

Judicial Colloquium on Human Trafficking On

14.03.2026 & 15.03.2026

Study Material

S. No.	Title and Citation	Abstract
1	Vishal Jeet v. Union of India (1990) 3 SCC 318	<p>Hon'ble the Supreme Court dealt with the grave issue of sexual exploitation of children and kidnapped girls trafficked for prostitution. Treating the matter as one of human rights and social justice, the Court recognized the inadequacy of existing law-enforcement efforts and lapse in implementation. It issued wide-ranging directions to central and state governments to take effective preventive and rehabilitative measures, establish advisory committees, improve enforcement of the Immoral Traffic (Prevention) Act, and create rehabilitation homes. The judgment emphasized the State's constitutional duty to protect vulnerable women and children and uphold their dignity.</p>
2	Prerana Vs. State of Maharashtra and others 2003 (2) Mh.L.J. 105	<p>The Hon'ble Bombay High Court in Prerana vs. State of Maharashtra and others (2003 (2) Mh.L.J. 105) emphasized the protection and rehabilitation of minor girls rescued from trafficking and forced prostitution. The court observed that such girls are victims of circumstances, not offenders, and thus should be treated as children in need of care and protection under the Juvenile Justice Act rather than being criminalized. It criticized the premature release of minors without proper rehabilitation measures, highlighting the crucial role of Child Welfare Committees in deciding their custody and rehabilitation. The court directed authorities to follow prescribed guidelines strictly, ensuring protection, counseling, and safe custody to prevent revictimization, underscoring a victim-centric, prevention-focused approach to combat human trafficking. This judgment marked a significant judicial intervention in safeguarding trafficking victims and strengthening protective legal frameworks against child trafficking.</p>

3	<p>Bachpan Bachao Andolan v. Union of India (2011) 5 SCC 1</p>	<p>Hon'ble the Supreme Court strengthened the legal framework for combating child labour, trafficking, and exploitation. The Court held that Article 21 includes a child's right to live with dignity, education, and protection from hazardous conditions. It directed governments to strictly enforce the Child Labour Laws, Juvenile Justice Act, and Bonded Labour System (Abolition) Act, and emphasized rescue, rehabilitation, and compensation for victims. The judgment mandated vigilance, institutional mechanisms, and accountability of employers and state authorities. The Court affirmed that protection of children is a constitutional obligation and core component of social justice.</p>
4	<p>Budhadev Karmaskar vs State of West Bengal (2011) 11 SCC 538</p>	<p>This case pertained to the brutal murder of a sex worker. The Hon'ble Supreme Court in this case observed that a woman is compelled to prostitution because of abject poverty and not for pleasure. The Hon'ble Court directed the Central and the State Governments for framing schemes for giving technical/vocational training to the sex workers and sexually abused women in all cities in India. The scheme should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment.</p>
5	<p>Dharmendra Kumar Beuria and other vs State of Orissa 2015 SCC Online Ori 472</p>	<p>The Hon'ble Court emphasized the severe consequences of human trafficking and underlined the court's objective to uphold justice by condemning such offences. The Court observed that trafficking involves exploitation, physical abuse, and illegal sale of individuals, often vulnerable victims like children. It highlighted the importance of stringent legal actions against traffickers to deter such crimes. The Court also emphasized the necessity for effective enforcement of laws, protection of victims, and preventive measures to combat trafficking.</p>
6	<p>Prajwala vs. Union of India (2015) 17 Supreme Court Cases 29</p>	<p>In this case before the Hon'ble Supreme Court, the Ministry of Home Affairs had filed an affidavit stating that the Organized Crime Investigative Agency shall be set up. The Hon'ble Court also noted that the Ministry of Women and Child Development has taken a policy decision to constitute a committee for preparing a comprehensive legislation dealing with all aspects of trafficking.</p>

7	<p>Moideeen E.M vs State of Kerala and Others 2017 SCC OnLine Ker 21219</p>	<p>The writ petitions was filed seeking permission to make publications in print media, seeking a kidney from willing altruistic donors from the public. The Hon'ble High Court of Kerala in its judgement opined that any publication in this regard could lead to negotiations and merely because there is no explicit offer in the advertisements, it cannot be inferred that there would not be any passing of consideration or an arrangement negotiated. Truly altruistic motives will also not be directed against an individual, and life of one is as precious of yet another.</p>
8	<p>Guria Swayam Sevi Sansthan Vs. Satyabhama and Another (2018)13 SCC 387</p>	<p>Hon'ble the Supreme Court highlighted the grave nature of human trafficking, emphasizing that the crime involves exploitation often through force, coercion, or deception, regardless of the victim's apparent consent. The Court underscored the necessity of a coordinated mechanism to track, rescue, and rehabilitate trafficked victims, recognizing the extensive and interstate nature of trafficking networks.</p> <p>The Hon'ble Court in para 2, observed that considering the seriousness of the allegations, the High Court ought not to have granted the bail in a mechanical manner without even noticing the facts of the case. The approach of the Court cannot be said to be proper while enlarging the accused persons on bail in such a serious crime. The Hon'ble Court set aside the bail to the accused persons.</p>
9	<p>In Re Children in Street Situations 2022 SCC OnLine SC 189</p>	<p>Hon'ble the Supreme Court emphasized the importance of protecting child victims of human trafficking and ensuring their best interests. The Court directed the use of video-conferencing for recording evidence and testimonies of child victims and witnesses, especially to prevent the hardships of travel and ensure safety. The Hon'ble Court in para 5 issued detailed SOP for recording evidence of children through video conferencing.</p>
10	<p>Sartaj Khan Vs. State of Uttarakhand 2022 SCC OnLine SC 360</p>	<p>Hon'ble the Supreme Court emphasized the gravity of human trafficking offenses, particularly involving minors. It observed that trafficking a minor girl from Nepal to India for exploitation is a serious crime warranting strict punishment. The court reinforced that when a part of the offense occurs within India, Indian courts have jurisdiction and sanctions under Section 188 CrPC are not necessary. The court dismissed the appellant's appeal, confirming the conviction under Sections 363, 366-B, 370(4), and 506 IPC, along with Section 8 of the POCSO Act, underscoring the need to combat human trafficking firmly.</p>

11	Pinki vs. State of Uttar Pradesh (2025)7SCC314	Hon'ble the Supreme Court recognized child trafficking as a grave human rights violation and crime against humanity. The Hon'ble Court discussed relevant principles to be kept in mind while granting bail. The Hon'ble Court further issued directions to the States, the trial courts, the parents across the country and also issued directions to take action against the hospitals involved in trafficking of newborn infants. The Hon'ble Court also directed the trial court to proceed with the recording of evidence preferably on a day to day basis and complete the proceeding of the trial within 06 months.
12	Victim 'X' Vs State of Bihar 2025 SCC Online SC 1490	Hon'ble the Supreme Court gave landmark directions and observations on human trafficking, especially in the context of women inmates in a protection home in Bihar. The Court condemned the accused, who was the officer in-charge of the women's shelter home, for egregious abuse of power, including sexual exploitation of the inmates. It was highlighted that the High Court erred in granting bail without hearing the victim and without proper reasoning, which the Supreme Court emphasized as mandatory under Section 15A (3) of the SC/ST Act. The Court stated that bail orders in cases of public interest must reflect a prima facie evaluation of the seriousness of the offense. It quashed the High Court's bail order, reinstated criminal proceedings, and stressed a victim-centric and accountable approach in bail jurisprudence to uphold justice and protect the vulnerable from institutional betrayal.
13	Umashankar Yadav and Another vs State of Uttar Pradesh 2025 SCC Online 1066	Hon'ble the Supreme Court highlighted that the authorities and activists involved in anti-human trafficking operations must adhere to lawful procedures. The Court underscored that actions taken in the name of rescue missions should not be misused to criminalize well-intentioned efforts. It emphasized that any obstruction to official duty must involve malicious intent or use of force, which was absent in this case. The Court observed that the charges against the activists were based on procedural lapses and lacked substantive evidence of force or intent to obstruct, thus advocating for protection of human rights defenders from malicious prosecution.
14	Indian Society of Organ Transplantation vs. Union of India and Others 2025 SCC Online SC 2569	The writ petition was filed in order to highlight the issues with regard to uniformity, equality and access in the realm of organ donation for both the donors and the recipients. The Hon'ble Supreme Court issued many directions to the Union of India through the National Organ and Tissue Transplant Organization in this regard. The Union of India through NOTTO has been requested in the judgement to evolve model allocation criteria in consultation with all the States so as to ensure a uniform national policy for transplantation and to consider amending Form 4 and Form 4A of the Registration of Births and Deaths Rules, 1999 so as to include a column on whether the deceased was a case of brain-stem death and if that be the case to indicate whether the option to donate organs was given to the relatives of the deceased.

ARTICLES

S. No.	TITLE	AUTHOR
1.	Child Trafficking in India: An Overview	Avanish Bhai Patel
2.	Human Trafficking in India- Putting a Price Tag on Human Dignity	Shivam Gomber, Advocate, Bar Council of Delhi
3.	Human Trafficking: Laws and Flaws	Dr. Ritu Mathur (Mitra), Associate Professor of History, Netaji Subhas Open University
4.	Human Trafficking in India	Nikhil Sharma
5.	Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation	Poonam Pradhan Saxen
6.	Prostitution: Sexual autonomy or Exploitation of Women?	Rachita Agrawal
7.	Right to Privacy of Unmarried Couples vis-a-vis Immoral Traffic (Prevention) Act, 1956	Srijan Somal and Pratyush Khanna
8.	Human Trafficking for Organ Removal in India: A Victim-Centered, Evidence-Based Report	Debra A. Budiani Saberi, Kallakurichi Rajendiran Raja, Katie C. Findley, Ponsian Kerketta, and Vijay Anand

later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. Learned counsel for the State submitted that firstly the point of delay was not taken up in the special leave petition, therefore he had no opportunity to counter the same. However, from the record he submitted that it took quite some time for translating the documents to Hindi and Gurumukhi. We have seen the documents filed before us and we are satisfied that there are valid and sufficient reasons for delay in serving the detention order.

15. Thus, we find no merit in any one of the submissions. The petition is, therefore, dismissed.

(1990) 3 Supreme Court Cases 318

(BEFORE S. RATNAVEL PANDIAN AND K. JAYACHANDRA REDDY, JJ.)

VISHAL JEET

.. Petitioner;

Versus

UNION OF INDIA AND OTHER STATES
AND UNION TERRITORIES

.. Respondents.

Writ Petition (Criminal) No. 421 of 1989[†], decided on February 5, 1990

Constitution of India — Articles 23(1), 35(a)(ii), 39(e) & (f) and 32 — Public interest litigation against forced prostitution of girls, Devdasis and Jogins and for their rehabilitation — In spite of stringent and rehabilitative provisions under various Acts, desired result yet to be achieved — Both Central and State Governments having obligation to safeguard interest and welfare of children and girls, must evaluate various measures and implement them in the right direction — Severe and speedy legal action against erring persons such as pimps, brokers and brothel keepers suggested — Direction for conducting CBI inquiry throughout the country not practicable — However certain directions issued inter alia for setting up a separate Zonal Advisory Committee, for taking steps for providing rehabilitative homes, for delving into Devdasi system and Jogin tradition etc. — Immoral Traffic (Prevention) Act, 1956 — Penal Code, 1860, Sections 366-A, 366-B, 372 and 373 — Juvenile Justice Act, 1986, Sections 13 and 15

Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244; *Gaurav Jain v. Union of India*, AIR 1990 SC 292, referred to

R-M/10057/CR

Advocates who appeared in this case:

Vishal Jeet, Advocate, petitioner-in-person;

V.C. Mahajan and A.S. Nambiar, Senior Advocates (R.B. Misra, Ms A. Subhashini, T.V.S.N. Chari, Prabir Choudhary, D. Goburdhan, M.N. Shroff, K.R. Nambiar, Uma Nath Singh, N.N. Johri, V. Krishnamurthy, V.N. Patil, A.S. Bhasme, P.R. Ramasesh, M. Veerappa, R.K. Mehta, R.S. Suri, B.L. Sharma, Dalveer Bhandari, Amal Dalla, D.K. Sinha, J.R. Das, S.K. Bhattacharya, S.K. Nandi, Mahabir Singh, I. Makwana,

† Under Article 32 of the Constitution of India

N.K. Sharma, A. Subba Rao, Ms Kamini Jaiswal, P.K. Manohar and Ms Shanta Vasudevan, Advocates, with them) for the Respondents.

a The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J.— This writ petition under Article 32 of the Constitution of India at the instance of an advocate is filed by way of a public interest litigation seeking issuance of certain directions, directing the Central Bureau of Investigation (1) to institute an enquiry against those police officers under whose jurisdiction Red Light areas as well Devadasi and Jogin traditions are flourishing and to take necessary action against such erring police officers and law breakers; (2) to bring all the inmates of the red light areas and also those who are engaged in ‘flesh trade’ to protective homes of the respective States and to provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a more dignified way of life and (3) to bring the children of those prostitutes and other children found begging in streets and also the girls pushed into ‘flesh trade’ to protective homes and then to rehabilitate them.

d 2. The averments made in the writ petition on the basis of which these directions are prayed for can be summarised thus:

Many unfortunate teenaged female children (hereinafter referred to as ‘the children’) and girls in full bloom are being sold in various parts of the country, for paltry sum even by their parents finding themselves unable to maintain their children on account of acute poverty and unbearable miseries and hoping that their children would be engaged only in household duties or manual labour. But those who are acting as pimps or brokers in the ‘flesh trade’ and brothel keepers who hunt for these teenaged children and young girls to make money either purchase or kidnap them by deceitful means and unjustly and forcibly inveigle them into ‘flesh trade’. Once these unfortunate victims are taken to the dens of prostitutes and sold to brothel keepers, they are shockingly and brutally treated and confined in complete seclusion in a tiny claustrophobic room for several days without food until they succumb to the vicious desires of the brothel keepers and enter into the unethical and squalid business of prostitution. These victims though unwilling to lead this obnoxious way of life have no other way except to surrender themselves retreating into silence and submitting their bodies to all the dirty customers including even sexagenarians with plastic smile.

h 3. The petitioner has cited certain lurid tales of sex with sickening details alleged to have been confessed by some children and girls either escaped or rescued from such abodes of ill-fame. After giving a brief note on Devadasi system and Jogin tradition, the petitioner states that this system and tradition which are still prevailing in some parts of the country should be put to an end. The ultimate plea of the petitioner is that

the young children and girls forcibly pushed into 'flesh trade' should be rescued and rehabilitated. With this petition, the petitioner has filed 9 affidavits said to have been sworn by 9 girls who claim to be living in the brothel houses, pleading for rescue and a list of names of 9 girls who are morally afraid to swear the affidavits. Be it noted that no counter has been filed by any one of the respondents. a

4. The matter is one of great importance warranting a comprehensive and searching analysis and requiring a humanistic rather than a purely legalistic approach from different angles. The questions involved cause considerable anxiety to the court in reaching a satisfactory solution in eradicating such sexual exploitation of children. We shall now examine this problem and address ourselves to the merits of the prayers. b

5. No denying the fact that prostitution always remains as a running sore in the body of civilisation and destroys all moral values. The causes and evil effects of prostitution maligning the society are so notorious and frightful that none can gainsay it. This malignity is daily and hourly threatening the community at large slowly but steadily making its way onwards leaving a track marked with broken hopes. Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent but its successful consummation ultimately rests with the public at large. c d

6. It is highly deplorable and heartrending to note that many poverty stricken children and girls in the prime of youth are taken to 'flesh market' and forcibly pushed into the 'flesh trade' which is being carried on in utter violation of all canons of morality, decency and dignity of humankind. There cannot be two opinions—indeed there is none—that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps. e f

7. Article 23 which relates to Fundamental Rights in Part III of the Constitution and which has been put under the caption 'Right against exploitation' prohibits 'traffic in human beings and begar and other similar forms of labour' and provides that any contravention of Article 23(1) shall be an offence punishable in accordance with law. The expression 'traffic in human beings' is evidently a very wide expression including the prohibition of traffic in women for immoral or other purposes. Article 35(a)(ii) of the Constitution reads that notwithstanding anything in this Constitution, Parliament shall have, and the legislature of a State shall not have, power to make laws for prescribing punishment for those acts which are declared to be offences under this part. The power of legislation, under this article, is given to the Parliament exclusively, for, otherwise the laws relating to fundamental rights would not have been uniform throughout the country. The power is specifically denied to the State legislatures. In implementation of the principles underlying Article g h i

a 23(1) the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA for short) has been enacted under Article 35 with the object of inhibiting or abolishing the immoral traffic in women and girls.

b 8. In this connection, it is significant to refer to Article 39 which relates to 'Directive Principles of State Policy' under Part IV of the Constitution. Article 39 particularises certain objectives. Clause (f) of Article 39 was substituted by Forty-Second Amendment Act, 1976. Among the objectives mentioned under clauses (e) and (f) of Article 39, we will confine ourselves only to certain relevant objectives under those two clauses which are sufficient for the purpose of this case. One of the objectives under clause (e) of Article 39 is that the State should, in particular, direct its policy towards securing that the tender age of children are not abused.

c One of the objectives under clause (f) is that the State should, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment. These objectives reflect the great anxiety of the Constitution makers to protect and safeguard the interests and welfare of the children

d of our country. The Government of India has also, in pursuance of these constitutional provisions of clauses (e) and (f) of Article 39, evolved a national policy for the welfare of the children.

e 9. It will be apposite to make reference to one of the principles, namely, principle No. (9) formulated by the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1959. The said principle reads thus:

f "The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form."

g 10. Before the adoption of SITA, there were enactments in some of the States for suppression of immoral traffic, but they were not uniform nor were they found to be adequately effective. Some States did not have any law on the subject.

h 11. With the growing danger in society to healthy and decent living with morality, the world public opinion congregated at New York in a convention for suppression of traffic in persons for exploitation for immoral purposes. Pursuant to the signing of that convention on May 9, 1950, our Parliament has passed an Act called "Suppression of Immoral Traffic in Women and Girls Act, 1956" which is now changed as "the Immoral Traffic (Prevention) Act, 1956" to which certain drastic amendments are introduced by the Amendment Acts of 46 of 1978 and 44 of 1986. This Act aims at suppressing the evils of prostitution in women and girls and achieving a public purpose viz. to rescue the fallen women and girls and to stamp out the evils of prostitution and also to provide an

i opportunity to these fallen victims so that they could become decent

members of the society. Besides the above Act, there are various provisions in the Indian Penal Code such as Sections 366-A (dealing with procurement of minor girl), 366-B (dealing with offence of importation of girl from foreign country), 372 (dealing with selling of minor for purposes of prostitution etc.) and 373 (dealing with the offence of buying minor for purposes of prostitution etc.). The Juvenile Justice Act, 1986 which provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles contains a specific provision namely Section 13 which empowers a police officer or any other person or organisation authorised by the State Government in this behalf to take charge of any neglected juveniles and bring them before the Board constituted under this Act which Board under Section 15 has to hold an enquiry and make such orders in relation to the neglected juveniles as it may deem fit.

12. In spite of the above stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. It cannot be gainsaid that a remarkable degree of ignorance or callousness or culpable indifference is manifested in uprooting this cancerous growth despite the fact that the day has arrived imperiously demanding an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking. This malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive.

13. In our view, it is neither practicable and possible nor desirable to make a roving enquiry through the CBI throughout the length and breadth of this country and no useful purpose will be served by issuing any such direction, as requested by the petitioner. Further, this malignity cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on these helpless and hapless victims most of whom are unwilling participants and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout.

14. This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers. The courts in such cases have to always take a serious view of this matter and inflict condign punishment on proof of such offences. Apart from legal action, both the Central and the State Governments who have got an obligation to safeguard the interest and welfare of the children and girls of this country have to evaluate various measures and implement them in the right direction.

15. Bhagwati, J. (as he then was) in *Lakshmi Kant Pandey v. Union of India*¹ while emphasising the importance of children has expressed his
a view thus : (SCC p. 249, para 6)

“It is obvious that in a civilized society the importance of child
b welfare cannot be over-emphasized, because the welfare of the
entire community, its growth and development, depend on the
health and well-being of its children. Children are a ‘supremely
important national asset’ and the future well-being of the nation
depends on how its children grow and develop.”

16. We, after bestowing our deep and anxious consideration on this
matter feel that it would be appropriate if certain directions are given in
this regard. Accordingly, we make the following directions:

c (1) All the State Governments and the Governments of Union ter-
ritories should direct their concerned law enforcing authorities
to take appropriate and speedy action under the existing laws in
eradicating child prostitution without giving room for any com-
plaint of remissness or culpable indifference.

d (2) The State Governments and the Governments of Union ter-
ritories should set up a separate Advisory Committee within
their respective zones consisting of the Secretary of the Social
Welfare Department or Board, the Secretary of the Law
e Department, sociologists, criminologists, members of the
women’s organisations, members of Indian Council of Child
Welfare and Indian Council of Social Welfare as well the mem-
bers of various voluntary social organisations and associations
etc., the main objects of the Advisory Committee being to make
suggestions of:

f (a) the measures to be taken in eradicating the child prostitu-
tion, and

g (b) the social welfare programmes to be implemented for the
care, protection, treatment, development and rehabilita-
tion of the young fallen victims namely the children and
girls rescued either from the brothel houses or from the
vices of prostitution.

h (3) All the State Governments and the Governments of Union ter-
ritories should take steps in providing adequate and rehabilita-
tive homes manned by well-qualified trained social workers,
psychiatrists and doctors.

i (4) The Union Government should set up a committee of its own
in the line, we have suggested under direction No. (2) the main
object of which is to evolve welfare programmes to be imple-
mented on the national level for the care, protection,
rehabilitation etc. etc. of the young fallen victims namely the

¹ (1984) 2 SCC 244 : (1984) 2 SCR 795

children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children. a

(5) The Central Government and the Governments of States and Union territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

(6) The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the government could do in that regard. b

(7) The copies of the affidavits and the list containing the names of 9 girls are directed to be forwarded to the Commissioner of Police, Delhi for necessary action. c

17. We may add that we are not giving an exhaustive list of the members for the constitution of the committee. Therefore, it is open to the concerned government to include any member or members in the committee as it deems necessary. d

18. We hope and trust that the directions given by us will go a long way towards eradicating the malady of child prostitution, Devadasi system and Jogin tradition and will also at the same time protect and safeguard the interests of the children by preventing their sexual abuse and exploitation. e

19. So far as the remaining prayer regarding rehabilitation of the children of prostitutes is concerned, we understand that a similar issue is raised in a separate writ petition bearing W.P. No. 824 of 1988 pending before this Court and this Court is seized of the matter and also has given an interim direction on November 15, 1989 for setting up a committee to go into the question from various angles of the problems taking into consideration the different laws relevant to the matter and to submit its report. (*Vide Gaurav Jain v. Union of India*².) Therefore, we are not expressing any opinion on this prayer regarding the rehabilitation of the children of prostitutes. f
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20. With the above directions, the writ petition is disposed of.

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IN THE HIGH COURT OF BOMBAY

Cri. W.P. No. 788 of 2002

Decided On: 07.10.2002

Appellants: **Prerana**

Vs.

Respondent: **State of Maharashtra and Ors.**

Hon'ble Judges:

A. P. Shah and Ranjana Desai, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Mahrukh Adenwalla and Y. M. Chaudhari, Advs.

For Respondents/Defendant: P. Janardhan, Addl. Adv. General, I. S. Thakur, A.P.P. for Respondent No. 1 and V.M. Thorat, Adv. for Respondent No. 3

Acts/Rules/Orders:

Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 2; Immoral Traffic (Prevention) Act, 1956 - Section 14, Immoral Traffic (Prevention) Act, 1956 - Section 15(4), Immoral Traffic (Prevention) Act, 1956 - Section 17(2); Immoral Traffic (Prevention) (Amendment) Act, 1986

JUDGMENT

Smt. Ranjana Desai, J.

1. Rule. Respondents waive service. By consent of the parties, taken up for hearing forthwith.
2. The petitioner is a registered organization established in 1986. It does work in the red light areas of Mumbai and Navi Mumbai with the object of preventing the trafficking of women and children and rehabilitating the victims of forced prostitution. This petition is filed in public interest to protect children and minor girls rescued from the flesh trade against the pimps and brothel keepers keen on re-acquiring possession of the girls.
3. The 1st respondent, State of Maharashtra has established institutions for the care, protection and rehabilitation of women and children rescued from the flesh trade. The Government

Special Rehabilitation Centre for Girls at Deonar is one such institution for the care and protection of child victims of forced prostitution. The 2nd respondent is the Probation Officer appointed under the Probation of Offenders Act, 1958 for the Government Special Rehabilitation Centre for Girls. The 3rd respondent, V. P. Jaiswal is an advocate, who, it is alleged, has appeared for the brothel keeper as well as the minor girls rescued from the brothel.

4. The facts, which give rise to the present petition, may be shortly stated. On 16-5-2002, the Social Service Branch raided the brothel at Santacruz. Four persons, who are alleged to be brothel keepers/pimps, were arrested. Twenty-four females were rescued. The four arrested accused were charged under Sections 3, 4 and 7(2)(a) of the Immoral Traffic (Prevention) Act, 1956 ("PITA" for short) under C. R. No. 00/02 (later converted to SP/LAC No. 20/2002 of 16-5-2002) by Social Service Branch. The twenty-four rescued females were not charged, but were taken into custody under Sections 15 and 17 of PITA for the purposes of ascertaining their age and family background.

5. The accused as well as the rescued females were produced before the learned Metropolitan Magistrate at Esplanade on 17-5-2002. The 3rd respondent appeared on behalf of the four accused. The accused were remanded to police custody and the rescued females were sent to the Government Special Rehabilitation Centre for Girls at Deonar so that they may be medically examined and enquiries be made about their parents and guardians. The learned Magistrate, in his order dated 17-5-2002, noted that the Investigating Officer as well as the Addl. Police Prosecutor had submitted that the detention of the rescued girls is necessary in the corrective home for further examination by medical officer and for making further enquiries about their parents and guardians. He also recorded that the 3rd respondent strongly opposed the application for sending the rescued girls to the corrective home at Deonar. The order indicates that the 3rd respondent argued that the concerned officer had not followed Sections 15 and 16 of the PITA and therefore the girls should be released immediately. So far as accused 1 to 4 are concerned, it appears that the 3rd respondent argued that their further interrogation is not necessary as the owner of the brothel was known to the officer and he can be called for interrogation at any time.

