1956, §§ 3–8 (India).

decades, police across India arrested sex workers using vague provisions like “soliciting” under Section 8 of the ITA or “public nuisance” under local police acts. These arrests were not about enforcing the law; they were about harassing a powerless community. The 2022 directions explicitly prohibit this. The Court directed that police “must not interfere or take criminal action against sex workers where the sex worker is an adult and is engaging in consensual sex work.”⁹⁶¹ This direction restores the equal protection guarantee. A sex worker has the same right as any other citizen not to be arrested without legal cause. The Court also invoked the substantive dimension of equality – not just treating likes alike, but addressing structural disadvantage. By ordering rehabilitation schemes, identity documents, and healthcare access, the Court recognised that formal equality is insufficient when a community has been systematically excluded from welfare benefits.⁹⁶²

Article 19(1)(g) – The Right to Practice Any Profession. Article 19(1)(g) guarantees every citizen the right “to practise any profession, or to carry on any occupation, trade or business.” This right is subject to reasonable restrictions under Article 19(6) in the interest of the general public. The question of whether sex work falls within the meaning of “profession, occupation, trade or business” has been a subject of debate. The Supreme Court in *Budhadev Karmaskar* did not directly decide this question, but its reasoning strongly suggests an affirmative answer. By repeatedly stating that voluntary sex work is not illegal, and by criticising the moralistic approach that stigmatises sex workers, the Court implicitly recognised that sex work can be a form of livelihood entitled to constitutional protection.⁹⁶³ In a later case, *State of Maharashtra v. Indian Hotel & Restaurants Association*, (2022) 8 S.C.C. 519, 598 (the “Dance Bar Case”), the Supreme Court held that bar dancers have a fundamental right to perform under Article 19(1)(g) and that

the state cannot impose a complete ban on dance performances in bars.⁹⁶⁴ The logic applies equally to sex workers: as long as the activity is consensual and adult, and does not involve trafficking or coercion, the state cannot prohibit it outright. However, the Court did not strike down Section 7 of the ITA, which criminalises the keeping of a brothel. This leaves a significant tension: a sex worker who shares premises with another sex worker for safety and companionship may be putting her landlord or manager at risk of prosecution.⁹⁶⁵

Article 23 – Prohibition of Trafficking and Forced Labor. Article 23 prohibits “traffic in human beings and begar and other similar forms of forced labour.” This is a fundamental right that is enforceable against both the state and private individuals. The Supreme Court in *Budhadev Karmaskar* was acutely aware that many sex workers do not enter the profession voluntarily. The Court’s observation that “a person becomes a prostitute not because she enjoys it but because of poverty” is, in part, an acknowledgment of the economic coercion that Article 23 was designed to combat. However, the Court also made a crucial distinction. The prohibition under Article 23 applies to forced labour – labour extracted against a person’s will through threats, violence, or legal compulsion. It does not apply to voluntary work, even if that work is morally stigmatised. Therefore, a person who chooses sex work as an adult, without coercion, is not a victim of trafficking under Article 23. The 2022 directions reflect this distinction. The Court directed that trafficking must be vigorously prosecuted, but also directed that sex workers who wish to continue working must be allowed to do so without state interference. The rehabilitation schemes ordered by the Court are for those who wish to leave – not for all sex workers.⁹⁶⁶

Directive Principles – Articles 39(a), 42, and 47. The Directive Principles of State Policy, contained

⁹⁶¹ *Budhadev Karmaskar*, slip op. at 3 (Direction No. 1).

⁹⁶² *Id.* at 8 (Direction No. 10).

⁹⁶³ *Id.* at 6.

⁹⁶⁴ *State of Maharashtra v. Indian Hotel & Restaurants Ass’n*, (2022) 8 S.C.C. 519, 598 (India).

⁹⁶⁵ Immoral Traffic (Prevention) Act § 7.

