

Why the Prajwala Judgment Feels Like a D. K. Basu Moment for Sex Workers



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No one should be subjected to illegal detention. Our moral assumptions should not obscure the fact that constitutional rights do not cease to exist merely because their beneficiaries are stigmatised sex workers.



Representative image of a sex worker. Photo: Flickr/Benzene Aseel CC BY NC ND 2.0.

Human trafficking for commercial sexual exploitation is heinous and a devastating experience for those subjected to it. Rescuing, rehabilitating and re-integrating victims of trafficking is an arduous process. It is all the more a nightmare when carried out in an insensitive manner that re-victimises those it seeks to help. Some rescued women, or voluntary sex workers, may prefer to continue in sex work, while others may wish to move on.

Rehabilitation carries different meanings for different people and these are deeply individual choices. It is imperative that the State and society respect those choices and uphold their right to live with dignity, free from interference, coercion and discrimination.

Notably, the Prajwala judgment ought to be called the sex workers' D.K. Basu moment as it makes protective detention answerable to procedure. A woman's choice, her word, now counts on paper. The judgment provides a Victim Protection Plan for the just rehabilitation of trafficked women.

A major omission in the courtroom, however, was the voice of the sex workers as they were not heard. We unpack both aspects and explore why this judgment is still a watershed and how it can be seen moving away from its own promise.

On May 29, 2026, a division bench of the Supreme Court delivered a transformative judgment by clinically distinguishing voluntary sex work from sex trafficking in *Prajwala v Union of India* (2026 INSC 609).

In a detailed discussion on issues of dignity, consent, trafficking and rehabilitation, the court has underscored the limitations of imposing rigid conceptual frameworks on inherently nuanced and fluid concepts while adjudicating cases involving trafficking for commercial sexual exploitation.

The petitioners in this case sought three reliefs.

First, that the right to rehabilitation of victims trafficked for commercial sexual exploitation (CSE) be recognised under Articles 21 and 23 of the constitution.

Second, a review of the existing loopholes in the legal and institutional framework governing the rescue, rehabilitation and repatriation of victims trafficked for CSE.

Third, they sought from the court directions to establish an Organised Crime Investigation

While examining the existing legal and institutional framework relating to sex trafficking, the court deemed it necessary to limit the scope of relief to the formulation of a Victim Protection Plan. For this, it invoked Article 142 of the constitution, thereby granting the first relief while declining the latter two.

The court realised that the existing institutional arrangement often made rehabilitation a reprimand rather than a relief. It was of the view that rescue and rehabilitation operations at times further stigmatised women.

It noted that international anti-trafficking laws actively discourage the incarceration of trafficked women, leading to them being housed in 'rescue homes.' These homes can at times turn out to be worse than regular prisons. Contrary to consistent appeals of the international community, sex workers continue to be detained in such rescue homes. They cannot seek bail or acquittal as they are not formally charged with any offence. Such detentions are rarely time-bound or subject to periodic reviews.

Victim's statement shall be accorded primacy

Among the guidelines issued, the court introduced provision of legal assistance to the sex workers, a right which is paramount and is often violated. The bench broadened the scope of inquiry under Section 17 of Immoral Traffic (Prevention) Act, 1956 (ITPA).

According to this provision, when trafficked women and girls are produced before magistrates, they must conduct an inquiry before sending them to protective homes. The bench divided the inquiry into two parts and introduced the concept of a preliminary inquiry.

Magistrates must initially verify whether the adult women produced before them are voluntary sex workers or victims of sex trafficking. Post this, they must record statements of the victims and social workers who are part of the Anti-Human Trafficking Units (AHTUs) which carry out rescue operations. The magistrate's opinion is to be based on the above observations.

The judgment makes it very clear that "the victim's own statement shall be accorded primacy and shall form the basis for the magistrate's decision." This means that once the magistrates are convinced that the adult sex workers have expressed their consent to continue in sex work, they are not to be detained in protective homes or state homes.

An in-depth inquiry is to be conducted only for those who need to be sent to institutional care. Rehabilitation is meant only for minor girls and women who have been trafficked. Procedural timelines have also been prescribed for completion of inquiries.

To sum it up in the apex court's own words: "Our plan is based on our conscious effort to shift the treatment of victims of trafficking for commercial sexual exploitation from mere passive objects to be rescued to that of persons with agency who have the capacity to make decisions on how they wish to be empowered. Such an approach would further enable her to exercise her right to rehabilitation in its truest and fullest sense."

Court did not hear sex workers in open court

The court also took note of the ongoing debate among women's groups regarding the nature and understanding of sex trafficking. One set of women's groups seeks the abolition of not only trafficking but of sex work per se. Some are tolerationists. Our own incongruous ITPA is mostly based on this discourse.