6. The learned Magistrate, after considering the arguments, observed that custody of accused 1 to 4 was necessary to know from where they had procured the girls. Having regard to the provisions of Section 15 of the PITA, the learned Magistrate observed that the girls can be sent to the registered Medical Practitioner for the purpose of "ascertainment of their age, for detection of injuries and result of sexual abuse or presence of any sexually transmitted diseases". In view of this, the learned Magistrate remanded accused 1 to 4 to Police custody till 24-5-2002 and 24 girls along with the report were sent to Shaskiya Mahila Sudharak Griha, Deonar for medical examination, to be kept there till 27-5-2002. A direction was given to the Probation Officer of the said Home to make enquiry with the help of the petitioner about the

parents and guardians of the rescued girls and also to make enquiry with the girls and to file his report on or before 22-5-2002.

7. On 20-5-2002 the rescued females were sent for ossification test in which, 14 of them were found to be adults and remaining 10 were found to be juveniles (under 18 years of age). Of the 10 minor girls six were from Meghalaya, three from Andhra Pradesh and one from Assam.

8. The four accused were released on bail on 24-5-2002.

9. On 27-5-2002, the twenty-four rescued girls were produced before the learned Metropolitan Magistrate at Esplanade. According to the Petitioner, the 3rd respondent appeared on behalf of the rescued females and pleaded that they should be released. The 2nd respondent stated that further time was required to complete the home studies then in progress as all the girls were from distant places. By order dated 27-5-2002, the learned Magistrate released the adult females and directed that the juvenile females be produced before the Juvenile Court on 28-5-2002.

10. On 28-5-2002, the juvenile females were produced before the Child Welfare Committee as the Juvenile Justice Board sits only on Mondays and Fridays. According to the petitioner, 3rd respondent appeared on behalf of the minor females before the Child Welfare Committee and prayed that the minor rescued females be sent for another age verification test. The Child Welfare Committee conceded to the request and passed orders, but directed that the rescued girls be produced before the Juvenile Justice Board on the next date in accordance with the order dated 27-5-2002.

11. Admittedly, the minor rescued females were produced before the Juvenile Justice Board at Bombay Central Court on 29-5-2002, when the Board adjourned the matter to 13-6-2002. During the interregnum, the minor females remained in the care and protection of the Special Rehabilitation Centre for Girls at Deonar. The police surgeon refused to conduct the age verification test of these girls as he had already conducted one, a few days earlier.

12. The minor females were produced before the Juvenile Justice Board on 13-6-2002 at Bombay Central Court. According to the petitioner, 3rd respondent filed a vakalatnama dated 13-6-2002 on behalf of the minor girls. He filed a discharge application and prayed that the minor girls be discharged on the ground that they had not committed any offence and had been in custody for over a month. This was opposed by the 2nd respondent and the police. The 2nd respondent prayed for time as she had corresponded with the organizations in the States from where the rescued girls had come and was awaiting their response. On that day no parents or guardians of these minor girls were present in the court. By order dated 13-6-2002, the Board discharged the minor girls. While releasing the minor girls, the Board noted that the 3rd respondent had made an application for discharge of the girls on the ground that they had not committed any offence and they were in custody for more than a month. The order notices that the 2nd respondent and the police had opposed the said prayer. The learned Judge, presiding

over the Board, then observed that he had personally asked every detained girl and all the girls had shown eagerness to be released. He further observed that under such circumstances it seemed to him that further detention of the girls was illegal and unwarranted because they had not committed any offence and they were victims of circumstances. He therefore ordered their release forthwith with condition that they shall not enter into the local jurisdiction of Social Service Branch. Thus the minor girls were released from the Court itself. The 2nd respondent could not, therefore, take the minor girls to the Government Special Rehabilitation Centre for Girls at Deonar. It is in these circumstances, being shocked at the manner in which the rescued girls, though they were minors, were released contrary to the provisions of law, that the petitioner has rushed to this Court.

13. We have heard at some length Ms. Mahrukh Adenwalla with Mr. Y. M. Choudhari for petitioner, Mr. P. Janardhan, learned Additional Advocate General with Mr. I. S. Thakur, A.P.P. for respondent 1 and Mr. V. M. Thorat, learned counsel appearing for respondent 3. Respondent 2 is served. None has represented respondent 2.

14. Ms. Adenwalla urged that some of the rescued girls being under 18 years of age are victims and cannot be treated as accused. Under Section 8 of the PITA soliciting in a public place is an offence. The same provision cannot be applied to juveniles. The learned counsel urged that the law does not permit a girl under 18 years of age to consent to sexual intercourse. Hence, a child cannot be charged for soliciting as in the eyes of law, her consent has been vitiated. She also drew our attention to certain provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the JJA" for short). She submitted that the said Act aims at providing proper care, protection and treatment of children under 18 years of age. 'Juvenile' or child is defined under the JJA as a child who has not completed 18 years of age. A child who is said to have committed an offence is described as a juvenile in conflict with law and destitute children who are likely to be grossly abused or tortured or who are mentally or physically challenged, are described as children in need of care and protection. She submitted that a juvenile in conflict with law has to be produced before Juvenile Justice Board and a child in need of care and protection has to be produced before the Child Welfare Committee. Thus, the JJA deals with two types of children, juveniles in conflict with law and children in need of care and protection. A juvenile girl found soliciting can be categorized both as a juvenile in conflict with law under Section 2(1) as well as child in need of care and protection under Section 2(d)(vi). The learned counsel contended that considering the fact that the girls under 18 years of age are victims of circumstances and are forcibly brought into flesh traffic by traffickers, who may include their family, relatives and friends, such girls cannot be treated as accused. They would more appropriately fall in the category of children in need of care and protection under Section 2(d)(vi). She submitted that it is, therefore, necessary that all such girls should be produced before the Child Welfare Committee and not before the Juvenile Justice Board. This is because it is necessary to rehabilitate these girls rather than penalize them, for they are forced into these activities.

15. Referring to the facts of the case on hand, the learned counsel contended that entire matter has been handled in very casual manner. She submitted that the ossification test indicated that the girls were minors. They were taken charge of from a brothel. They were clearly victims of circumstances, acting at the dictates of the brothel keeper. They were therefore children in conflict with law and ought to have been produced before the Child Welfare Committee. They were wrongly produced before the Juvenile Board. The learned counsel further urged that the Juvenile Board fell into a serious error in releasing them. It could not have done so without recording a finding that they were not minors but adult females. Having regard to the provisions of the JJA, it was obligatory on the part of the Juvenile Board to send them to protective home. By releasing them, the Juvenile Board has driven them back to the flesh trade.

16. The learned counsel also contended that the conduct of respondent 3, advocate Shri Jaiswal is objectionable. Shri Jaiswal appeared for the brothel keepers, who are accused and got them released on bail. He also appeared for the victim girls, who were not accused. There is certainly a conflict of interest between the brothel keepers and the victims and the learned advocate could not have appeared for both. Ms. Adenwalla submitted that respondent 3 is guilty of professional misconduct. Respondent 3 even appeared before the Juvenile Justice Board and argued that the girls should be released. Serious note will have to be taken of the conduct of respondent 3. The learned counsel also contended that the rescued girls will have to be traced and hence this Court should direct that the investigation should go on. The learned counsel urged that this Court should issue necessary guidelines/directions which can be followed by the investigating agency and the Courts, while dealing with similar cases.

17. Mr. V. M. Thorat, the learned counsel appearing for respondent 3 contended that it is true that respondent 3 appeared for the rescued girls, but that does not amount to professional misconduct. He submitted that the girls were claiming to be adults. The girls and the four accused were claiming to be innocent and wanted to be released on bail. They were not making any allegations against each other. Respondent 3 was briefed at the last moment. There appeared to be no conflict between them and hence respondent 3 filed applications for all. No professional misconduct can be attributed to him. Respondent 3 has filed affidavit in this Court justifying his conduct and supporting the Court's orders. We shall advert to it at the appropriate stage.

18. Mr. Janardhan, the learned Addl. Advocate General supported the petitioner. He also emphasized the need for this Court to issue necessary directions to prevent recurrence of such events in future. He has taken us through the affidavit of Shabana Irshad Shaikh, Sub-Inspector of Police, Social Service Branch, Crime Branch, C.I.D. Mumbai. We shall refer to it shortly.

19. Before we deal with the rival contentions, it is necessary to have a look at the relevant provisions of law. We may first refer to certain provisions of the Constitution. Article 15(3) of the Constitution empowers the State to make any special provision for women and children. Under Article 23 of the Constitution, traffic in human beings is prohibited and any

contravention of this provision is an offence punishable in accordance with law. Two important Directive Principles of State Policy are found in Article 39(e) and (f). They read as under:

"39 (e) - that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) - that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

20. Article 48 imposes on the State a primary responsibility of ensuring that all children until they complete the age of 14 years are provided free and compulsory education. Chapter IV-A which was inserted in the Constitution by the Constitution (42nd Amendment) Act, 1976 introduced fundamental duties in the Constitution. Article 15A(a) states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. The intention of the Constitution makers is clear. Stated in plain words, it means that women and children have to be protected. Trafficking in them has to be prevented and stopped. They must be allowed to develop in free and healthy conditions.

21. Various legislative measures have been taken to give effect to this intention. The Suppression of Immoral Traffic in Women and Girls Act, 1956 was a step in that direction. It was amended by Act No. 44 of 1986. The title of the said Act was changed to the Immoral Traffic (Prevention) Act, 1956 ("PITA" for short). The purpose of this Act is to inhibit or abolish commercial vice namely, the traffic in persons for the purpose of prostitution as an organized means of living. We will refer to only the relevant provisions. Section 2(aa) of the PITA defines "child" to mean a person who has completed the age of sixteen years and Section 2(cb) defines "minor" to mean a person who has completed the age of sixteen years but has not completed the age of eighteen years. Section 2(f) states that "prostitution" means the sexual exploitation or abuse of persons for commercial purposes and expression "prostitute" has to be construed accordingly. Section 2(b) defines "corrective institution" to mean an institution in which persons who are in need of correction may be detained. Section 2(g) defines "protective home" to mean an institution in which persons who are in need of care and protection may be kept. The PITA provides for punishment for keeping a brothel or for allowing premises to be used as a brothel (Section 3), for living on the earnings of prostitution (Section 4), for procuring, inducing or taking persons for the sake of prostitution (Section 5), for detaining a person in premises where prostitution is carried on (Section 6), for prostitution in or in the vicinity of public places and seduction of a person in custody (Section 7). Section 8 will have some relevance. It provides for punishment for seducing or soliciting for purpose of prostitution. Section 9 provides for punishment for seduction of a

person in custody. Under Section 10A depending on circumstances, a female offender may be sent to a corrective institution for a term by a Court in lieu of sentence.

22. Section 14 makes offences punishable under the PITA cognizable. Under Section 15(4) a police officer is entitled to enter any premises if he has reasonable grounds for believing that the offence punishable under the PITA has been or is being committed in respect of a person. Under Section 15(5-A) any person who is produced before a Magistrate has to be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases. Under Section 16 a Magistrate may direct that such a person be rescued from such a place and produced before him. Section 17 provides for intermediate custody of persons rescued under Section 15 or 16 and if such a person is in need of care and protection, the Magistrate can direct that he or she may be detained in a protective home. Section 20 provides for removal of prostitute from any place. Protective homes are provided under Section 21. Section 22B provides for summary trials.

23. Taking note of increasing world wide awareness of the problems of children particularly, problems of a girl child and various world conventions resolving to take measures to put an end to immoral traffic in children to some of which, India is a party, the legislature enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 ("JJA" for short). As its preamble reads, it is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection by providing for proper care, protection and treatment by catering to their developmental needs and by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their ultimate rehabilitation to various institutions established under the said Act. It is necessary to refer to some relevant provisions of this Act, to appreciate the gradual change in the approach of the legislature towards destitute and erring children.

24. The JJA is a child friendly Act. It simply makes two categories of children. Under Section 2(k) juvenile or child means a person who has completed 18 years of age. Section 2(a) defines child in need of care and protection. In this category are children who are not involved in any offence but who are neglected, abused and are victims of circumstances. Section 2(d)(i) to (ix) describe the type of children who fall in this group. For the purposes of the present case it is necessary to read 2(d)(vi). It defines child in need of care and protection to mean a child who is being or is likely to be grossly abused, tortured or exploited for purposes of sexual abuse or illegal acts.

