
CASE COMMENT ON PRAJWALA V. UNION OF INDIA AND OTHERS

Sainikitha OL, B.Com., LL.B. (Hons.), The Tamil Nadu Dr. Ambedkar Law University,
School of Excellence in Law.

Suruthi Sundari, B.Com., LL.B. (Hons.), The Tamil Nadu Dr. Ambedkar Law University,
School of Excellence in Law.

Case Name: Prajwala v Union of India and Ors

Date of Decision: 29.05.2026

Bench: J.B. Pardiwala and R. Mahadevan

Citation: 2026 SCC OnLine SC 1053

1. Introduction:

India serves as a source, transit and destination country for the trafficking of women and children for Commercial Sexual Exploitation (CSE). The CSE of women and children is largely carried out both in and out of brothels, housed and resorts and other places. The digital dissemination of the CSE content does not require the perpetrator nor the victim to be present in a certain single location and thus, various stakeholders and authorities are required to completely unroot the practice within the country.

Various factors contribute to the targeting of women and children from particular groups such as who are severely affected by poverty, lack of access to education, unemployment, gender, financial allurements, better standard of living or marriage. The victims were often forced to live in a harsh environment and to cope with the same, they end up getting addicted to alcohol and drugs. Many data relating to trafficking for CSE is also mostly inaccurate. However, in the year 2004, the Union of India (i.e., respondent no 1) admitted that there were at least 30 lakh victims across the country.

2. Procedural History and Facts of the Case:

For the longest time, there had been disagreement in defining the term 'human trafficking' and later resolved by the Palermo Protocol (The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, 2000). The definition clearly

highlights that all persons, irrespective of age or gender, can become victims of trafficking. The present petition focuses only on the trafficking of vulnerable person for one particular purpose, i.e. the trafficking of women and children for CSE. The petitioner is an anti-trafficking organisation with primary operation in Hyderabad, Telangana and host over 250 women and children who had been rescued from prostitution.

The Petitioner had filed the Writ Petition in 2004 which challenged various anti-trafficking efforts undertaken in India. The rescue, rehabilitation of sex workers/ trafficked victims is grossly inadequate and they are being treated as ‘criminals’ instead of survivors/victims of a heinous crime. The reintegration into the society never really happens as the victims are taken back to the same brothels due to the poor implementation of the post-rescue phase. The core problem identified was the absence of a robust “Victim Protection Plan” which risked rendering all rescue efforts futile and counterproductive.

The need to protect victims under the Immoral Traffic (Prevention) Act, 1956 was recognised by the Supreme Court and involved the NALSA for the same and parties agreed that a comprehensive protocol was necessary. The Government of India submitted a “Draft Protocol” and also considered schemes from NALSA and the National Commission for Women (NCW). After consultations, a Joint-Proposal for a Victim Protection Plan was filed by NALSA and the petitioner.

The Ministry of Home Affairs undertook to set up the “Organized Crime Investigative Agency” (OCIA) and the court expressed that the OCIA shall be made functional before 1st December 2016. A Committee had also been constituted by the Ministry of Women & Child Development under the chairmanship of the Secretary of the Ministry for preparing a comprehensive piece of legislation in trafficking.

On December 9, 2015, original writ petition was disposed by the Apex Court after taking on record of two aspects.

1. The creation of the OCIA under the MHA and
2. Preparing a comprehensive legislation on the subject of trafficking.

Aftermath the 2015 order, an Inter-Ministerial Committee drafted the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016, which was revised in 2017 after public

feedback. A Miscellaneous Application was filed by the petitioner owing to the lack of progress on both the formulation of a new law and creation of the OCIA. Later in December 2018, the petitioner did not press the First M.A as the government introduced the Trafficking of Persons Bill, 2018 and passed by the Lok Sabha. However, the 2018 Bill lapsed because it was never taken up in the Rajya Sabha and the 2021 Bill was drafted which was stalled and never advanced to Parliament. Due to the absence of any substantial progress, the Petitioner filed a Miscellaneous Petition in 2022 seeking compliance with the 2015 Court order.

3. Issues:

Upon completion of the substantial and convincing arguments from both parties, and going through the history of the case in hand, the Hon'ble Court decided to primarily consider the state of the victims. It has been quoted that the journey of each of the victims is unique and cannot be fit into one box. Further, the Hon'ble Court went on to discuss their lives and the mental trauma they had suffered. In this process, the Hon'ble Court had considered the following seminal questions in detail;

- (i) Whether, on a combined reading of Articles 21 and 23 of the Constitution respectively, the victims of trafficking for Child Sexual Exploitation could be said to be entitled to the right to rehabilitation?
- (ii) Whether it could be said that there is a gap or lacuna in the present legislative and institutional framework insofar as the rescue, protection, rehabilitation and repatriation of the victims of trafficking for Child Sexual Exploitation is concerned?
- (iii) Whether it is necessary for this Court to direct the creation of the Organised Crime Investigation Agency for the investigation of offences pertaining to human trafficking?

