

# Judicial Interpretation of “*Consensual Adult Sex Work*” Versus Trafficking in India

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**Abstract:** The debate surrounding the legal and constitutional standing of sex work in India is both complex and deeply rooted in societal, moral, and economic contexts. While trafficking for sexual exploitation is unequivocally condemned under Indian law, the question of whether consensual adult sex work can be treated as a legitimate form of livelihood remains unresolved in judicial and legislative spheres. This article critically examines the nuanced distinction between *consensual adult sex work* and *trafficking* within the Indian legal framework, with a focus on constitutional rights, statutory provisions, judicial interpretations, and evolving socio-legal perspectives. By analysing landmark judgments from the Supreme Court and various High Courts, this study explores how the judiciary has grappled with the competing imperatives of morality, public order, human rights, and personal autonomy. Furthermore, it assesses the effectiveness of laws like the Immoral Traffic (Prevention) Act, 1956 (ITPA), the Indian Penal Code, 1860 (IPC), and relevant international conventions in addressing trafficking while safeguarding the rights of sex workers. The article concludes by identifying gaps in the current legal approach and proposing a balanced, rights-based framework that distinguishes consensual sex work from exploitation.

**Keywords:** Sex Work, Trafficking, Consensual Adult Sex Work, Immoral Traffic (Prevention) Act, Constitutional Rights, Judicial Interpretation, Human Trafficking, Sex Workers’ Rights, Supreme Court Judgments, Human Dignity, Article 21, Public Morality, International Conventions.

## INTRODUCTION

Sex work, as a form of labour, has existed across civilizations and cultures, often shaped by economic necessity, patriarchal structures, and social norms. In India, the subject has long been entangled with notions of morality, legality, and human rights. While trafficking defined as coercion, deception, or force for exploitation has always been a criminal offense, consensual adult sex work occupies a legally ambiguous space.

The Constitution of India guarantees the right to life, personal liberty, and equality before the law. Yet, the Immoral Traffic (Prevention) Act, 1956 (ITPA), which is the principal legislation on the subject, does not criminalize sex work per se but penalizes activities associated with it,

such as running brothels, soliciting in public places, and living on the earnings of prostitution. This creates a paradox where sex work is technically legal but rendered practically unviable.

The judicial interpretation of “consensual” sex work versus trafficking is crucial because conflating the two leads to human rights violations against sex workers, including police harassment, forced rehabilitation, and loss of livelihood. Conversely, failing to distinguish trafficking risks enabling exploitation under the guise of choice. Indian courts have, over the years, taken varied approaches, sometimes emphasizing moralistic positions and at other times adopting a rights-based lens.

This article explores the legal definitions, constitutional underpinnings, landmark cases, and evolving jurisprudence to understand how Indian courts interpret and differentiate consensual sex work from trafficking, while also comparing global legal standards.

## **HISTORICAL BACKGROUND: JUDICIAL INTERPRETATION OF CONSENSUAL ADULT SEX WORK” VERSUS TRAFFICKING IN INDIA**

### **1) Setting the stage: concepts, law, and the enduring confusion**

From the very start of India’s modern legal history, “prostitution,” “sex work,” “immoral traffic,” and “trafficking” have been used interchangeably in public discourse—even though the law and the courts have not treated them as identical. “Consensual adult sex work” refers to adults who, without force, fraud, coercion, or deception, sell sexual services. “Trafficking,” by contrast, is organized exploitation: recruitment, transportation, harbouring, transfer, or receipt of persons by improper means for exploitation. Indian law has oscillated between two impulses: a public-morality approach that sought to suppress visible markets in sex, and a rights-based approach that protects adults’ autonomy, equality, dignity, health, and livelihood while forcefully criminalizing exploitation and child abuse. The judiciary’s role has been to interpret statutes and the Constitution amid these tensions.

