

Supreme Court Frames Victim Protection Plan for Human Trafficking Survivors

June 8, 2026 • vajiramandravi.com



Human Trafficking Survivors Latest News

- The Supreme Court recently framed a comprehensive **Victim Protection Plan** for survivors of human trafficking and commercial sexual exploitation (CSE).
- A bench of Justices JB Pardiwala and R Mahadevan held that the “existing vacuum seriously **impairs the fundamental rights**” of trafficking victims and was “left with no option” but to issue detailed directions.
- The plan will operate until Parliament enacts a dedicated law on the protection and rehabilitation of CSE victims.

Background: A 22-Year-Long Legal Battle

- The case traces to a 2004 petition filed by Prajwala, a Hyderabad-based anti-trafficking organisation.
- Its core argument was: trafficking victims were being treated as criminals rather than victims or survivors. The absence of a Victim Protection Plan was making rescue and rehabilitation efforts ineffective.

- In December 2015, the Supreme Court disposed of the petition after the government promised to establish an Organised Crime Investigation Agency (OCIA) and an Inter-Ministerial Committee to draft a comprehensive anti-trafficking law.
- Neither promise was kept. The timeline of failure is striking:
 - OCIA was never set up.
 - Draft anti-trafficking Bills were prepared in 2016, 2017, 2018, and 2021 — none became law.
 - The 2018 Bill passed the Lok Sabha but lapsed when the 16th Lok Sabha dissolved.
 - Instead of OCIA, the government amended the NIA Act in 2019 to allow NIA to investigate trafficking cases.
- Prajwala returned to the Supreme Court in 2022, alleging non-compliance. The current judgment is the result.

On Dignity: What the Court Said

- The bench grounded its entire reasoning in the concept of human dignity.
- Every person possesses dignity simply by virtue of being human. Trafficking violates this directly — the entire transaction treats victims as objects, as though their humanity is irrelevant.
- The court went further. It held that dignity is not a fixed condition — it is shaped by circumstances.
- A person without income or independent livelihood cannot negotiate from a position of choice. Material deprivation does not merely diminish dignity; it actively creates conditions in which dignity can be stripped away.
- This is why trafficking victims are so vulnerable — poverty and dependence make them easy targets.
- The court also acknowledged the deep and pervasive stigma that CSE victims carry, noting that it is their identity and suffering that are fundamentally undermined.

On Rehabilitation: A Constitutional Right

- The court made a landmark holding: victims of trafficking for CSE have a constitutional right to rehabilitation, flowing from Articles 21 and 23 of the Constitution.
 - Article 21 guarantees the right to life with dignity.
 - Article 23 explicitly prohibits traffic in human beings and forced labour.
- The court drew upon the *Bandhua Mukti Morcha* (1984) and *Neerja Choudhary* (1984) judgments, which had held that freeing bonded labourers was not enough — rehabilitation was equally essential.
- The goal, the court said, is not merely to punish perpetrators — it is to empower victims by guaranteeing their rights.

The Problem with Section 17 of ITPA

- The bench examined **Section 17** of the **Immoral Traffic (Prevention) Act (ITPA), 1956**, which governs what happens after a woman is removed from a brothel during a raid.
- The provision's fundamental flaw: it treats three very different categories of women identically —
 - Women trafficked into prostitution
 - Women who were trafficked but later continued voluntarily
 - Women who entered sex work entirely voluntarily

- This one-size-fits-all approach, the court held, risks violating rights and dignity.
- The court directed that magistrates must first conduct an inquiry to identify voluntary adult sex workers — for whom “rescue” does not apply.
- A **victim’s consent must be the primary** and governing consideration in all decisions about detention in protective homes or reintegration with family.
 - Experts, however, note a real-world complexity – the line between voluntary and involuntary is rarely clean.
 - Women who entered sex work under coercion may, after years, come to describe it as a part of life.
 - Consent, in practice, operates under structural conditions of poverty and dependence that make clean determinations very difficult.

What the Victim Protection Plan Covers

- The court framed a detailed plan covering every stage from rescue to reintegration.

During Rescue

- Victims must not be arrested, abused, photographed, or filmed in ways that reveal their identity.
- Special attention is mandated for children, transgender persons, persons with disabilities, and those with mental illness.

Post-Rescue

- Victims cannot be kept in lock-ups or detained overnight at police stations.
- They must be provided legal aid, medical care, and counselling immediately.
- They must be produced before appropriate authority without delay.
- Before ordering long-term custody, magistrates must hear the victim and, where necessary, determine whether an adult woman is in sex work voluntarily.

In Protective Homes

- Homes must not resemble prisons.
- Each survivor is to be assigned a case worker and given an individual care plan covering healthcare, counselling, education, skill development, livelihood support, and access to government schemes.
- Bank accounts must be created for long-term residents.
- Mechanisms to report abuse within homes must be established.

On Anti-Trafficking Units

- Units must be headed by officers of Deputy Superintendent of Police rank.
- They are to be notified as police stations with powers to register and investigate trafficking cases.
- They must maintain databases on traffickers and victims and coordinate with social workers and child welfare officials.

What the Court Did Not Do — and What It Asked Parliament to Do

- The bench declined to create OCIA as originally promised by the government. Instead, it directed Parliament to:
 - Amend Sections 7, 8, and 20 of ITPA, which currently expose victims to prosecution.
 - Rethink mandatory fixed-period detention in protective homes.
 - Recognise the rights of voluntary adult sex workers — noting that “the rights of sex workers can exist without there being a right to sex work.”
 - Enact a comprehensive standalone anti-trafficking law.

Source: IE | SCCO

Source: <https://vajiramandravi.com/current-affairs/supreme-court-frames-victim-protection-plan-for-human-trafficking-survivors/>

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