25. Section 2(1) says that a juvenile in conflict with law means a juvenile who is alleged to have committed an offence. Section 4 provides for Juvenile Justice Board. Section 10 states that as soon as a juvenile in conflict with law is apprehended by police, the matter has to be reported to a member of the Board. Section 15 of the JJA provides for the orders that may be

passed against a juvenile who has committed an offence. The Board may, inter alia, ask the juvenile to go home after advice or provide for his counseling or direct that he may be sent to a special home. Under Section 16, a juvenile who has completed the age of 16 can be kept in a safe custody, but in no case can a juvenile be sentenced to death or life imprisonment. Under Section 20 cases which are pending on the date on which the JJA has come into force, shall be continued in the respective courts where they are pending, but if the court finds that juvenile has committed an offence, it shall record a finding to that effect and send the juvenile to the Board which shall pass orders as if it has been satisfied that the juvenile has committed the offence.

26. Under Section 29 of the JJA, the State Government may constitute a Child Welfare Committee. A child in need of care and protection has to be produced before the said Committee as per Section 32. If such a child has no family of ostensible support, the Committee may direct that the child may be remanded to children's home or shelter home. Chapter IV of the JJA is devoted to rehabilitation and social integration of children.

27. The JJA therefore intends improving the lot of children, be they children in need of care and protection or juveniles in conflict with law. The officers dealing with them have to be specially trained and instructed. Procedure to be adopted while dealing with them is different. The thrust is on rehabilitation. Adoption, foster-care, sponsorship or lodging them in after-care organizations are the options open to the authorities. Even where they are involved in offences they are not to be treated as offenders, but merely as children who have strayed their path for want of guidance. We will have to examine the present case against this background.

28. In almost all cases, where girls are rescued from a brothel, it is found that they are forced to submit to prostitution by brothel keepers. Cases are not unknown where young women from far of corners of India have to leave their homes and come to city like Bombay in search of bread. They are a burden to their parents. Their marriages cost money. They are neglected and unwanted. Many a time they are brought to cities with false promises of better future and sold to brothel keepers. Once they are in the trade, it is impossible for them to get out of it. If it is a brazen case of voluntarily soliciting in public attracting Sections 7 or 8 of the PITA such girls can be described as children in conflict with law and will have to be produced before Juvenile Justice Board. Otherwise such girls can more aptly fall under Section 2(b)(v) of the JJA as children in need of care and protection i.e., children who are being or who are likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts and they will have to be produced before the Child Welfare Committee. While dealing with both these categories of minors a kindly approach is needed. Their reformation or rehabilitation must be the object. The provisions of the JJA will have to be strictly followed.

29. If the facts of the present case are examined, we find that the provisions of the JJA are completely ignored. Shabana Shaikh, Sub Inspector of Police, Crime Branch CID Mumbai has

stated that the brothel was raided on 15-5-2002. Four brothel keepers were arrested on the spot. Twenty four girls were found in the premises. Against the said accused Special LAC No. 20/02 under Sections 3, 4, 7(2)(a) of the PITA, was registered. On 17-5-2002, the four accused as well as the twenty four girls were produced before the Additional Chief Metropolitan Magistrate's 3rd Court, Esplanade, Mumbai. The learned Magistrate remanded the four accused to police custody till 24-5-2002 and twenty four girls were sent to Shaskiya Mahila Sudhar Griha with a direction that their medical examination be carried out.

30. On 20-5-2002, the medical examination of the girls was carried out. Ten girls were found to be minors. On 24-5-2002, the four accused were released on cash bail. On 27-5-2002, the twenty four girls were produced before the learned Magistrate. Four major girls were released and ten minor girls were ordered to be produced before the Juvenile Court on 28-5-2002.

31. On 28-5-2002, the Probation Officer produced the ten minor girls before the Juvenile Welfare Board. Respondent 3, Advocate Jaiswal appeared for the minor girls and argued for their release claiming that they are not minors. The Board ordered their re-examination and the matter was adjourned to 13-6-2002. On 11-6-2002, the Probation Officer produced the said ten girls before the Medical Officer of Nagpada Police Hospital for their re-examination to ascertain their ages. The Medical Officer expressed opinion that he had already examined them in detail and issued a certificate as to their age with a margin of error of 6 months on either side. According to the Medical Officer the certificate was issued after physical examination, ossification test, X-ray examination as per procedure prescribed in H. S. Mehta's Book of Medical Law and Ethics in India (1963) and hence re-examination of the said girls was not necessary.

32. With this report the said girls were again produced before the Juvenile Court, Mumbai on 13-6-2002. Respondent 3 again appeared for them and argued for their release. The Probation Officer opposed their release and contended that she had made correspondence with different Non-Governmental Organizations of different States about the girls and hence they may be detained for further 15 days. The Board released the girls on the condition that they shall not enter into the local jurisdiction of Social Service Branch.

33. We express our displeasure at the manner in which this case has been handled by the Board. First of all if the girls were minors and they were not involved in any offence, they could not have even been described as juveniles in conflict with law. They were children in need of care and protection as per the provisions of the JJA. They ought to have been produced before the Child Welfare Committee once their minority was confirmed. Assuming they had to be produced before the Magistrate to seek orders for their production before the appropriate forum, the Magistrate should have directed their production before the Child Welfare Committee and not before the Juvenile Justice Board because they were minors and not accused. Assuming further, that they could have been produced before the Juvenile Justice Board, there was no warrant for the Board to release them because the record before the Board

clearly indicated that the girls were minors. The Board could have released them, without conditions, only if they were majors. Because they were minors, the Board was duty bound to follow the procedure prescribed under the JJA. The Board ought to have given due consideration to the request of the Probation Officer that they should not be released because she was awaiting information about them from the States from where they had come. This request was obviously made to explore the possibility of finding out their parents so that their custody could be entrusted to them with some conditions. Surprisingly the Board released them on a condition that they shall not enter into the local jurisdiction of Social Welfare Branch.

34. We have referred to the relevant provisions of the JJA which make it evident that both, a juvenile in conflict with law or a child in need of care and protection have to be dealt with, keeping in mind the possibility of their reformation and rehabilitation. The JJA provides for Protective Homes or Special Homes where such girls have to be kept for safe custody, because the fear is that they may be driven back to the brothels. The Board should have been alive to this. By asking the girls not to enter into the local jurisdiction of Social Service Branch, the Board has treated them as confirmed prostitutes. Such orders can be passed under Section 20 of the PITA which empowers a Magistrate to order removal of prostitutes from any place and prohibit them from re-entering it. We wonder how the Board could have passed such harsh order to the detriment of the minor girls. The learned Magistrate presiding over the Board has observed that he had personally asked the girls and they had shown eagerness to be released. There is no provision under the JJA whereunder, the Board can release the minor girls because they desired to be released without giving a thought to their rehabilitation and the frightening possibility of their re-entry into brothels.

35. Another disturbing facet of the matter is that it is at the request of respondent 3, who had appeared for the brothel keepers, that the Board released the girls. Having appeared for the accused, respondent 3 could not have appeared for the victim girls who were not the accused. This was sufficient indication that the girls would be driven back to the brothels, and the Board should have realized this. The Board committed the greatest blunder in entertaining such an application and releasing the, girls pursuant thereto. The Board ought to have sent them to the Protective Home as requested by Probation Officer. In our opinion greatest injustice has been done to the minor girls.

36. We are also of the opinion that it was improper on the part of Advocate Jaiswal to appear for the accused as well as for the victim girls. To us there appears to be a clear clash of interest between the accused and the victim girls. We have perused the affidavit filed by him in this Court. Through the affidavit respondent 3 has justified his conduct. We are not happy with the explanation offered by respondent 3. The tenor of the affidavit strikes a very unhappy note. Respondent 3 was present in the Court. We have also heard his advocate. Even in this Court we witnessed a defiant approach of respondent 3. We may not be however understood to have expressed any final opinion on the conduct of respondent 3, as in our opinion, the proper

authority to consider this is the Bar Council of Maharashtra. We will therefore refer his case to the Bar Council to conduct appropriate enquiry and arrive at its conclusions without getting influenced by our observations about his conduct.

37. We feel that the following directions may prevent recurrence of such events in future.

(A) No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.

(B) A Magistrate before whom persons rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place are produced, should, under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a Juvenile in conflict with law, or to the Child Welfare Committee if such person is a child in need of care and protection.

(C) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.

(D) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.

(E) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.

(F) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.

(G) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act, 1956.

38. We are anxious about the safety of the minor girls who are released. The statement made by the learned A.G.P. that the investigation will go on and vigorous efforts will be made to trace the minor girls has reduced our anxiety to some extent.

39. We have already indicated that respondent 3's conduct in this case needs to be examined by the Bar Council. We therefore direct the Bar Council of Maharashtra to conduct an inquiry into respondent 3, Advocate Jaiswal's conduct in this case, as per law. We make it clear that our observations about his conduct are prima facie observations and the Bar Council of Maharashtra should examine his case, after giving him a notice and after giving him an opportunity of hearing in accordance with law, without being influenced by our observations.

40. The petition is disposed of with above directions.

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**THE
SUPREME COURT CASES**
(2011) 5 SCC

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(2011) 5 Supreme Court Cases 1

(BEFORE DR. DALVEER BHANDARI AND A.K. PATNAIK, JJ.)

BACHIPAN BACHAO ANDOLAN Petitioner;

Versus

UNION OF INDIA AND OTHERS Respondents.

d

Writ Petition (C) No. 51 of 2006[†], decided on April 18, 2011

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A. Constitution of India — Arts. 21, 32, 21-A, 23, 14, 19 and 39(f), 39-A, 41 to 43, 45, 47 and Preamble — PIL — Children/Juveniles — Children's rights — Abuse of human rights of children in circuses — Rescue, rehabilitation and social integration of children/juveniles working in circuses — Directions regarding, issued — Though writ petitioner was concerned with human rights violations of children in circuses, Solicitor General broadening scope of petition and presenting broader evil of child trafficking and violation of children's rights in general rather than confining it only to circuses — Supreme Court noting comprehensive suggestions and reports presented and acknowledging that children's exploitation needs to be systematically dealt with — But before going to other aspects, Supreme Court first dealing with children working in Indian circuses — Employment of children below 18 years in circuses, held, is unconstitutional and illegal — Central Government directed to issue notification prohibiting employment of children/juveniles in circuses, conduct raids and liberate children/juveniles, send them to protective homes and hand them over to their parents after proper verification — State directed to frame proper scheme for rehabilitation of rescued children from circuses — Secretary, Ministry of Human Resource Development, Department of Women and Child Development directed to file a comprehensive affidavit of compliance within ten weeks — Certain other directions issued for coordinated action at the State level

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[†] Under Article 32 of the Constitution of India

B. Juvenile Justice (Care and Protection of Children) Act, 2000 — Ch. IV and Ss. 29 to 45, 2(k) and 26 — Rescue, rehabilitation and social integration of children/juveniles working in circuses — Directions issued regarding a

C. Education and Universities — Right of Children to Free and Compulsory Education Act, 2009 — S. 3 and Ch. 6 — Violation of rights under, of children forced to work in circuses — Remedial steps, directed

D. Criminal Law — Crimes Against Women and Children — Child abuse — Rescue, rehabilitation and social integration of children/juveniles working in circuses — Directions regarding — Penal Code, 1860 — Ss. 292 to 394, 319 to 329, 339 to 346, 349 to 351, 359 to 363, 365 to 375, 114, 420, 465, 466, 468, 471, 503 and 506 — Offences under, against children generally and in Indian circuses — Remedial steps suggested, taken note of b

E. Information Technology, Computer and Internet Laws — Information Technology Act, 2000 — S. 67 — Offences relating to child pornography in general — Remedial steps suggested, taken note of c

F. Medical Practice and Practitioners — Transplantation of Human Organs Act, 1994 — Ss. 9 and 18 to 20 — Offence of removing human organs of children — Remedial steps suggested, taken note of

G. Criminal Law — Crimes Against Women and Children — Trafficking — Protection of children from immoral trafficking and prostitution — Remedial steps suggested, taken note of — Immoral Traffic (Prevention) Act, 1956 — Ss. 15 to 17-A, 21, 2(aa), (cb) and 3 to 8 d

H. International Law — International Conventions — UN Protocol to Prevent, Suppress and Punish Trafficking in Persons — Preamble and Arts. 5 and 1 to 3 — India being a signatory and Art. 5 obligation of member countries to adopt legislative and other measures to stop trafficking in persons — Implications e

A writ petition in public interest was filed under Article 32, Constitution of India. The writ petition placed materials, instances, detailed forms of child exploitation, abuse and inhuman treatment of children in circuses and their forceful detention there. The petitioner explained that in spite of his best efforts and even negotiations with Indian Circus Federation (ICF) he could not stop this abuse, that how the police, Labour Departments and State machinery could not come to the aid of these children. The petitioner also placed on record various child laws critically discussing about their efficacy in eradicating and dealing with the evil of child exploitation in circuses. f

The petitioner prayed for issuance of appropriate directions to the respondents (1) to frame appropriate guidelines for the persons engaged in circuses, (2) to conduct simultaneous raids in all the circuses by CBI to liberate the children and to check the gross violation of all fundamental rights of the children, (3) to appoint special forces in the borders to ensure action and to check the cross-border trafficking, (4) to apply the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and make intra-State trafficking of young children, their bondage and forcible confinements, regular sexual harassments and abuses cognizable offences under IPC as well as under g
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a Section 31 of the Juvenile Justice Act, (5) to empower Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2000 to award compensation to all those victims rescued from the circuses with a time-bound rehabilitation package and the State Government to create a fund for the same, and (6) to lay out a clear set of guidelines prohibiting the employment/engagement of children up to the age of 18 years in any form in the circuses.

b Notices were issued. The Solicitor General accepted the gravity of the situation and broadened the scope of the petition and tried to present the broader evil of children trafficking generally rather than confining it only to circuses. He also discussed about the laws and Government's effort in this regard and suggested measures and directions that are required for dealing with the problem. To stress the gravity of the issue he submitted that India is home of 19% of the world's children, that more than one-third of Indian population i.e. around 440 million is below 18 years and that in spite of said ratio, the total expenditure on children in India was extremely low in the years 2005-2006 and 2006-2007 respectively.

c Adjourning the writ proceedings and passing the directions below, the Supreme Court

Held :

d The present order is limited to directions regarding children working in Indian circuses. Consequently the following directions are made. In order to implement the fundamental right of the children under Article 21-A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today. The respondent Governments are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children are to be kept in the care and protective homes till they attain the age of 18 years. The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification. The respondents are directed to frame a proper scheme of rehabilitation of rescued children from circuses. The Secretary of the Ministry of Human Resources Development, Department of Women and Child Development is directed to file a comprehensive affidavit of compliance within ten weeks.