The interpretive journey can be understood chronologically in four broad phases: (i) colonial regulation and the roots of “immoral traffic,” (ii) early post-Constitution policing and the Suppression/Immoral Traffic Acts, (iii) constitutional jurisprudence on dignity, livelihood, privacy, and child protection, and (iv) the twenty-first-century recalibration culminating in explicit judicial separation of consensual adult sex work from trafficking.

## **2) Colonial antecedents: regulation, morality, and contagious disease laws**

Under British rule, the state attempted to control, rather than abolish, prostitution. Municipal by-laws and the Contagious Diseases Acts (late nineteenth century) regulated brothels around cantonments, reflecting a utilitarian concern with venereal disease among soldiers more than any coherent rights or feminist framework. At the same time, the Indian Penal Code (IPC, 1860) did not criminalize prostitution per se. Instead, it targeted surrounding conduct: procurement (e.g., later IPC §366A), selling or buying minors (IPC §§372–373), kidnapping/abduction, wrongful confinement, assault, public nuisance, and obscenity. This duality—tolerate adult commerce while penalizing exploitation and public disorder—seeded the later judicial task: distinguish consensual adult activity (not an IPC offense) from criminal exploitation and offenses involving children or coercion.

Social reform movements especially those targeting the Devadasi system and child marriage added moral urgency against sexual exploitation. But these were uneven, region-specific, and often framed through “rescue” rather than adult agency. By Independence, the legal furniture for anti-exploitation existed but was scattered across public order, morality, and child-protection provisions.

## **3) Early Republic: constitutional bedrock and the first anti-traffic statute**

The Constitution (1950) introduced a transformative rights charter. Article 14 (equality), Article 19(1)(g) (occupation, subject to reasonable restrictions), Article 21 (life and personal liberty), and Article 23 (prohibition of traffic in human beings and beggar) would become the judiciary’s primary interpretive tools. Crucially, Article 23 constitutionally condemned “traffic in human beings” but did not outlaw adult consensual sex. This left space for Parliament to enact a specialized anti-traffic law aligned with international commitments.

In 1956, India enacted the Suppression of Immoral Traffic in Women and Girls Act (SITA), giving domestic effect to the 1949 UN Convention for the Suppression of the Traffic in Persons. SITA did not criminalize the mere act of a consenting adult selling sex. Instead, it targeted brothel-keeping, living on the earnings of prostitution, procuring and detaining for prostitution, and soliciting in public. This architecture reflected a policy compromise: tolerate individual adult selling of sex in private, but criminalize the market structures seen as exploitative and the public visibility considered a moral nuisance.

Courts in the 1960s–70s largely read SITA through a public-morals lens, upholding police powers to conduct raids, close brothels, and “rescue” women. Yet the judiciary also insisted that “rescue” could not morph into indefinite detention; due process and proper findings were required. Still, consensually rarely featured as a central analytic category; the paradigm was rescue/suppression rather than adult autonomy.

#### **4) From SITA to ITPA: the 1978 and 1986 amendments and the intensification of control**

Amendments in 1978 and, more comprehensively, in 1986 retitled the law as the Immoral Traffic (Prevention) Act (ITPA). The 1986 amendment broadened reach (e.g., widened definitions, enhanced penalties), raised age thresholds, and strengthened “protective homes” schemes. The policy emphasis remained: prostitution by a consenting adult in private is not directly criminalized, but the ecosystem (brothels, public solicitation, pimping, and third-party profiteering) are. In practice, however, enforcement blurred lines: police raids swept in consenting adults alongside trafficked persons; “rescue” homes became carceral; and possession of condoms was sometimes treated as incriminating, undermining public health goals. These frictions soon reached the courts.

Through the 1980s, High Court decisions grappled with custody and rehabilitation orders under ITPA. Judges recognized that forced confinement of adults, absent findings of coercion or vulnerability, violated liberty. The seeds of a rights-based correction were sown: courts began distinguishing protective detention for minors and trafficked victims from wrongful restrictions on consenting adults.