⁹⁶⁶ *Budhadev Karmaskar*, slip op. at 4–5 (Direction Nos. 4, 5).

in Part IV of the Constitution, are not directly enforceable by courts. However, the Supreme Court has repeatedly held that they inform the interpretation of fundamental rights and that the state has a duty to implement them progressively. In *Budhadev Karmaskar*, the Court invoked three Directive Principles. Article 39(a) requires the state to direct its policy towards securing “that the citizens, men and women equally, have the right to an adequate means of livelihood.” The Court noted that most sex workers are driven to the profession precisely because they lack an adequate means of livelihood. The rehabilitation schemes ordered by the Court are a direct implementation of this principle. Article 42 requires the state to make provision for “just and humane conditions of work.” Sex work, as currently practiced in India, is often far from just or humane. The Court’s directions on police protection, access to healthcare, and the right to form collectives are all aimed at improving working conditions. Article 47 requires the state to raise the level of nutrition and the standard of living of its people and to improve public health. The Court’s direction that the possession of condoms should not be treated as evidence of an offense directly advances public health goals.⁹⁶⁷

Article 142 – The Power to Do Complete Justice. Article 142 is the Supreme Court’s extraordinary power. It provides that the Supreme Court “may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.” This power is plenary. It allows the Court to override statutory provisions, issue directions to the executive, and even create new law in the absence of legislation. The most famous example of Article 142 in action is *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241, where the Supreme Court laid down comprehensive guidelines on sexual harassment at the workplace in the absence of a parliamentary law. Those guidelines remained in force until the Sexual Harassment of Women

at Workplace (Prevention, Prohibition and Redressal) Act was passed in 2013. Similarly, in *Common Cause v. Union of India*, (2018) 8 S.C.C. 618, the Court used Article 142 to strike down the electoral bonds scheme as unconstitutional. In *Budhadev Karmaskar*, the Court used Article 142 to fill a legislative vacuum. The Union Government had received the panel’s report in 2016 and done nothing. The Court waited for six years. Finally, on May 19, 2022, it exercised its power under Article 142 and issued a series of binding directions that would remain in force until Parliament enacted a comprehensive law.⁹⁶⁸

The Transition to the BNS and BNSS. Although the 2022 directions were issued under the old IPC and CrPC, the new criminal codes – the *Bharatiya Nyaya Sanhita* (BNS), 2023 and the *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023 – have largely retained the substantive protections that the Court relied upon. The offense of murder, which was previously under Section 302 of the IPC, is now defined under Sections 100 and 101 of the BNS, with punishment prescribed under Section 103 of the BNS.⁹⁶⁹ The provision for mandatory free medical treatment for rape survivors, formerly Section 357C of the CrPC, is now Section 397 of the BNSS.⁹⁷⁰ The BNSS also introduces new protections, such as mandatory videography of searches (Section 105) and timelines for judgment delivery, which may indirectly benefit sex workers as accused persons. However, the core criminal provisions relating to violence against sex workers remain substantially the same. The ITPA, which is the primary law governing sex work, has not been amended to reflect the Supreme Court’s directions. This legislative inertia is the single biggest obstacle to full implementation.

3. THE 2022 DIRECTIONS: A COMPREHENSIVE CHARTER OF RIGHTS FOR SEX WORKERS ACROSS INDIA

On May 19, 2022, the Supreme Court issued a series of detailed, binding directions that

⁹⁶⁷ Id. at 5–6 (Direction Nos. 6, 7, 8).

⁹⁶⁸ Id. at 2.

⁹⁶⁹ Compare Indian Penal Code § 302, with *Bharatiya Nyaya Sanhita* §§ 100–103 (2023).

⁹⁷⁰ Compare Code of Criminal Procedure § 357C, with *Bharatiya Nagarik Suraksha Sanhita* § 397.

fundamentally changed the legal landscape for sex workers in India. These directions, issued under Article 142, cover police conduct, criminal law enforcement, healthcare, welfare benefits, media reporting, and participatory governance. They can be grouped into several thematic clusters.

NonCriminalisation of Voluntary Sex Work. The most fundamental clarification was that voluntary sex work between consenting adults is not illegal. Police authorities must not interfere or take criminal action against sex workers where the sex worker is an adult and is engaging in consensual sex work. The Court made clear that this does not mean all aspects of sex work are legal – the running of a brothel remains an offense under Section 7 of the ITPA, and public soliciting under Section 8 is also an offense – but the act of exchanging sex for money, in private, between two adults, is not a crime.⁹⁷¹ This clarification is crucial because, for decades, police had operated under the mistaken belief that sex work itself was illegal, leading to arbitrary arrests and harassment. A sex worker cannot be arrested simply for being a sex worker. If a police officer makes such an arrest, the arrest is unconstitutional and the officer can be sued for false imprisonment and violation of fundamental rights.