The enactment does not prohibit sex work. It prohibits it only when it takes place in the public gaze. Then, there is another set of thinkers who want trafficking to be criminalised

while voluntary sex work is to be decriminalised. Lastly, there are groups which seek the legalisation of sex work.

Although the court is cognisant of the debates revolving around these contentious issues, it did not precipitate the matter by giving findings explicitly in favour of any one group. It subtly yet firmly dismissed the theory and practice of the abolitionists by reading international instruments into our sex trafficking laws and the Victim Protection Plan.

The ITPA, which is based on the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 has not accommodated the changes introduced by the Palermo Protocol of 2000 (the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children 2000 which supplements the UN Convention against Transnational Organised Crime). It implicitly read the principles laid down in Palermo Protocol into the guidelines, thereby making them clearer and less susceptible to further judicial review.

Should we call it poetic justice that the court delivered this judgment in a writ petition filed by Prajwala, an abolitionist anti-trafficking organisation? The judgment is contrary to much of what the organisation stands for.

For the past three decades, the abolitionists have set the agenda for rescue and rehabilitation operations. Ironically, most government and non-government groups across India have followed this template. One must also note that abolitionist organisations are also celebrating the judgment as much as voluntary sex workers' collectives.

One would imagine that this judgment is a culmination of a legal battle launched by a group of sex workers or a sex worker collective like the Durbar Mahila Samanwaya Samithi. The sex workers seem to have the ears of the judges. Their voices keep ringing in our minds when we read the judgment. But that is not the case. The court did not have the benefit of hearing them in open court.

What is puzzling is that, despite its emancipatory approach this judgment denied the principle of *audi alteram partem* to its recipients. Their voice is predominantly absent. Here, the court did what all other agenda-setters, public discourse propounders and agents of social change do. It could have instead invoked its inherent powers, got them impleaded and brought the voices of sex workers' collectives on record.

In fact, they were parties to an interlocutory application in the case. Despite this anomaly, the court fortunately did not go wrong. Its heart seems to be in the right place

However, there is one disturbing aspect of the judgment which perhaps provides some solace to the abolitionists. Though the Court states that primacy shall be given to the women's statement, considerable weight is also given to the social workers' report.

While the judges have written extensively about respecting these women, their agency and autonomy, the court has inadvertently wrested that very agency from their hands and vested it in the magistrates and the social workers who are attached to the AHTUs. It pits the word of a sex worker against that of the supposed 'gentlewoman'.

Social workers and NGOs have played a pivotal role in rescue operations and management of the homes since the inception of the ITPA, as the legislation envisages such involvement. The same set of people will continue to play a similar role.

The Victim Protection Plan is silent on the ideological inclinations, composition and screening of these NGOs. Their moral policing is at times more harmful to the sex workers than regular policing. As the NGOs engaged in rescue and rehabilitation work are essentially agencies and instrumentalities of the State, the court should have laid down clearer guidelines on the code of conduct for these NGOs.

For instance, it should have insisted that only those groups that follow the principles laid down by the Supreme Court in *Budhadev Karmaskar v State of West Bengal* (2022) 20 SCC 220 and the international anti-trafficking conventions which strongly discourage penalising voluntary sex work and incarceration of sex workers, ought to be involved in this work.

While the judgment underscores the importance of training AHTU personnel, such training, by itself, is insufficient to remedy the deeper structural problems entrenched within the anti-trafficking framework. Although ITPA's cause title was made gender-neutral through the 1986 amendment, most of the provisions remain female-centric. The apex court could have further bridged this gap by extending the same relief to trafficked persons and sex workers across the gender spectrum.

Whether it is the Unlawful Activities (Prevention) Act, 1967 (UAPA), the Prevention of Money Laundering Act (PMLA), or the ITPA, illegal detention remains a violation of personal liberty regardless of the statutory provision invoked to justify it. It does not really matter whether one is a political prisoner, a bootlegger or a sex worker.

No one should be subjected to illegal detention. Our moral assumptions should not obscure the fact that constitutional rights do not cease to exist merely because their beneficiaries are stigmatised sex workers.

Similarly, detention remains detention whether it is protective, preventive or punitive. Protective detention should be subject to no less judicial and public scrutiny than any other

form of detention. If anything, it demands greater accountability, as those confined in the name of protection are often the most vulnerable.

This judgment offers much food for thought to all sections of people, particularly to the judicial magistrates across the country, who should read it closely and implement it faithfully. For sex workers, it will resonate deeply, as it captures their lived experiences that have long been invisible within legal discourse.

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