#### **5) Early constitutional articulation: dignity and credibility of sex workers**

A watershed moment came when the Supreme Court explicitly recognized the dignity and testimonial worth of women in sex work. In **State of Maharashtra v. Madhukar Narayan Mardikar** (1991), the Court held that a woman’s character even if she is a sex worker does not erode her right to privacy and dignity and does not render her testimony unworthy of credence. This was not a case about the legality of sex work itself; rather, it repudiated a discriminatory evidentiary practice that had treated “unchaste” women as inherently unreliable. Yet the doctrinal implications were profound: sex workers are full rights-bearers, and courts must guard against prejudice masquerading as legal reasoning. Subsequent High Court rulings cited *Mardikar* to push back on police and prosecutorial narratives that dehumanized women suspected of prostitution.

## **6) Children at the centre: Gaurav Jain and the welfare paradigm**

In **Gaurav Jain v. Union of India** (1997), the Supreme Court confronted the intergenerational harms faced by children of women in prostitution, directing the State to design education, shelter, and rehabilitation measures. This marked a pivot towards structural remedies and social rights, treating children's vulnerability as a constitutional concern under Articles 14, 21, and Directive Principles. Though the judgment's remedy design was contested over the years, it cemented a judicial posture: sex workers' children must not suffer stigma or exclusion. While not a "consent" case, Gaurav Jain sharpened the distinction between protecting vulnerable groups (children) and assuming that all adult women in the trade are necessarily coerced.

## **7) Human rights and public health: the HIV/AIDS era and harm reduction**

From the late 1990s through the 2000s, India's HIV response brought a public-health rationale to courtrooms. Litigation around needle-exchange, condom distribution, outreach, and anti-discrimination reframed sex workers as stakeholders in health governance. Courts admonished local authorities when condom possession was treated as evidence of prostitution, noting that such practices deter prevention and violate the right to health. The rights-based language dignity, non-discrimination, privacy gained traction, and judicial orders increasingly demanded that enforcement under ITPA avoid undermining public health programs. The idea that adult women could choose sex work while still needing protection from violence and exploitation moved from the margins toward mainstream legal reasoning.

## **8) Constitutional deepening: privacy, autonomy, and the anti-trafficking pivot in the IPC**

Two powerful statutory and constitutional developments reshaped judicial interpretation in the 2010s.

First, Parliament amended the IPC in 2013 after the Justice Verma Committee Report. The new **§370** and **§370A** reframed trafficking as a distinct offense covering recruitment, transport, harbouring, transfer, or receipt of persons for exploitation, using force, fraud, coercion, abduction, abuse of power, or inducement. This modern definition aligned with the Palermo Protocol—made clear that trafficking is about coercive processes and exploitative outcomes, not about the mere sale of sex by adults. Courts began reading ITPA alongside §370: consensual adult sex work falls outside §370, whereas child prostitution or adult prostitution obtained by prohibited means falls squarely within it.

Second, the Supreme Court's **K.S. Puttaswamy v. Union of India** (2017) recognized privacy as a fundamental right intrinsic to dignity and autonomy under Article 21. Though not a sex-work case, Puttaswamy's emphasis on decisional autonomy, bodily integrity, and the zone of private choices became a template for later decisions. High Courts invoked Puttaswamy to scrutinize police "rescue" actions against adults absent proof of coercion, to invalidate intrusive detentions, and to stress that consenting adults are entitled to live and work without arbitrary state interference. This constitutional deepening enabled courts to sharpen the consent/coercion distinction.

### **9) Budhadev Karmaskar and the Supreme Court's structural turn**

Beginning in 2011, the Supreme Court's **Budhadev Karmaskar v. State of West Bengal** docket transformed into a broader inquiry into sex workers' rights, rehabilitation, and state obligations. Triggered by the brutal murder of a sex worker, the Court constituted panels, received reports from governmental and civil-society bodies, and issued iterative directions over a decade. A key theme emerged: sex workers are citizens entitled to constitutional rights, and state action must not confound voluntary adult work with trafficking.