Police Conduct and Protection from Harassment. The Court directed that sex workers must be treated with dignity by law enforcement. Any physical or verbal abuse by police officers is prohibited. If a sex worker is a victim of a crime – whether assault, robbery, or rape – her complaint must be taken seriously and an FIR registered immediately. Police officers who refuse to register FIRs or who harass sex workers can be proceeded against departmentally and may also face contempt of court proceedings.⁹⁷² The Court also issued detailed directions on the conduct of brothel raids. When police raid a brothel, they must not arrest or penalise the sex workers themselves, provided the sex workers

are adults and are engaged in voluntary sex work. The only persons who can be proceeded against are the brothel keepers, pimps, and traffickers. This direction is crucial because, in the past, raids often resulted in the mass arrest of sex workers, who were then held in protective homes or sent to jail. The Court further directed state governments to survey all protective homes under the ITPA and release any adult women who are being detained against their will.⁹⁷³

Healthcare and Public Health Measures. The Court addressed healthcare access directly. Any sex worker who is a victim of sexual assault must be provided immediate medical assistance in line with Section 357C of the CrPC (now Section 397 of the BNSS).⁹⁷⁴ This section mandates that any hospital, whether government or private, must provide free firstaid or medical treatment to a rape survivor. The Court clarified that this applies equally to sex workers. On the issue of condoms, the Court directed that the possession of condoms by a sex worker should not be treated as evidence of the commission of an offense under the ITPA or any other law. This is a public health measure of enormous significance. In the past, police had used condoms as “proof” of sex work and arrested women on that basis, creating a perverse incentive to avoid carrying condoms, thereby increasing the risk of HIV and other sexually transmitted infections. The Court’s direction removes that incentive and encourages safe sex practices.⁹⁷⁵

Welfare Entitlements and Identity Documents. Sex workers often lack standard proof of address, making it impossible for them to obtain Aadhaar cards, voter identity cards, or ration cards. They may be homeless, or they may live in rented rooms without formal rental agreements. Landlords are often unwilling to provide proof of residence because they fear prosecution under the ITPA for running a brothel. This vicious cycle of exclusion has left sex workers invisible to the state’s welfare machinery. The Court directed

⁹⁷¹ Budhadev Karmaskar, slip op. at 3–4 (Direction Nos. 1, 2).

⁹⁷² Id. at 4 (Direction No. 3).

⁹⁷³ Id. at 4–5 (Direction Nos. 4, 5, 6).

⁹⁷⁴ Bharatiya Nagarik Suraksha Sanhita § 397.

⁹⁷⁵ Budhadev Karmaskar, slip op. at 5 (Direction No. 8).

that these documents must be issued to sex workers even if they are unable to produce standard proof of residence. A letter from a recognised NGO or a post office address will suffice. This enables sex workers to open bank accounts, access government schemes, and participate in the formal economy. The Court also directed that during the COVID19 pandemic, state governments must provide dry ration to sex workers without insisting on any proof of identification – a recognition that sex workers were among the hardest hit by lockdowns.⁹⁷⁶

Media Guidelines and Participation in Policymaking. The Court directed the Press Council of India to issue guidelines to ensure that the identities of sex workers are not disclosed during reporting on arrests, raids, or rescue operations. This protects sex workers from further stigmatisation and social exclusion. Finally, and perhaps most significantly for the long term, the Court directed that both the Central and State Governments must involve sex workers in all decisionmaking processes relating to their welfare. Any policy or programme designed for sex workers must be planned, designed, and implemented in consultation with sex worker collectives. This is a recognition of the principle “nothing about us without us” – that sex workers are not passive recipients of charity but active agents with expertise about their own lives.⁹⁷⁷

4. CRITICAL EVALUATION: ACHIEVEMENTS, GAPS, AND THE PERSISTENT IMPLEMENTATION CHALLENGE UNDER THE NEW CRIMINAL CODES

Budhadev Karmaskar v. State of West Bengal is a landmark judgment – there is no doubt about that. It ranks alongside *Vishaka* (sexual harassment guidelines), *NALSA v. Union of India* (transgender rights), and *Navtej Singh Johar v. Union of India* (decriminalisation of homosexuality) as a case where the Supreme Court expanded the horizons of constitutional rights for a marginalised community. But a judgment is not a revolution. A balanced critical evaluation requires acknowledging both what

the Court achieved and what remains undone, especially in light of the transition to the BNS and BNSS.