(Para 64)

N.R. Nair v. Union of India, (2001) 6 SCC 81, referred to

e The comprehensive submissions of Solicitor General and others have been carefully noted. Children's exploitation needs to be systematically dealt with. From the said submissions it is abundantly clear that the Government of India is fully aware about the problems of children working in various places, particularly in circuses. It may be pertinent to mention that the right of children to free and compulsory education has been made a fundamental right under Article 21-A, Constitution of India. Now every child of the age of 6 to 14 years has the right to have free education in the neighbourhood school till elementary education.

(Paras 64, 63 and 21 to 58)

g *Estimates of the United Nations regarding human trafficking; Statistics of NHRC Committee on Missing Children; UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, (the PALERMO Protocol on Trafficking); Rescue and Rehabilitation of Child Victims Trafficked for Commercial Sexual Exploitation, a Report*

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by UNICEF published by the Department of Women and Child Development, Ministry of Human Resource Development, Government of India; Trafficking in Women and Children in India: Shanker Sen and P.M. Nair (Eds.): "Abolition of Child Labour in India": report submitted by NCFER to Planning Commission; Studies conducted by Human Rights Watch Asia in 1995, referred to

[Ed.: The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and the other 2 protocols jointly known as Palermo Protocols can be downloaded as an e book from the web address verified as on 30-4-2011 : <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf>

UNDP discusses the legal and policy aspects of the trafficking in India, Bangladesh and Nepal and Sri Lanka. The pdf file can be downloaded as an e book from the web address verified as on 30-4-2011 : [http://www.unodc.org/documents/human trafficking/2011/ Responses to Human Trafficking in Bangladesh India Nepal and Sri Lanka.pdf](http://www.unodc.org/documents/human%20trafficking/2011/Responses%20to%20Human%20Trafficking%20in%20Bangladesh%20India%20Nepal%20and%20Sri%20Lanka.pdf)]

The provisions of the Right of Children to Free and Compulsory Education Act, 2009 are material. By virtue of Section 3, 2009 Act, every child of the age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. The Central Government has notified the 2009 Act in the Gazette on 27-8-2009 and the 2009 Act has been brought into force with effect from 1-4-2010. (Para 59)

The National Commission for Protection of Child Rights has already been constituted. The said Commission now receives a statutory status by virtue of 2009 Act. It is expected that on a close interface between the National Commission for Protection of Child Rights, the State Governments and the Ministry of Women and Child Development, positive outcomes should actually be worked out. It is, therefore, necessary that a coordinated effort must be made by the three agencies, namely, the Commission, the Ministry and the State Governments. The Solicitor General submitted that the recommendations be implemented by the agencies concerned. In the State/Union Territory, the responsibility must vest either in the Chief Secretary or a Secretary in charge of children, women and family welfare. It would be open to the State Government in appropriate cases to nominate a Special Officer for the said purpose not lower than the rank of a Secretary to the State Government. Each State must issue a circular effectively indicating how the recommendations will be implemented.

(Paras 60 and 61)

The submissions of the Solicitor General are accepted and it is directed that the said circular shall be issued within 4 weeks from today and a compliance report be filed by the Chief Secretary of each State. (Para 62)

SS-D/47992/CR

Advocates who appeared in this case :

Gopal Subramaniam, Solicitor General, Shail Kr. Dwivedi, Additional Solicitor General, Ms Jayshree Anand, Dr. Manish Singhvi and Manjit Singh, Additional Advocate General, Colin Gonsalves, A.K. Srivastava and Pramod Swarup, Senior Advocates [Ms Divya Jyoti, Ms Jyoti Mendiratta, Aananat Asthana, Anand Varma, Ms Sushma Suri, Anubhav Kumar, Ms Sunita Verma, Ms Sadhana Sandhu, S.N. Terdal, K.K. Mahalik, Ms Noorjahan, Ajay Pal, Sanjay R. Hegde, Amit Kr. Chawla, A. Rohen Singh, Tara Chandra Sharma, Ms Neelam Sharma, S.W. A. Qadri, Rajeev K. Dubey, Kamendra Mishra, Ms Anil Kr. Jha, Anis Suhrawardy, S. Mehdi Inam, T. Ahmad, Ms Momota Oinam (for M/s Corporate Law Group), Mohanprasad Meharias, Devanshu Kr. Devesh, R. Gopalakrishnan, Milind Kumar, Gopal Singh, Manish Kumar, Rituraj Biswas, Chandan Kumar, Janaranjan Das, Swetaketu Mishra, P.P. Nayak, Ms Hemantika Wahi, Sohanath Padhan, Asok Bhan, Ms Savitri Pandey,

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a Ms Varuna Bhandari, D.S. Mahra, Ms Sunita Sharma, Ms Gunwant Dara, Ms Anil Katiyar, Ramesh Babu M.R., T. Harish Kumar, Prasanth P., V. Vasudevan, V.G. Pragasam, S.J. Aristotle, S. Prabu Rama Subramanian, Pradeep Purohit, B.S. Banthia, Ms Kamini Jaiswal, Naresh K. Sharma, Arun K. Sinha, Ms Enatoli Sema, Edward Belho, Pragyan Pradip Sharma, P.V. Yogeswaran, R.N. Upadhyay, Anil Shrivastav, Ritu Raj, Ms Suparna Srivastava, Ms Sudarshini Ray, Ram Swarup Sharma, Rajesh Srivastava, Kh. Nobin Singh, Ratan Kr. Choudhuri, Ms Anuradha Rustagi, Ms D. Bharati Reddy, G. Prakash, S.S. Shamsirey, P.N. Gupta, Ms Aruna Mathur, Amarjeet Singh Girda, Viman Dubey (for M/s Arputham Aruna & Co.), Dr. Indra Pratap Singh, Anuvrat Sharma, Ms Alka Sinha, Naresh K. Sharma, Manoj K. b Mishra, Balaji Srinivasan, Ms Madhusmita Bora, B.D. Vivek, Ms A. Subhashini, Kamal Mohan Gupta, K.N. Madhusoodhanan and R. Sathish, Advocates] for the appearing parties.

Chronological list of cases cited

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1. (2001) 6 SCC 84, *N.R. Nair v. Union of India*

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The Judgment of the Court was delivered by

c **DR. DALVEER BHANDARI, J.**— This petition has been filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman conditions. There are instances of sexual abuse on a daily basis, physical d abuse as well as emotional abuse. The children are deprived of basic human needs of food and water.

e **2.** It is stated in the petition that the petitioner has filed this petition following a series of incidents where the petitioner came in contact with many children who were trafficked into performing in circuses. The petitioner found that circus is one of the ancient forms of indigenous entertainment in the world, with humans having a major role to play. However, the activities that are undertaken in these circuses deprive the artists especially children of their basic fundamental rights. Most of them are trafficked from some poverty-stricken areas of Nepal as well as from backward districts of India. The outside world has no meaning for them. There is no life beyond the circus campus. Once they enter into the circuses, f they are confined to the circus arena, with no freedom of mobility and choice. They are entrapped into the world of circuses for the rest of their lives, leading a vagrant tunnelled existence away from the hub of society, which is tiresome, claustrophobic and dependent on vicissitudes.

g **3.** It is submitted that the petitioner is engaged in a social movement for the emancipation of children in exploitative labour, bondage and servitude. Bachpan Bachhao Andolan has been able to liberate thousands of children with the help of the judiciary and the executive as well as through persuasion, social mobilisation and education.

h **4.** It is submitted that for the first time the petitioner came to know about the plight of children in Indian circuses way back in 1996. At that time, the petitioner had rescued 18 girls from a circus performing in Vidisha District of Madhya Pradesh. This was possible after a complaint made by a 12-year-old girl, who managed to escape from the circus premises. Her complaint was

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that she and several other Nepalese girls had been trafficked and forced to stay and perform in the circus where they were being sexually abused and were kept in most inhuman conditions.

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5. Following this incident, an organised attempt was made by the petitioner to understand and learn more about the problem of child labour in Indian circuses and how to eradicate the same. This began in July 2002 with the initiation of a research on the problem of child labour in Indian circuses. The findings in the abovementioned research were compiled in a report termed as “Eliminating Child Labour from Indian Circuses”.

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6. Once all the above facts and figures were established, the petitioner decided to implement a multi-pronged strategy to eradicate the practice of employing children in Indian circuses. Simultaneously, preparations were made to put across the problem in front of circus owners to make them aware of the moral and legal questions pertaining to the use of children in circuses. The petitioner initiated a dialogue with all the major circus owners and appealed to them to stop trafficking, bondage, child labour and other violations of child rights. The Indian Circus Federation (for short “ICF”) responded positively but ironically this body has a very thin representation from the circus industry with approximately less than 10% of the big circuses and probably less than 20% of all the circuses were members of this Federation.

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7. It is submitted that the petitioner convened a meeting with the circus owners on 18-8-2003 and 19-8-2003 where a few owners under the umbrella of ICF agreed to make a declaration that there shall be no further use of children in the circuses in India and a full list of the children employed by them will be provided to the petitioner and that they would voluntarily phase out all the children from their circuses in a time-bound manner. It was also decided that the petitioner and its partner non-governmental organisations (for short “NGOs”) in Nepal will help in repatriation and rehabilitation of liberated children.

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8. The petitioner submitted that since ICF does not have enough influence even on its own members, the agreement did not get implemented. However, the petitioner kept on receiving information and complaints from several parents through the NGOs working in Nepal. The petitioner sent the staff of his organisation to cross-check and reconfirm the facts in Bhairawa, Hetauda in Nepal and Siliguri in India and found that organised crime of trafficking of children for Indian circuses, particularly from Nepal is rampant.

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9. In February and March 2004, the petitioner received complaints from many Nepalese parents whose children have been trapped in circuses for more than 10 years and had never been allowed to meet them on one pretext or the other even after repeated requests to the circus owners. Majority of the complaints were for the children in Great Indian Circus (a non-federation circus) which was found to be located in Palakkad, Kerala. In June 2004, the petitioner came to know through credible NGOs and individuals working in

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Hetauda, Nepal that the daughters of 11 parents were trapped into Great Roman Circus in India. The petitioner has since then conducted several studies and interviews with various people who are engaged in circus.

10. The petitioner further found that life of these children begins at dawn with training instructors' shouting abuses, merciless beatings and two biscuits and a cup of tea. After 3 to 5 shows and a lot of pervert comments of the crowds, the young girls are allowed to go back to their tents around midnight. Even then, life might have something else in store, depending upon the nature and mood swings of the circus owners and managers. If any child complains about the inadequate amount of food or the leaking tent in the rain or if a child is scared on the rope while performing the trapeze, he/she is scolded and maltreated by the managers or employers and sometimes even caned on one pretext or the other.

11. There are no labour or any welfare laws, which protect the rights of these children. Children are frequently physically, emotionally and sexually abused in these places. The most appalling aspect is that there is no direct legislation, which is vested with powers to deal with the problems of the children who are trafficked into these circuses. The Police, Labour Department or any other State agency is not prepared to deal with the issue of trafficking of girls from Nepal holding them in bondage and unlawful confinement. There is perpetual sexual harassment, violation of the Juvenile Justice Act and all international treaties and conventions related to human rights and child rights where India is a signatory.

12. The petitioner submitted that this Court in *N.R. Nair v. Union of India*¹ upheld the rights of animals who are being made to perform in these circuses after understanding their plight. The situation of children in circuses is no different, if not worse.

13. The petitioner has made various attempts to regulate and improve the conditions of children in circuses including engaging the circus owners' association. However, none of them have derived good results. It is categorically submitted that the petitioner does not want the circuses to be completely banned or prohibited but there is a strong need to regulate this as any other industry including ensuring safety and other welfare measures of all those who are working in circuses, particularly the children. Almost all the circuses employ at least 50 persons and therefore a large number of labour laws should be applied.