Across interim orders culminating in a widely cited 2022 direction set, the Court clarified several points that reverberate through High Courts and enforcement agencies:

- **Consenting adults in sex work are entitled to dignity, equality, and privacy;** mere profession cannot invite harassment, arbitrary detention, or discrimination.
- **Media and police must not disclose identities** of sex workers; sensationalism violates privacy and can cause irreparable harm.
- **Condom possession cannot be treated as evidence of prostitution;** such practice undermines public health and stigmatizes safer-sex behaviour.
- **Rescue and rehabilitation mechanisms must focus on victims of trafficking and minors;** adult women claiming to be in sex work by choice cannot be forced into detention homes absent proof of coercion or vulnerability findings recorded by a competent authority.

Budhadev Karmaskar did not decriminalize brothels or public solicitation (ITPA remains). But the Court's directions recalibrated enforcement: trafficking is a grave crime that must be targeted, while consensual adult sex work must not be policed as though it were trafficking.

## 10) High Courts operationalize the consent/coercion divide

With this Supreme Court scaffolding, High Courts have, over the last decade, repeatedly emphasized that **consensual adult sex work is not a crime per se** and that ITPA's machinery cannot be used to curtail the liberty of adults unless statutory grounds are met. Several consistent judicial themes have emerged:

1. **No “protective” detention of consenting adults:** Courts have set aside orders sending adult women to “protective homes” when they explicitly declined rehabilitation and no finding of coercion, trafficking, or “need for care and protection” under the Juvenile/child-protection regime existed.
2. **Evidentiary discipline:** Courts have frowned upon raids that rely solely on moral suspicion or presence in a red-light area. They stress the need for proof of brothel-keeping, living on earnings, procurement, or trafficking elements. Adult presence plus condoms is not evidence of a crime.
3. **Child vs adult bright line:** Where minors are involved, courts have imposed strict liability under ITPA and IPC child-protection provisions. But with adults, **consent and agency matter**; conflation erodes credibility of anti-trafficking efforts and violates fundamental rights.
4. **Role of Article 19(1)(g):** Although the Court has never declared a fundamental right “to be a sex worker,” some High Court decisions acknowledge that adults have a right to pursue a livelihood and that restrictions must be “reasonable” under Article 19(6). The upshot: the state can regulate spaces (e.g., brothels, public solicitation) and third-party profiteering, but it cannot criminalize private consensual transactions per se.
5. **Privacy in enforcement:** Invoking Puttaswamy, courts have required that searches and raids respect procedural safeguards; invasive medical examinations or photographing adults without consent have been condemned.

Together, these decisions operationalize the Supreme Court's stance: trafficking is coercion plus exploitation; consensual adult sex work without those elements is not trafficking and triggers protective constitutional rights.

### **11) International law's shadow: Palermo, CEDAW, and evolving standards**

Judicial interpretation in India has been increasingly dialogic with international norms. The Supreme Court often reads fundamental rights in light of international obligations where domestic law is silent or ambiguous. The **Palermo Protocol** (2000) provided a modern definition of trafficking that inspired the 2013 IPC amendments. **CEDAW** Committee General Recommendations have urged states to distinguish voluntary adult sex work from trafficking and to centre women's autonomy and health. Indian courts have selectively cited such instruments to reinforce anti-exploitation while resisting paternalistic overreach against adults. This comparative law frame buttresses the consent/coercion divide in cases of adult sex work and sharpens child-protection mandates.

### **12) Legislative forays and judicial restraint: proposed Trafficking Bills**

Parliamentary attempts to create a comprehensive Trafficking of Persons law (notably drafts from 2018 and 2021) sparked debate: would new "aggravated" offenses and broad closure/rescue powers unintentionally penalize consensual adult sex workers and their families? While these Bills did not become law, the judiciary's running commentary direct and indirect has flagged constitutional guardrails: precision in definitions, due process in rescue/rehab, and non-criminalization of adult consensual conduct. Courts have shown willingness to read any eventual statute in harmony with Articles 14, 19, 21, and 23 and to strike down overbreadth that collapses sex work into trafficking.