The framing of issues is primarily centred around the rights of the victims, and the legislature's impact in their rescue and recovery.

4. Submissions of the Parties:

4.1. Submissions of the Petitioners:

The Counsel who appeared for the Petitioner were Ms. Aparna Bhat, Senior Advocate, Ms. Rajkumari Banju, Advocate on Record and Ms. Karishma Maria, Advocate. The counsel for

the petitioner has submitted in detail regarding the inadequacy of the existing protective mechanisms for the victims of trafficking and child sexual exploitation. They had reminded the Hon'ble Court and the learned opposite counsels about the primacy of filing the original writ petition praying for a "Victim Protection Plan" for the victims of the Child Sexual Exploitation. They highlighted the inefficiency of the legal system and the institutional support system in the pre-rescue, rescue and post-rescue stages of the victims and the survivors of trafficking. Consequently, the Hon'ble Court had passed the judgment dated 09.12.2015 disposing of the original writ petition after several consultations and reports of the State Governments, NALSA and other eminent stakeholders. As a corollary, the Union of India agreed to the following commitments,

(i) Creation and Enforcement of the Organised Crime Investigation Agency

(ii) Enforcing a comprehensive legislative framework consisting of the Victim Protection Plan

The petitioner contested the Union Government's updated stance that the creation of an Organised Crime Investigative Agency (OCIA) and a separate anti-trafficking law are no longer necessary, arguing that it deviates from the promises previously made to the Court. The petitioner further argued that, despite the Bharatiya Nyaya Sanhita's introduction of organized crime as a distinct offense, the sections pertaining to trafficking essentially replicate the previous legal system. The petitioner argued that the new criminal laws alone are insufficient to address the increasingly sophisticated tactics used by trafficking networks, underscoring the need for comprehensive legislation, since the Ministry of Home Affairs had already recognized human trafficking as organized crime through its 2012 advisory.

Additionally, the petitioner contended that specialized investigation is necessary because trafficking is carried out through organized criminal networks that are supported by intricate financial transactions. Despite the 2019 revisions to the NIA Act, the petitioner claims that the National Investigation Agency's small number of trafficking charges shows that the current institutional architecture has failed to accomplish its goals. The petitioner went on to point out that investigations only concentrate on criminals captured during rescue operations, while important players in trafficking networks, such as recruiters, transporters, and financiers, often evade prosecution because of poor planning and insufficient financial investigations.

It was further argued that while trafficking has changed substantially due to the growing use of digital channels for recruitment and exploitation, existing institutional mechanisms, such as advisory committees have largely been dormant. Given these deficiencies, the petitioner asked the Supreme Court to oversee the execution of its previous promises and to develop comprehensive guidelines that create a coordinated, victim-centered framework for trafficking prevention, efficient investigation and prosecution, and the long-term protection and rehabilitation of survivors.

4.2 Submissions of the Respondents:

The learned Additional Solicitor General represented the Union Government and stated that they have complied with the directions of the Supreme Court dated 9th December, 2015, and have implemented institutional, administrative, and legislative policies in eradicating human trafficking. It was highlighted that the existing legal framework, through provisions related to organised crime under Bharatiya Nyaya Sanhita and victim compensation under Bharatiya Nyaya Suraksha Sanhita, offered an effective and sufficient framework for dealing with trafficking-related offences. Therefore, the need for a separate piece of legislation to address the offence of trafficking was not justified.

Additionally, it was contended that the modification in the National Investigation Agency Act, 2019, enhances coordination and prosecution by enabling the National Investigation Agency to look into trafficking cases with interstate and international dimensions. The government also emphasised the implementation of the Mission Shakti Scheme through Shakti Sadan, which offers vulnerable women and trafficking survivor refuge, healthcare, counselling, and skill development. The respondent also mentioned that the creation of Women Help Desks and Anti-Human Trafficking Units with funding from the Nirbhaya Fund, as well as the Crime Multi-Agency Centre (Cri-MAC), enables law enforcement agencies to share information in real time, including in cases involving cyber-enabled trafficking.

Finally, it was argued that a distinct anti-trafficking law and the proposed Organised Crime Investigative Agency (OCIA) have been successfully accomplished by the combined operation of the new criminal laws, the Immoral Traffic (Prevention) Act, the National Investigation Agency, and the current institutional mechanisms.