What the Court Achieved. First, the case established beyond doubt that sex workers are constitutional persons with full rights under Part III of the Constitution. The right to dignity under Article 21 applies to them as much as to any other citizen. Second, the case clarified the legality of voluntary sex work. For decades, there was widespread confusion – even among police and judges – about whether the act of sex work itself was a crime. The Court’s 2022 directions put that confusion to rest. Third, the case created enforceable protections against police abuse. A sex worker who is arbitrarily arrested, beaten, or denied an FIR can now approach the High Court or the Supreme Court for contempt proceedings. Fourth, the case unlocked access to welfare benefits. The direction on Aadhaar cards, ration cards, and voter IDs is transformative. It brings sex workers out of the informal shadows and into the administrative grid. Fifth, the case mandated the involvement of sex workers in policymaking. Sixth, the Court’s public health directions – particularly on condoms and medical treatment – have the potential to save lives and prevent disease.⁹⁷⁸

What the Court Left Undone. First, the Court did not strike down the brothel prohibition under Section 7 of the ITPA. This means that sex workers who share premises for safety remain legally vulnerable. A constitutional challenge to Section 7 under Article 19(1)(g) and Article 21 is entirely possible, but it has not yet been litigated. Second, the Court did not strike down the soliciting ban under Section 8 of the ITPA, leaving streetbased sex workers at risk of arrest. Third, the Court did not create a statutory right to rehabilitation. The rehabilitation schemes are executive schemes, not a law passed by Parliament. They can be underfunded, redesigned, or abandoned by a future government. Fourth, the Court did not address the issue of sex workers’ children, who

⁹⁷⁶ Id. at 6–7 (Direction Nos. 9, 10, 11).

⁹⁷⁷ Id. at 7–8 (Direction Nos. 12, 13, 14).

⁹⁷⁸ Id. at 3–8.

face discrimination in schools. Fifth, the case did not address the criminalisation of clients – a political choice left to the legislature.⁹⁷⁹

The Implementation Gap and the Transition to BNS/BNSS. The Supreme Court's directions are binding on all states under Article 141. However, implementation requires active cooperation from state police forces, state health departments, and state social welfare boards. Some states have responded quickly. For example, in April 2025, Madhya Pradesh issued a circular to all police stations directing them not to arrest women engaged in voluntary sex work.⁹⁸⁰ Other states have done little or nothing. The transition to the BNS and BNSS has not changed this ground reality. While Section 397 of the BNSS reiterates the obligation to provide free medical treatment to rape survivors, and the substantive offenses of violence remain largely the same, the police culture of impunity and harassment has not been automatically transformed by the new codes. Moreover, the ITPA – which is the primary source of criminal sanctions against sex work – has not been amended to align with the Supreme Court's directions. The Union Government has shown no inclination to introduce a comprehensive sex work law. This legislative vacuum is the most serious obstacle.⁹⁸¹

The Federalism Challenge. The Supreme Court directed both the Central and State Governments to act. But under the Constitution's Seventh Schedule, "police" and "public order" are State subjects (Entry 2, List II). The ITPA, however, is a Central law (falling under the concurrent list via Entry 20 of List III – "economic and social planning"). The Court's directions to state police forces are constitutionally valid because they interpret a Central law (ITPA) and enforce fundamental rights under Part III. Nevertheless, actual implementation varies wildly across states. A state government that is hostile to the Court's directions can simply drag its feet, and

the Court's ability to compel action is limited by its own docket and resources. The new BNSS introduces timelines for judgment delivery and procedural safeguards, but it does not provide a special mechanism for enforcing Supreme Court directions against state police forces. The contempt jurisdiction remains the primary, but slow, remedy.⁹⁸²