### **13) Practical frictions: policing culture, municipal by-laws, and carceral "care"**

Despite doctrinal clarity, enforcement often reverts to moral-policing. Municipal regulations around "public decency," nuisance, and zoning sometimes serve as de facto tools to target red-light areas. ITPA raids continue to elide consent; women are bundled into "rescue" vehicles, produced late before magistrates, and sent to homes where exit requires litigation. Courts routinely intervene, ordering release when adults assert consent and no trafficking evidence exists. This pattern executive overreach corrected by judicial insistence on rights has become a defining feature of the Indian experience.

The judiciary has also tried to reform the infrastructure itself. Orders have asked states to ensure legal aid, community-based rehabilitation options, and access to welfare schemes without forcing "exit" as a precondition for benefits. The Court's approach recognizes structural

vulnerability (poverty, stigma, violence) without presuming lack of agency for every adult in the trade.

#### **14) Intersectional turns: caste, migration, transgender rights, and queer jurisprudence**

Recent jurisprudence has become more sensitive to intersectionality. Many sex workers are internal migrants or from historically marginalized castes. Courts evaluating “consent” have been encouraged to look beyond formal words to material conditions coercion may be subtle (debt bondage, withheld documents, threats). Yet where adults’ articulate choice and there is no evidence of prohibited means, the courts insist on respecting autonomy. The expanding rights jurisprudence for transgender persons (following NALSA and subsequent statutory recognition) and queer citizens (post-**Navtej Johar**, 2018) reinforces an anti-stigma stance: intimate and occupational choices in the private sphere warrant decriminalization unless clear harm to others is proven. While these cases don’t directly adjudicate sex work, their logic dismantling moralistic criminalization of consensual adult conduct has influenced lower court attitudes.

#### **15) The media, data protection, and the right to be let alone**

Another strand in the courts’ reasoning has to do with reputation and informational privacy. Sensational reporting that reveals sex workers’ identities compounds social death and deters access to justice. Judicial directions now routinely prohibit disclosure of names and images and caution against “raid journalism.” As India contemplates data protection norms, these privacy principles strengthened by Puttaswamy are likely to further entrench protections for adults in consensual sex work from doxxing, facial recognition misuse, or databases that track presence in red-light areas.

#### **16) Contemporary synthesis: the judiciary’s settled position**

Putting the strands together, the courts today follow a relatively settled template:

- **Adult consensual sex work is not, by itself, a criminal offense.** ITPA targets the exploitation infrastructure (brothels, pimps, public solicitation) and protects minors and coerced persons. The IPC’s trafficking provisions punish coercion-based exploitation. Neither statute criminalizes the mere private sale of sex by consenting adults.
- **Trafficking is a process crime focused on coercion, deception, abuse of vulnerability, and exploitative outcomes.** Its hallmark is the nullification of consent;

a minor's "consent" is legally irrelevant. Judicial interpretation has consistently upheld severe punishment where these elements are established.

- **Enforcement must honor constitutional rights.** Police cannot treat every adult woman in a red-light area as trafficked; detention requires statutory grounds and judicial oversight. Adult women asserting choice cannot be compelled into "rehabilitation homes."
- **Public health and dignity are non-negotiable.** Condoms are not evidence; outreach should be facilitated, not penalized. Media must preserve anonymity; the state must extend welfare benefits without forcing occupational change.
- **Children remain a central concern.** Where minors are found, courts presume vulnerability and authorize strong protective measures, including separation from exploiters, psychosocial support, and expedited criminal trials of traffickers.