14. The petitioner seeks application of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and also suggests that intra-State trafficking of young children, their bondage and forcible confinements, regular sexual harassment and abuses should be made cognizable offences under the Penal Code, 1860 as well as under Section 31 of the Juvenile Justice Act. Children Welfare Committees under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be empowered to award compensation to all those victims rescued from the circuses with

time-bound rehabilitation packages and the State Government to create a fund for the same.

15. Mostly, these children are sold to the circus owners either by the agents or their relatives or sometimes the poor parents are lured into the web by promising high salaries, luxurious life, etc. However, some exceptional circuses were also found (only four) that treated their employees marginally better and allowed them to avail the privilege of limited movement outside the circus campus for limited time, but child labour was prevalent in these circuses as well and artists were not given minimum wages.

16. The petitioner has complained about living and working conditions of the children and has enumerated the following broad categories which are set out as under:

(i) *Insufficient space.*—In almost all the circuses visited by the research team, the living conditions were quite similar, but nonetheless deplorable. There are separate sleeping arrangements for males and females, with the company girls segregated from the rest of the circus troupe by a boundary. There are also separate tents for the families working in the circuses. Usually 5 to 10 and sometimes even more people are crammed into a single tent, thus most of the child artists complain of insufficient space and lack of personal space and privacy.

(ii) *Meals.*—Most of the circuses provide two meals—lunch and dinner to the artists and tea also two times from the canteen run by the management. The quantity and quality of the food is variable, depending on the management. Most often, the food is inadequate to satisfy the appetite of young growing children.

(iii) *Sleep timings.* Sleep timings are also very erratic, depending upon the nature of the work being performed by the child artists, though on a general trend most go to bed at midnight after the last show is over, to be woken up at dawn for practice.

(iv) *Poor sanitation.*—There are no proper toilets and bathrooms. Make-shift toilets are created on the circus ground near the tents and all the company girls have to share it and the stench around them is unbearable. In general, condition of sanitation in circuses is most pathetic. It also precipitates unhygienic conditions that could lead to diseases. Invariably all the artists voiced their dissatisfaction on the issue of sanitation and hygiene.

(v) *No health care personnel.*—Another important issue concerning the artists is the lack of any health care personnel to look into their day-to-day health care needs as well as the accidents that are so common in the circuses. The manager or the keeper usually provides medication for common ailments such as fever, cold, etc. and looks into the first-aid needs of the artists. For a serious medical condition or an accident during training or performance, the trainer or the manager usually accompanies the patient to the nearest medical help. The management bears the charges of the treatment during that time, but later deducts it from the

a salary of the incumbent. However, some managements do bear the medical bill of the artists if a mishap occurs during the performance or training. Overall, it can be said that the living conditions inside the premises of the circus arena are squalid and deplorable, with no facilities and basic amenities being provided to the circus artists, not even proper sanitation.

b (vi) *High risk factor.*—Nature of the activities in circuses is such that the risk factor for the artists is very high as accidents and mishaps during practice sessions and shows are common phenomenon. On top of that, there are no health care personnel employed by the circuses to look into the health care needs of the artists, even at the time of emergency. It was found that the lives of the children was endangered due to the risk factor involved in the circuses, especially those who were involved in items like ring of death, well of death, sword items, rope dance, etc. They constituted 10% of the total number of children. Rest 60% fell in the medium risk category while 30% were not involved in any risky items. Moreover, some circuses either fail to or are ignorant about taking the necessary precautions, which further heightens the risk involved. In fact, the research team witnessed an accident while visiting one of the circuses.

d (vii) *Remuneration.*—Besides paying meagre salaries to the children, the management of some circuses holds back the salaries of the children saying that they would be paid only to their parents when they visit them, which rarely happens. Salary accounts are often manipulated and the loss due to accidents or mishaps is not compensated.

e (viii) *Bound by contract.* The child artists are brought to the circuses to be contracted for 3 to 10 years and once the contract is signed/agreed upon by the parents or guardians of the children, these young ignorant children are bound and indebted to the circus management and are unable to break away from the circus, even if they are discontented with their lives in the circus.

f (ix) *Daily routine hindering their all-round development.*—In the circus, their daily routine starts with practising even before the sunrise (rigorous training session initially), mostly accompanied with verbal and physical abuse and harsh physical punishments at times, for the slightest error or no error at all. From afternoon onwards until midnight, they are on the stage, performing and enthralling the audience with their vivacity and wit. They cannot share their agony and grievances or raise their voice against the torturous life they are forced to lead. For them, there is no education, no play, no recreation and their life is confined to the circuses without any exposure to the outside world. All this prohibits them from knowing the other opportunities available, as they are aware of and are exposed to just one aspect of life, that is, the aspect they see in the circuses they work in. Due to the cruel and inhuman attitude of the management in some circuses, which imposes restrictions on the children

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for meeting their folks, and also due to the travelling nature of the troupe, most of the children end up losing contact with their parents, especially those across the border or residing at far-off places even within the country. And those fortunate few, who get a chance to meet their parents, do so once or twice a year, either when their parents visit or when they are allowed to go home. Consequently, they are exposed to a world which hinders their psychological, spiritual and socio-economic development, with no knowledge of their rights, duties and scope for a better future and thus, are left with no other option but to continue working in the circuses for the rest of their lives. Instability in life, due to the circus's nomadic existence, makes it difficult for them to pursue formal education, resulting in a large number of illiterate children and adults in circuses. a

17. The employment of the children in circus involves many legal complications and in that respect major complications are as under: c

1. Deprivation of the children from getting educated thereby violating their fundamental right for education enshrined under Article 21-A of the Constitution.

2. Deprivation of the child from playing and expression of thoughts and feelings, thereby violating the fundamental right to freedom of expression. d

3. Competency to enter into contract for working in circus.

4. Violation of statutory provisions of law like the Employment of Children Act, 1938, the Children (Pledging of Labour) Act, 1933, the Child Labour (Prohibition and Regulation) Act, 1986, the Minimum Wages Act, 1948, the Prevention of Immoral Traffic Act, the Equal Remuneration Act, 1976 and the Rules made thereunder and the Bonded Labour System (Abolition) Act, 1976 read with the Rules made thereunder, the Factories Act, 1948, the Motor Transport Workers Act, 1961, etc. e

5. Existing labour laws and legitimacy of contracts of employment for children. f

6. The legitimacy of contracts of employment for children and working conditions.

18. The petitioner has given innumerable instances in the petition of abuse of children in the circuses. All those instances demonstrate under what horrible and inhumane conditions the children have to perform in the circuses. The experiences of the petitioner are only a scratch on the surface and there are many children who are being trafficked regularly into circuses. While it is not the case of the petitioner that circuses should be completely banned and prohibited, there is a strong need to regulate this as any other industry including ensuring safety gears and other measures as are done in other countries. g

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19. The petitioner has filed the petition with the following prayers:

- a 1. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to frame appropriate guidelines for the persons engaged in circuses;
- b 2. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to conduct simultaneous raids in all the circuses by CBI to liberate the children and to check the gross violation of all fundamental rights of the children;
- c 3. Issue a writ of mandamus or any other appropriate writ, order or direction to appoint special forces in the borders to ensure action and to check the cross-border trafficking;
- d 4. Issue a writ of mandamus or any other writ, order or direction applying the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and make intra-State trafficking of young children, their bondage and forcible confinements, regular sexual harassments and abuses cognizable offences under the Penal Code as well as under Section 31 of the Juvenile Justice Act;
- e 5. Issue a writ of mandamus or any other appropriate writ, order or direction to empower Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2000 to award compensation to all those victims rescued from the circuses with a time-bound rehabilitation package and the State Government to create a fund for the same;
- f 6. Issue a writ of mandamus or any other appropriate writ, order or direction to lay out a clear set of guidelines prohibiting the employment/engagement of children up to the age of 18 years in any form in the circuses.

20. This Court issued notices to the Union of India and other States and Union Territories. Replies have been filed on behalf of various States and the Union Territories.

- f **21.** Shri Gopal Subramaniam, the learned Solicitor General appearing for the Union of India has filed written submissions with the heading “The Indian Child: India’s Eternal Hope and Future”. The learned Solicitor General has broadened the scope of this petition and has tried to deal with the problem of child trafficking.

22. Mr Subramaniam submitted that:

- g 1. Trafficking in human beings is not a new phenomenon. Women, children and men have been captured, bought and sold in marketplaces for centuries. Human trafficking is one of the most lucrative criminal activities. Estimates of the United Nations state that 1 to 4 million people are trafficked worldwide each year. Trafficking in women and children is an operation which is worth more than \$10 billion annually. The NIIRC Committee on Missing Children has the following statistics to offer:
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(a) 12.6 million (governmental sources) to 100 million (unofficial sources) stated to be child labour;

(b) 44,000 children are reported missing annually, of which 11,000 get traced; a

(c) About 200 girls and women enter prostitution daily, of which 20% are below 15 years of age.

2. International conventions exist to punish and suppress trafficking especially of women and children. (Refer UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, also referred to as the PALERMO Protocol on Trafficking). “Trafficking” is now defined as an organised crime and a crime against humanity. The Convention being an international convention is limited to cross-border trafficking but does not address trafficking within the country. The definition of “trafficking” is significant: b

“... The recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation...” c

3. Exploitation shall include at a minimum, the exploitation of the prostitutes or others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs. d

4. It is submitted that children under 18 years of age cannot give valid consent. It is further submitted that any recruitment, transportation, transfer, harbouring or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used. Three significant elements constitute trafficking: e

(a) the action involving recruitment and transportation;

(b) the means employed such as force, coercion, fraud or deception including abuse of power and bribes; and f

(c) the purpose being exploitation including prostitution.

5. Internationally, there is a working definition of “child trafficking”. The working definition is clear because it incorporates the above three elements. In June 2001, India has adopted the PALERMO Protocol to evolve its working definition of “child trafficking”. g

6. The forms and purposes of child trafficking may be:

(a) bonded labour;

(b) domestic work;

(c) agricultural labour;

(d) employment in construction activity; h

(e) carpet industry;

- (f) garment industry;
- (g) fish/shrimp export;
- a (h) other sites of work in the formal and informal economy.
7. Trafficking can also be for illegal activities such as:
- (a) begging;
- (b) organ trade;
- (c) drug peddling and smuggling;
- b 8. Trafficking can be for sexual exploitation i.e.
- (a) forced prostitution;
- (b) socially and religiously sanctified forms of prostitution;
- (c) sex tourism;
- (d) pornography;
- c 9. Child trafficking can be to aid entertainment in sports:
- (a) circus/dance troupes;
- (b) camel jockeying;
10. Trafficking can be for and through marriage. Trafficking can be for and through adoption. It is submitted that intervention is possible in cases of child trafficking only if fundamental principles are kept in mind. The fundamental principles are the following:
- d (a) The child has to perform to the best of his ability. The growth of a child to its potential fulfilment is the fundamental guarantee of civilisation;
- (b) Empathy for troubled children by adopting non-discriminatory and attitudes free of bias.
- e (c) Children must be protected in terms of well-being under all circumstances.
- (d) Right to freedom from all forms of exploitation is a fundamental right.
- f (e) Confidentiality of the child in respect of the child's privacy must be maintained.
- (f) Trafficking is an organised crime which could have multiple partners including syndicates.
11. Intervention must be a joint initiative of government and non-governmental organisations which can be, in some cases, potential partners. An effective intervention must in all circumstances lead to effective and enduring protection of children from exploitation, abuse and violence.
- g 23. According to the Solicitor General it is the bounden duty of the police to discharge its obligation. He submitted that the following guidelines should be mandated:
- h (i) Care must be taken to ensure the confidentiality of the child and due protection must be given to her/him as a witness.

(ii) The detailed interview of the victim should be done preferably by crisis intervention centres/members of the Child Welfare Committee under the Juvenile Justice Act. There should be adequate breaks and intervals during the interview with a child victim. a

(iii) If the police employ a child-friendly approach to the entire investigation, the possibility of getting all relevant information gets higher. This can be done by having a supportive environment for the child at the police station wherein attention is paid to his needs. This can be done at the police station itself or at any other place co-managed by police and any NGO/CBO. Support persons for the child should be contacted and in their absence, any civil society group working with/for children or members of CWC (whichever the child feels comfortable with) could be asked to be present. b

(iv) Due care must be maintained to attend the issues like interpreters, translators, record maintaining personnel, audio-video recording possibilities, etc. c

(v) As far as possible, the same investigating officer must follow up the case from investigation stage to the trial stage.

(vi) There should be provision of good water as well as toilet facilities for the child in the police station and the hospital.

(vii) No child should be kept in a police station. d

(viii) Where a special juvenile police unit or a police officer has been designated to deal with crimes against children and crimes committed by children, cases relating to children must be reported by such officer to the Juvenile Justice Board or the Child Welfare Committee or the child-line or an NGO, as the case may be.