The Distinction Between "Voluntary" and "Forced" Remains Blurred. The Court's framework rests on a bright line between voluntary sex work (protected) and forced sex work or trafficking (prohibited). In reality, the line is often blurred. A woman who was trafficked as a minor may, as an adult, continue to work in sex work because she has no other skills or support system. Is that voluntary? A woman who is not physically coerced but who faces starvation if she does not sell sex – is that voluntary? The Court's observation about poverty suggests an awareness of this complexity, but the directions themselves do not provide clear guidance. Rehabilitation schemes must be designed to reach those who are trapped by economic circumstances, not just those who are physically held against their will. Under the BNS, the definition of "trafficking" is still evolving, and courts will need to interpret it in light of the Budhadev Karmaskar framework.⁹⁸³

5. CONCLUSION: THE UNFINISHED REVOLUTION AND THE PATH FORWARD UNDER THE BNS AND BNSS

Budhadev Karmaskar v. State of West Bengal is a testament to the transformative potential of constitutional litigation in India. What began as a criminal appeal arising from a horrific murder ended with the Supreme Court issuing a charter of rights for one of the most marginalised communities in the country. The Court's articulation that sex workers are entitled to a life of dignity under Article 21, coupled with detailed directions on police conduct, healthcare, and

⁹⁷⁹ Immoral Traffic (Prevention) Act § 7, 8.

⁹⁸⁰ "Now, Police Cannot Arrest Women Engaged In Prostitution Voluntarily In Madhya Pradesh," ETV Bharat (Apr. 5, 2025, 3:30PM), <https://www.etvbharat.com/english/national/bharat/nowpolicecannotarrest>

womenengagedinprostitutionvoluntarilyinmadhyapradesh/na20250405172639336564707.

⁹⁸¹ Budhadev Karmaskar, slip op. at 5.

⁹⁸² India Const. arts. 141, 142.

⁹⁸³ Bharatiya Nyaya Sanhita § 143 (defining trafficking).

welfare benefits, represents a paradigm shift in the legal discourse on sex work in India.⁹⁸⁴

The case has had a tangible impact beyond the courtroom. Following the 2022 directions, several State Governments have issued police circulars directing officers not to arrest women engaged in voluntary sex work. Media guidelines have been framed to protect the identities of sex workers. The direction on Aadhaar cards has enabled thousands of sex workers to open bank accounts and access government welfare schemes. In states like Madhya Pradesh, police circulars explicitly reference the Supreme Court's judgment and prohibit the arrest of voluntary sex workers. These are real changes, even if unevenly distributed across the country.

But the journey toward full realisation of the rights recognised in Budhadev Karmaskar is far from complete. The absence of a comprehensive law, the persistence of institutional abuse, and the deeprooted stigma attached to sex work continue to pose formidable challenges. The transition to the Bharatiya Nyaya Sanhita (BNS), 2023 and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 provides an opportunity for a fresh legislative conversation, but it also carries the risk that the old habits of selective enforcement will simply carry over into the new regime. The BNSS's procedural reforms – such as mandatory videography of searches (Section 105) and timelines for judgment delivery – could be used by sex workers to challenge police misconduct, but only if they have access to legal aid and the courage to come forward. The BNS, by preserving the core criminal offenses of violence and trafficking, does not hinder the Budhadev Karmaskar framework; it simply renumbers the provisions. The real work remains in the ITPA and in the executive's implementation of the Court's directions.

Now the work moves elsewhere. The Union Government must introduce and pass a comprehensive law on sex work – a law that fully decriminalises consensual adult sex work, that

repeals or amends Sections 7 and 8 of the ITPA, that creates a statutory rehabilitation fund, and that establishes an independent grievance redressal mechanism. State governments must train police officers, issue circulars, and set up welfare boards. Hospitals must be sensitised to the requirements of Section 397 of the BNSS. Schools must be directed not to discriminate against the children of sex workers. And society must learn to see sex workers as human beings. The Supreme Court has done its part. The Constitution has spoken. Now it is for the rest of us to listen, to act, and to ensure that the dignity so eloquently proclaimed in Budhadev Karmaskar becomes a lived reality for every sex worker in India.⁹⁸⁵

⁹⁸⁴ Budhadev Karmaskar, slip op. at 8.

⁹⁸⁵ Id. at 9.



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