### **17) Ongoing challenges and likely judicial horizons**

Even with doctrinal clarity, on-the-ground practice is uneven. Three tensions will likely continue to engage the courts:

1. **"Voluntary" under structural duress:** Judges will keep wrestling with what consent means amid poverty, debt, and migration pressures. Expect nuanced, fact-sensitive rulings that distinguish structural compulsion (which calls for welfare remedies) from criminal coercion (which triggers trafficking charges) without automatically criminalizing the adult worker's conduct.
2. **Digital intermediaries and platform liability:** As solicitation migrates online, courts will be asked to interpret ITPA and IPC alongside IT-law frameworks. The judiciary will likely preserve the consent/coercion distinction while scrutinizing intermediaries for knowingly facilitating exploitation, especially of minors.
3. **Zoning and livelihoods:** Litigation over municipal evictions of red-light districts will test Article 19(1)(g) reasonableness. Courts may require rehabilitation packages and participatory planning rather than blanket displacements masquerading as "nuisance" abatement.

4. **Comprehensive trafficking law (if enacted):** Should Parliament pass a new trafficking statute, courts will read it down where necessary to avoid overbreadth, insist on precise *mens rea*, and protect adults' decisional autonomy guided by Puttaswamy, equality doctrine, and the Budhadev Karmaskar directions.

## 18) Conclusion: from conflation to calibration

Indian judicial interpretation has travelled a long road: from colonial regulation and post-Independence moralism to a constitutionally anchored calibration that **separates consensual adult sex work from trafficking**. The Supreme Court's pronouncements insisting on dignity, privacy, and non-discrimination for adult sex workers have filtered down to High Courts, refining day-to-day enforcement and evidentiary standards. At the same time, courts have stiffened the spine of anti-trafficking law by focusing on coercion, child protection, and organized exploitation.

This calibrated approach does not romanticize sex work or ignore vulnerability. Rather, it respects adult agency while mobilizing the criminal law where it belongs: against traffickers and profiteers who strip people especially children of choice and liberty. In doing so, Indian courts have nudged the legal system away from conflation and toward a principled, rights-compliant equilibrium: **consensual adult sex work is a matter of autonomy and regulation; trafficking is a grave crime**. The historical trajectory shows how constitutional values dignity, equality, privacy, livelihood gradually permeated statutory interpretation, transforming a once-blunt "immoral traffic" paradigm into a more precise and humane jurisprudence fit for a modern democracy.

## JUDICIAL INTERPRETATION OF CONSENSUAL ADULT SEX WORK VERSUS TRAFFICKING IN INDIA

### 1. Legal Framework Governing Sex Work and Trafficking

#### a. Immoral Traffic (Prevention) Act, 1956 (ITPA)

The ITPA was enacted to fulfill India's obligations under the 1950 UN Convention for the Suppression of the Traffic in Persons. While it does not outlaw prostitution itself, it criminalizes organized commercial sex, public solicitation, and exploitation of sex workers. Sections 3–9 of the Act target brothel-keeping, procuring, and solicitation, but enforcement has often blurred the line between consensual sex work and trafficking.

## **b. Indian Penal Code,1860 (IPC,1860)**

Sections 370 and 370-A, after the 2013 Criminal Law Amendment, define human trafficking and impose severe penalties. The definition emphasizes exploitation through force, coercion, or abuse of power, which is distinct from voluntary sex work.

## **c. Constitutional Provisions**

Articles 14, 19(1)(g), and 21 are most relevant. While Article 19(1)(g) guarantees the right to practice any profession, it is subject to reasonable restrictions on grounds such as morality and public order. Article 21 protects life and personal liberty, including dignity and autonomy. Courts have occasionally invoked these rights in favour of sex workers.

## **2. Judicial Approaches to Consensual Sex Work**

### **a. Early Moralistic Approach**

In earlier decades, courts tended to adopt a moralistic framework. In *State of Uttar Pradesh v. Kaushaliya* (1964), the Supreme Court upheld certain restrictions on prostitutes' movement, citing public morality. This approach often viewed sex work as inherently immoral, failing to distinguish between consensual and coerced sex work.

### **b. Gradual Shift Towards Rights-Based Interpretation**

The judiciary's stance evolved, particularly in the 21st century, influenced by constitutional morality and human rights discourse. In *Budhadev Karmaskar v. State of West Bengal* (2011), the Supreme Court emphasized rehabilitation and dignity of sex workers, stating that sex workers have a right to live with dignity under Article 21, regardless of societal perceptions.