5. Decision:

In accordance with the judgment of the Supreme Court, human dignity and fundamental rights protected by Articles 21 and 23 of the Constitution are seriously violated by trafficking for commercial sexual exploitation. The Court noted that trafficking is a complex human rights issue that goes beyond rescue and criminal punishment, drawing on the tenets of the Palermo Protocol. It acknowledged that the interrelated pillars of prevention, protection, prosecution, and rehabilitation are essential to the success of anti-trafficking initiatives. Although the Court acknowledged that India has a strong legal framework, such as, the Immoral Traffic (Prevention) Act, the Bharatiya Nyaya Sanhita, the Juvenile Justice Act, and the POCSO Act, it concluded that there were serious issues with institutional coordination and the execution of rehabilitation programs.

Consequently, it was decided that the State's constitutional duty to provide victims with genuine physical, psychological, social, and economic rehabilitation goes beyond merely saving them. Acknowledging these gaps in implementation, the Court exercised its authority under Articles 32 and 142 of the Constitution to create a comprehensive Victim Protection Plan that will be in effect until suitable legislation is passed. Additionally, the Court made it clear that consensual adult sex work and trafficking must be separated, and it mandated that persons should not be coerced into institutionalisation without first establishing whether they are victims of trafficking.

Furthermore, the Court refused to impose a mandamus mandating the creation of the proposed Organised Crime Investigative Agency (OCIA). However, the Court suggested that the Union Government re-evaluate enacting comprehensive anti-trafficking legislation, bolster victim protections, enhance responses to cyber-enabled trafficking, review provisions about child trafficking and the criminalisation of victims under the Immoral Traffic (Prevention) Act, and implement more adaptable rehabilitation models. As a result, the Court granted the application in part by recommending legally enforceable directives through the Victim Protection Plan, leaving the executive and legislature to decide on more comprehensive policy and legislative changes.

6. Reasoning:

The Court established that a combined reading of Article 21 and 23 forms a fundamental right

to rehabilitation for victims of trafficking. Rescue without rehabilitation and return of victims to the same conditions of life is meaningless. The Court relied on *Bandhua Mukti Morcha, Neerja Chaudhary v. State of M.P* and *Public Union for Civil Liberties v. State of T.N* to reiterate the three-fold duty when dealing with victims of such structures (i) identification of victims, (ii) their rescue, and (iii) their rehabilitation.

The right to rehabilitation includes protection from the traffickers and also from the fear of being trafficked again. The Court further conveyed that much more efforts are needed to secure the rights of the victim. Courts must adopt a liberal interpretation to cast the net of benefits as widely as possible. In dealing with Article 23 or legislation enacted to give effect to it, the courts shall presume that the exploited persons are entitled to benefits.

The principle of non-interference with adult voluntary sex workers was highlighted by relying on judgements such as *Budhadev Karmaskar v. State of W.B.* The consent of the victim should be the driving force and governing consideration in decisions regarding detention in protective homes or reintegration with the family. As the Parliament cannot be directed to enact a law, the Court did not issue any mandamus to create OCIA. The NIA is empowered to investigate trafficking offences u/s. 143 and 144 of the BNS. There exists no lacuna or gap in the present investigation mechanisms, however the same is scattered in multiple existing systems. The Court suggested the Respondent-1 to reexamine the legislation with regard to adult sex workers who are often isolated and stigmatised and there remains a significant gap between law in the textbooks and the actual reality of these workers.

7. Opinion:

Henceforth, the Supreme Court's recommendation suggests that there is a change in the perspective about trafficking for commercial sexual exploitation, and based on the rights of the victims. Thereby, the Hon'ble Court has acknowledged that trafficking should be combated by protection, rehabilitation, and reintegration instead of criminal prosecution. This further emphasises the principle of non-criminalisation of victims of human trafficking under the Immoral Traffic (Prevention) Act, 1956 and recognises them under the category of "victims".

The recommendation to implement adaptable and customized rehabilitation models recognizes that trafficking survivors have a variety of needs and situations, and that a standard approach is insufficient to ensure meaningful reintegration into society. This reasoning reinforces the

constitutional understanding of rehabilitation as an essential part of Article 21, right to life rather than as an administrative choice. Conclusively, the ruling adds significantly to Indian anti-trafficking jurisprudence by supporting changes that place victim welfare, autonomy, and dignity as paramount.

8. Conclusion:

This judgement is pivotal for the recognition of rescue and rehabilitation of the victims, whereby they are mostly treated as criminals and deprived of a dignified life. Hence, a monumental moment for the victims of trafficking especially involving women and children for sexual exploitation purposes.