24. It is submitted that Articles 23, 39, 14 and 21 of the Constitution of India guarantee every child to be freed from exploitation of any form. Article 23 prohibits traffic in human beings, “begar” and other forms of forced labour. Force, assault, confinement can be dealt with under Sections 319 to 329 IPC for simple and grievous hurt. Sections 339 to 346 IPC for wrongful restraint and wrongful confinement; Sections 350 to 351 IPC for criminal force and criminal assault; Section 370 IPC for import, export, removal, disposing/ accepting, receiving, detaining of any person as a slave; Sections 361 to 363 IPC for kidnapping and abduction; Section 365 for kidnapping and abduction for wrongful confinement; Section 367 IPC for kidnapping and abduction for slavery or to subject a person to grievous injury; Sections 41, 416 and 420 IPC for fraud and cheating by personation; Sections 465, 466, 468 and 471 IPC for forgery and using forged documents as genuine; and Sections 503 and 506 IPC for criminal intimidation. It is submitted that a direction must be issued to the Commissioner of Police, Delhi and the State Governments and Union Territories that their police force are required to be sensitised to the above provisions while dealing with safety and freedom of children. e

25. The Juvenile Justice (Care and Protection of Children) Act, 2000 was amended in 2006 by Act 33 of 2006. It is a special legislation for children f

and defines “children” as “a person up to the age of 18 years”. The Juvenile Justice Act is build upon a model which addresses both children who need care and those who are in conflict with law.

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26. According to the learned Solicitor General, the Goa Children’s Act, 2003 must be viewed as a model legislation. He submitted that not only does it define “child trafficking” but also seeks to provide punishment for abuse and assault of children through child trafficking for different purposes such as labour, sale of body parts, organs, adoption, sexual offences of paedophilia, child prostitution, child pornography and child sex tourism. All State authorities such as airport authorities, border police, railway police, traffic police, hotel owners are made responsible under the law for protection of children and for reporting offences against children. It is submitted that until a suitable legislation is enacted, directions of a preventive nature may be issued against the police authorities in all States to protect the rights of children.

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27. The learned Solicitor General submitted that there is blatant violation of the Child Labour (Prohibition and Regulation) Act, 1986, the Children (Pledging of Labour) Act, 1933, the Bonded Labour System (Abolition) Act, 1976, the Factories Act, 1948, the Plantations Labour Act, 1951, the Mines Act, 1952, the Merchant Shipping Act, 1958, the Apprentices Act, 1961, the Motor Transport Workers Act, 1961, the Bidi and Cigar Workers (Conditions of Employment) Act, 1966 and the West Bengal Shops and Establishment Act, 1963.

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28. The learned Solicitor General submitted that each State Government must constitute committees for the purpose of preventing child labour. It is submitted that there should be an apex committee constituted by each State Government with the following members:

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(a) The Chief Secretary of the State;

(b) Secretary in charge of child and women development;

(c) Director of Health and Family Welfare;

(d) Commissioner of Police of the State;

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(e) Two psychiatrists to be nominated by the Indian Psychiatric Society.

The State Government with the assistance of the said committee by a transparent process will constitute committees for each district consisting of health workers, police personnel, factory inspectors and people from the civil society/NGO. The committee will be able to inspect and determine whether there is forced employment of children. All dhabas/restaurants must be prohibited from employing children. It is necessary that this stipulation which already exists must be effectively enforced.

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29. The learned Solicitor General submitted that in the Ministry of Family Welfare and Child Development, a division needs to be created to deal with issues arising out of dissemination of publications which are

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harmful to young persons, publishing pornographic material in electronic form as well as the enforcement of Section 293 of the Penal Code.

30. It is submitted that a further research study must be undertaken on the efficacy of the provisions of the Young Persons (Harmful Publications) Act, 1956, Section 67 of the Information Technology Act, 2000 and Section 293 of the Penal Code. The Transplantation of Human Organs Act, 1994 makes removal of human organs without authority and commercial dealing in human organs criminally liable. a

31. In a brilliant study undertaken by the Government of India in coordination with UNICEF, areas relating to trafficking have been acknowledged. It is submitted that the Central Government acknowledges the increasing prevalence of trafficking for the purpose of commercial sexual exploitation of children. In a study² published by the Department of Women and Child Development, Ministry of Human Resource Development, Government of India, the objectives were: b

(a) To obtain a better understanding of rescue and rehabilitation processes; c

(b) To gain a more complete understanding of the involvement of the State, the judiciary, law enforcement agencies and NGOs engaged in rescue and rehabilitation; d

(c) To make recommendations on the need for developing guidelines for rescue and rehabilitation. These guidelines should represent a common denominator of nationally agreed standards in this area as well as take regional variations into account. e

The following statistics are alarming:

(i) There are an estimated two million children, aged between 5 and 15, forced into CSI around the world; f

(ii) Girls between the ages of 10 and 14 years are most vulnerable;

(iii) 15% of commercial sexual workers in India are believed to be below 15 years old and 25% are estimated to be between the ages of 15 and 18; g

(iv) 5,00,000 children worldwide are forced into this profession every year. h

32. It is submitted that the Report dealt with cross-border trafficking in the following way:

“Research on cross-border trafficking has indicated that 5000-7000 young Nepali girls were trafficked into India annually. This research also highlighted the fact that in the last decade, the average age of the trafficked girls has steadily fallen from 14 to 16 years to 10 to 14 years. These findings are supported by studies conducted by Human Rights Watch Asia in 1995, which stated that the average age of Nepali girls trafficked into India dropped from 14 to 16 years in the 1980s to 10 to 14 h

² Rescue and Rehabilitation of Child Victims Trafficked for Commercial Sexual Exploitation, a Report by UNICEF.

a years in 1991 despite the introduction of laws designed to combat trafficking of minors. Ghosh's study estimated that Nepali children constitute 20% (40,000) of the approximately 2,00,000 Nepalese commercial sexual workers in India. Young girls are trafficked from economically depressed neighbourhoods in Nepal and Bangladesh to the major prostitution centres in Delhi, Mumbai and Calcutta. Social workers have reported encountering children as young as nine in Kamathipura, a red light area in Mumbai."

b **33.** The promise of marriage and employment is often used for luring young children into sexual trade. The Report also talks about the trafficking of children in urban brothels and the regional variations. The Report describes how trafficking is undertaken.

c **34.** Trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is very low. Women and children do not usually come to the brothels on their own will, but are brought through highly systematic, organised and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker nor the child gets caught during transit. Different groups of traffickers include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organised and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of women in this business is restricted to recruitment at the brothels.

d **35.** The typical profile of a trafficker is a man in his twenties or thirties or a woman in her thirties or forties who have travelled the route to the city several times and know the hotels to stay in and the brokers to contact. They frequently work in groups of two or more. Male and female traffickers are sometimes referred to as dalals and dalalis (commission agents) respectively and are either employed by a brothel owner directly or operate independently. Often collusion of family members forms an integral part of trafficking with uncles, cousins and stepfathers acting as trafficking agents. In March 1994, Human Rights Watch Asia interviewed several trafficked victims of whom six were trafficked into India from Nepal with the help of close family friends or relatives. In each case, the victim complained of deception.

e **36.** The Suppression of Immoral Trafficking Act* was enacted after the Geneva Convention on Immoral Trafficking of Women and Children was signed by India in 1956. In order to have data on the success of rehabilitation strategies, delivery points in rehabilitation strategy would have to be strengthened as would be seen in the later parts of this Report.

f **37.** It is submitted that a trafficker never blows the gaff. It is done in silence and quiet. It becomes necessary to involve police authorities by means of acute sensitisation to a realm of illegality. Therefore, there has to be a special initiative taken by police with reference to children. The Central Government has evolved the national plan of action to combat trafficking and

* Ed.: The Immoral Traffic (Prevention) Act, 1956

commercial sexual exploitation of women and children in 1998. It is submitted that there has now been a very careful realisation that the plan for rescue and rehabilitation must be through a conceptual map. The said map gives a very good indication of the initiatives and possibly its positive and negative outcomes. The learned Solicitor General submitted that a trafficked child can be brought before the Magistrate under two circumstances:

(a) when the raid/search or removal takes place by a police action under Section 15 of ITPA or when the Magistrate herself/himself passes rescue orders;

(b) the trafficked child can also be brought before the Magistrate as an accused under Sections 8-A and 8-B of ITPA.

38. The following directions are necessary:

(a) Every Magistrate before whom a child is brought must be conscious of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000;

(b) He must find out whether the child is below the age of 18 years;

(c) If it is so, he cannot be accused of an offence under Section 7 or 8 of ITPA;

(d) The child will then have to be protected under Juvenile Justice Authority;

(e) The Magistrate has a responsibility to ascertain and confirm that the person produced before her or him is a child by accurate medical examination;

(f) The definition of a child in Section 2(k) means a juvenile or a child as a person who has not completed 18 years of age;

(g) Once the age test is passed under Section 17(2) establishes that the child is a child/minor less than 18 years of age, the Magistrate/Sessions Judge while framing charges must also take into account whether any offence has been committed under Sections 342, 366, 366-A, 366-B, 367, 368, 370, 371, 372, 373, 375 and if so, he or she must also frame charges additionally;

(h) The child should be considered as a child in the protection of the Child Welfare Act;

(i) The child should be handed over to the Child Welfare Committee to take care of the child. The performance of the Child Welfare Committees must be reviewed by the High Court with a committee of not less than three Hon'ble Judges and two psychiatrists;

(j) A child must not be charged with any offence under ITPA or IPC;

(k) A minor trafficked victim must be classified as a child in need of care and protection. Further, the Magistrate must also order for intermediate custody of minor under Section 17(3) of ITPA, 1956;

(l) There should not be any joint proceedings of a juvenile and a person who is not a juvenile on account of Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2000;

(m) It is necessary that courts must be directed that the same lawyer must not represent the trafficker as well as the trafficked minor;

a (n) Evidence of child should be taken in camera. Courts must protect the dignity of children. The children's best interest should be the priority.

39. The learned Solicitor General submitted that Child Welfare Committees are empowered committees under Section 31(1) of the Juvenile Justice Act. However, the standards employed by the Child Welfare Committees are not the same across the country. In order to set up uniform standards, the direction relating to review of Child Welfare Committees must be re-examined. All Superintendents of Jail must report upon a review within 15 days from today whether any person who is a child is in custody of the jail, if so, the said person must be produced immediately before the Magistrate empowered to try offences under the Juvenile Justice (Care and Protection of Children) Act, 2000. The said Magistrate must set out a report in relation to the circumstances under which such a child has been lodged in jail to the Chief Justice of the High Court concerned. Thereafter the High Court may forward a report to this Court for passing of appropriate orders in relation to the welfare of the child.

b 40. The learned Solicitor General submitted that the power of rehabilitation is necessary. The said power has been conferred under Section 33(3) of the Juvenile Justice (Care and Protection of Children) Act, 2000. The said provision provides that:

“33. (3) After the completion of the inquiry if the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.”

e 41. It is further submitted that rehabilitation will be the measure of success of the Juvenile Justice (Care and Protection of Children) Act, 2000. Reintegration into society by means of confident and assertive occupations leading to a sense of self-worth will have to be devised. This requires innovative strategies and not any high flown claims to social development.

f 42. The Juvenile Welfare Board will have no competence to deal with cases of children who are in prostitution or have been trafficked. Such children are to be considered as children in need of care and protection. However, in States where the Child Welfare Committees have not been constituted, these matters should be referred to the Juvenile Welfare Board. It is submitted that the book on *Trafficking in Women and Children in India* edited by Shanker Sen along with P.M. Nair, IPS is a useful document. In a report called “Abolition of Child Labour in India” submitted by NCPDR to the Planning Commission, certain useful perspectives are to be found.

g 43. It is submitted that India is home to 19% of world's children. More than one-third of the country's population around 440 million is below 18 years. India's children are India's future. They are the harbingers of growth, potential fulfilment, change, dynamism, innovation, creativity. It is necessary that for a healthy future, we must protect, educate and develop the child

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population so that their citizenry is productive. Resources must be invested in children proportionate to their huge population. As far as the total expenditure on children in 2005-2006 is concerned, it was 3.86% and in 2006-2007 it was increased to 4.91%. It is highly inadequate looking to the population of children. a

44. In a report submitted by the Ministry of Women and Child Development, 40% of India's children have been declared to be vulnerable or experiencing difficult circumstances. They are entitled to special protection under Articles 14, 15, 16, 17, 21, 23 and 24 of the Constitution. The concerns of child and the paradigm of child rights have been addressed suitably in various international conventions and standards on child protection including the UN Convention on the Rights of the Child (UNCRC), 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985, the UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1990, the Hague Convention on Inter-Country Adoption, 1993. India has ratified the UN Convention on the Rights of the Child in 1992. The Convention inter alia prescribes standards to be adhered by all State parties in securing the best interest of the child. b
c

45. The learned Solicitor General submitted that the millennium development goals cannot be secured unless child protection is an integral part of programmes, strategies and plans for their achievement. The newly constituted Ministry of Women and Child Development has rightly remarked that child protection is an essential part of the country's strategy to place "Development of the Child at the Centre of the 11th Plan". The National Plan of Action for Children articulates a rights agenda for the development of children. d