### **c. Recognition of Consent and Autonomy**

In *Budhadev Karmaskar* (2022 directions), the Court explicitly directed that sex workers should not be harassed by police if engaged in consensual work and that their consent should be respected. This recognition marks a departure from equating all sex work with trafficking.

### 3. Judicial Interpretation of Trafficking

#### a. Definition and Proof

The Supreme Court in *Bachpan Bachao Andolan v. Union of India* (2011) clarified that trafficking involves recruitment, transportation, transfer, harbouring, or receipt of persons for exploitation through force, coercion, or deception. Consent of the victim is immaterial in cases involving minors or coercion.

#### b. Special Protection for Minors

Courts have consistently held that any sexual activity with minors is trafficking and exploitation, regardless of purported consent. The POCSO Act operates in tandem with anti-trafficking provisions to safeguard children.

#### c. Conflation Problems

Despite clear definitions, enforcement agencies and lower courts often conflate consensual adult sex work with trafficking, leading to raids, arrests, and forced “rescue” operations against adults who willingly engage in sex work.

### 4. Landmark Judgments Distinguishing the Two

1. **Budhadev Karmaskar v. State of West Bengal (2011, 2022):** Established that sex workers are entitled to dignity and non-discrimination, and police must respect their consent.
2. **Smt. Prajwala v. Union of India (2015):** Focused on combating trafficking while recommending measures to prevent harassment of consenting sex workers.
3. **Gaurav Jain v. Union of India (1997):** Addressed rehabilitation but did not clearly separate voluntary sex work from trafficking.
4. **V. Saroja v. Madras State (1963):** Early example where public morality outweighed individual autonomy.
5. **High Court Rulings:** Several High Courts, such as the Delhi High Court in *Vishal Jeet v. Union of India*, have underscored the need to target traffickers rather than consensual workers.

## 5. International Perspective and India's Obligations

India is a signatory to the Palermo Protocol (2000), which defines trafficking distinctly from consensual sex work and emphasizes victim protection. However, domestic laws like ITPA often fall short in operationalizing this distinction. Countries like New Zealand have decriminalized sex work, leading to better health and safety outcomes without increasing trafficking. Indian jurisprudence has yet to fully align with such progressive models.

## 6. Socio-Legal Challenges

- **Stigma and Discrimination:** Social attitudes often lead to police brutality and judicial bias.
- **Law Enforcement Practices:** Raids often target brothels where consensual sex work occurs, conflating it with trafficking.
- **Lack of Regulatory Framework:** Absence of clear legal recognition for consensual sex work perpetuates exploitation.
- **Misuse of Rehabilitation Laws:** Forced detention in "rehabilitation" homes violates Article 21 rights of consenting adults.

## CONCLUSION

The judicial interpretation of "*consensual adult sex work*" versus trafficking in India reflects a gradual but incomplete shift from moralist to rights-based perspectives. While the Supreme Court has recently recognized sex workers' rights to dignity, consent, and protection from harassment, these principles have yet to permeate lower courts and law enforcement practices. The distinction between trafficking and consensual sex work is clear in law but blurred in enforcement. A coherent approach grounded in constitutional rights, human dignity, and international obligations is essential to ensure that anti-trafficking measures do not become tools of oppression against consenting adults engaged in sex work.

## FUTURE SCOPE

- **Legislative Clarity:** Amendments to ITPA to explicitly protect consensual sex work and focus solely on trafficking and exploitation.

- **Judicial Guidelines:** Supreme Court to issue binding guidelines distinguishing consensual sex work from trafficking for uniform enforcement.
- **Decriminalization Models:** Study and adapt best practices from countries like New Zealand and Australia for safer, regulated sex work.
- **Capacity Building for Law Enforcement:** Sensitization programs to prevent harassment and ensure rights-based interventions.
- **Community-Led Policy Development:** Involvement of sex workers' collectives in policy formulation to ensure lived experiences shape the law.

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