46. The learned Solicitor General further submitted that the existing child protection mechanisms have to be first noticed. The delivery points however need to be strengthened. To review the delivery of these programmes, there must be nodal agencies. Points of responsibility have to be identified and strengthened. The programme for juvenile justice is to enable children in need of care and protection and those in conflict with law to be secured. The Central Government provides financial assistance to the State Governments/UT administrations for establishment and maintenance of various homes, salary of staff, food and clothing for children in need of care and protection of juveniles in conflict with law. Financial assistance is based on proposals submitted by States on a 50:50 cost-sharing basis. e
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47. It is submitted by the learned Solicitor General that in order to give effect to the programme for juvenile justice, it is necessary that nodal points have to be identified. The Child Welfare Committee is one such body, but it is necessary that the working of the Child Welfare Committee must be overseen by either the Executive Chairman of the Legal Services Authority or by the High Court itself. It is also necessary that the financial assistance being provided for children in need and care must result in tangible results to the children whose future is sought to be rehabilitated. For that purpose, it is g
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a appropriate that a court-monitored mechanism is established. For every juvenile home, a District Judge or a Judge nominated by the Chief Justice of the High Court should be a visitor. There must be periodic internal reports which are given to the High Court and just as in case of prisons, juvenile homes must be monitored by courts and their living conditions must also be carefully examined.

b **48.** It is also submitted by the learned Solicitor General that the point of responsibility for overseeing the conditions in the juvenile home must also be shared by the District Magistrate of each district. It is necessary that there should be dual reporting—one to the judicial section of the High Court; and the other to the District Magistracy and onwards to the State Government. Each State Government must open a Juvenile Justice Cell which will receive periodic reports of juvenile homes, the number of children, the status of children, the manner of rehabilitation and the current status. The State
c Government must also ensure that therapeutic help as well as psychiatric assistance wherever necessary is offered to the juveniles on a top priority basis. The District Collectors must submit their reports to the Secretary of the Department concerned who in turn must report to the Chief Secretary. The Chief Secretary must be constructively responsible for the administration of the programme for juvenile justice and also must supervise the monetary
d spending and the manner in which the money spent has been duly accounted. Thus a certification programme for spending monies based on Central schemes must be introduced. This certification must be by an independent authority that will ensure that the monies allocated have in fact been spent for the benefit and welfare of the children. If the home is situated within a panchayat area, then the Chairman of the panchayat or the Zila Parishad must
e be also made responsible for certifying that all the monies which were intended for the home in terms of grants or subventions have been duly utilised.

f **49.** It is further submitted by the learned Solicitor General that the Integrated Child Protection Programme for Street Children is also a scheme by which NGOs are supposed to run 24-hour shelters and to provide food, clothing, shelter, non-formal education, recreation, counselling, guidance and referral services for children. Considering the vulnerability of the children, all NGOs must be directed to be registered with the Collector concerned. There must be a database of every NGO including details of all the
g functionaries of the NGO with full particulars including their addresses. In order to enable the enrolment in schools of street children, vocational training, occupational placement and to mobilise preventive health services including reduction of drug and substance abuse, a nodal point is necessary. The nodal point must be either a Sub-Divisional Magistrate/Executive Magistrate whose work will be countersigned by a Subordinate Judge appointed by the District Judge of the district. Similarly, database must be
h maintained in relation to the children, their parentage, present status and the present condition of their educational qualifications and whether they are capable of vocational training. It is important that occupational therapists

must be able to assess on the basis of modern IQ and aptitude tests about the way in which such children can be taken forward to mainstream living by offering vocational guidance. Offering children under difficult circumstances, relevant support is an obligation and should not be a matter of charity or fortuitousness in terms of a magnanimous dispensation. a

50. The learned Solicitor General also gave suggestions as under:

Child-line services are provided for children in distress

These should be catalogued and there should be a Central Registry which will provide information about the status of the child-line services at the local level. It should be the District Magistrate who must be responsible for the effective running of the child-line service. All District Magistrates in the country must post on the website their child-line service number and must give effective publicity to the services available and invite members of civil society to report any child in distress at such numbers. b
c

Shishu Griha to promote in-country adoption

Details of the working of the said scheme need to be collected and a database must be maintained in respect of orphans/abandoned/destitute infants or children up to 6 years. The adoptive parents must be obliged to give reports to the District Judge who will in turn examine whether the adoptive parents have taken care of the child failing which adequate court-monitored measures may be necessary. d

Schemes for working children in need of care and protection

This scheme is very important. Children who are engaged as domestic labour, working at roadside dhabas and mechanic shops have to be rescued and a bridge education has to be provided including vocational training. This must be undertaken again by identifiable points of responsibility. It is necessary that an Executive Magistrate must be allocated a certain area to be covered where children are rescued. This should be undertaken by a District Magistrate dividing his district in suitable divisions where such Executive Magistrates can rescue working children. They need to be rehabilitated. It is important that rescue will be effective only when there is scope for rehabilitation. It should not happen that in the name of rehabilitation children are put in detention homes or remand homes. That would be an act of cruelty. e
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51. The learned Solicitor General further gave suggestions including Pilot Project to combat trafficking of women and children for commercial sexual exploitation as under: g

Pilot Project to combat trafficking of women and children for commercial sexual exploitation

This is a source and destination area for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to hometown and legal services, etc. h

Central Adoption Resource Agency (CARA)

a It is an autonomous body under the Ministry of Women and Child Development to promote in-country adoption and regulate inter-country adoption. CARA also helps both Indian and foreign agencies involved in adoption of Indian children to function within a regulated framework, so that such children are adopted legally through recognised agencies and no exploitation takes place.

b *National Child Labour Project (NCLP) for rehabilitation of child labourers*

Under the scheme, project societies at the district level are fully funded for opening up of special schools/rehabilitation centres to provide non-formal education, vocational training, supplementary nutrition, stipends, etc. to children withdrawn from employment.

c **52.** The Ministry of Women and Child Development has actually in an outstanding report identified the shortcomings and gaps in existing child protection institutions. The reasons for limitations in effective implementation of programmes have been properly identified. The reasons are as follows:

Lack of prevention

d Policies, programmes and structures to prevent children from falling into difficult circumstances are mostly lacking. This pertains both to policies to strengthen and empower poor and vulnerable families to cope with economic and social hardship and challenges and thus be able to take care of their children, as well as to make efforts to raise awareness of all India's people on child rights and child protection situation.

e *Poor planning and coordination*

(i) Poor implementation of existing laws and legislations;

(ii) Lack of linkages with essential lateral services for children, for example, education, health, police, judiciary, services for the disabled, etc.;

f (iii) No mapping has been done of the children in need of care and protection or of the services available for them at the district, city and State levels;

(iv) Lack of coordination and convergence of programmes/services;

(v) Weak supervision, monitoring and evaluation of the juvenile justice system.

g *Services are negligible relative to the needs*

(i) Most of the children in need of care and protection, as well as their families do not get any support and services;

(ii) Resources for child protection are meagre and their utilisation is extremely uneven across India;

h (iii) Inadequate outreach and funding of existing programmes results in marginal coverage even of children in extremely difficult situations;

(iv) Ongoing large-scale rural-urban migration creates an enormous variety and number of problems related to social dislocation, severe lack of shelter and rampant poverty, most of which are not addressed at all; a

(v) Lack of services addressing the issues like child marriage, female foeticide, discrimination against the girl child, etc.;

(vi) Little interventions for children affected by HIV/AIDS, drug abuse, militancy, disasters (both man-made and natural), abused and exploited children and children of vulnerable groups like commercial sex workers, prisoners, migrant population and other socially vulnerable groups, etc.; b

(vii) Little interventions for children with special needs, particularly mentally challenged children.

Poor infrastructure

(i) Structures mandated by legislation are often inadequate; c

(ii) Lack of institutional infrastructure to deal with child protection;

(iii) Inadequate number of CWCs and JJBs;

(iv) Existing CWCs and JJBs not provided with requisite facilities for their efficient functioning, resulting in delayed enquiries and disposal of cases. d

Inadequate human resources

(i) Inappropriate appointments to key child protection services leading to inefficient and non-responsive services;

(ii) Lack of training and capacity building of personnel working in the child protection system;

(iii) Inadequate sensitisation and capacity building of allied systems including police, judiciary, health care professions, etc.; e

(iv) Lack of proactive involvement of the voluntary sectors in child protection service delivery by the State UT administrations;

(v) Large number of vacancies in existing child protection institutions. f

Serious service gaps

(i) Improper use of institution in contravention to government guidelines;

(ii) Lack of support services to families at risk making children vulnerable;

(iii) Overbearing focus on institutional (residential care) with non-institutional (i.e. non-residential) services neglected; g

(iv) Inter-State and intra-State transfer of children especially for their restoration to families not provided for in the existing schemes;

(v) Lack of standards of care (accommodation, sanitation, leisure, food, etc.) in all institutions due to lower funding;

(vi) Lack of supervision and commitment to implement and monitor standards of care in institutions; h

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a (vii) Most 24-hour shelters do not provide all the basic facilities required, especially availability of shelter, food and mainstream education;

(viii) Not all programmes address issues of drug abuse, HIV/AIDS and sexual abuse related vulnerabilities of children;

(ix) None of the existing schemes address the needs of child beggars or children used for begging;

b (x) Minimal use of non-institutional care options like adoption, foster care and sponsorship to children without home and family ties;

(xi) No mechanism for child protection at community level or involvement of communities and local bodies in programmes and services;

c (xii) Serious services and infrastructure gaps leading to few adoptions;

(xiii) Cumbersome and time-consuming adoption services;

(xiv) Lack of rehabilitation services for older children not adopted through regular adoption processes;

d (xv) Aftercare and rehabilitation programme for children above 18 years are not available in all States, and where they do exist they are run as any other institution under the Juvenile Justice (Care and Protection of Children) Act, 2000.

It is further submitted by the learned Solicitor General that the above needs to be addressed by interventional orders of this Court in the exercise of its extraordinary jurisdiction under the Constitution. Points of implementation must be identified.

e **53.** The learned Solicitor General further submitted that each State Government must identify an officer who is responsible for implementation of schemes in relation to children. There must be a parallel linkage between a point of contact of the Collector/ executive administration with a point in legal aid i.e. the Executive Chairman of the State Legal Services Authority
f and a point in the NGO sector/civil society. Similarly, points must be identified in each Zila Parishad and Panchayat Samiti and Gram Panchayats. In fact, the Presiding Officers of the Gram Nyayalayas may also be encouraged to identify children who are vulnerable and who need protection. The Integrated Child Protection Scheme is presently in place. It seeks to institutionalise essential services and strengthen structures; it seeks to enhance capacities at all levels; it seeks to create database and knowledge
g base for child protection services; it needs to strengthen child protection at family and community level. The guiding principles are neatly formulated in this Scheme. These must be implemented.

54. The adoption programme will be governed by the following guiding principles:

h (i) Best interest of the child is paramount;

(ii) Institutionalisation (e.g. placement into residential care) of the child should be for the shortest possible period of time;

(iii) All attempts should be made to find a suitable Indian family within the district, State or country; a

(iv) The child shall be offered for inter-country adoption only after all possibilities for national adoption, or other forms of family based placement alternatives such as placement with relatives (kinship care), sponsorship and foster care arrangements have been exhausted; b

(v) All institutions should disclose details about children in their care and make sure that those free for adoption are filed and recorded with the State Adoption Resource Agency (SARA) and CARA, with all supporting documentation of authorisation of such adoption from CWC; c

(vi) Inter-State coordination to match the list of prospective adoption parents (PAPs) with that of available children should be done by SARAs; c

(vii) No birth mother/parent(s) should be forced/coerced to give up their child for monetary or any other consideration;

(viii) Adoption process from the beginning to end shall be completed in the shortest possible time;

(ix) Monitoring, regulating and promoting the concept and practice of ethical adoptions in the country should be ensured; d

(x) Agencies involved in the adoption process should perform their duties in a transparent manner, following rules of good governance and adhering to the professional and ethical code of conduct. Those agencies shall be reporting to and will be subject to rigorous auditing and supervision by responsible State bodies. e

55. The most outstanding feature of this Scheme which needs to be implemented on a full-time and firm basis is the Government-civil society partnership. This will involve active involvement of the voluntary sector, research and training institutions, law college students, advocacy groups and the corporate sector. It should be the duty of the Health Secretary of each State Government including under the Chairmanship of the Health Secretary, Government of India to have a blueprint for implementing the Government-civil society initiative. It is necessary that there must be a 6-monthly strategy plan which must be prepared by the State Government and also by the Central Government in this regard. f

56. The ICPS programmes are now brought under one umbrella and are as follows: g

(a) Care, support and rehabilitation services through child-line;

(b) Open shelters for children in need in urban/semi-urban areas;

(c) Family based non-institutional care through sponsorship, foster care, adoption and aftercare. h

57. It is necessary that poor families must be discouraged from placing their children into institutional care as a poverty coping measure.

a Institutionalised children have to be reintegrated into families. The following portion of the sponsorship Scheme is relevant:

“3.1. It is submitted that this can be monitored by a representative of the Comptroller and Auditor General/Accountant General of each State as well as the Health Secretary in charge of child development in each State.”

b 58. The Scheme shall provide support for foster care through the sponsorship and foster care fund available with the District Child Protection Society. The Child Welfare Committee either by itself or with the help of SARA, shall identify suitable cases and order placement of the child in foster care. Once the Child Welfare Committee orders the placement of the child in foster care, a copy of the order shall be marked to DCPS for release of funds and to SARA for follow-up and monitoring. SARA shall periodically report about the progress of the child to the Child Welfare Committee and DCPS. In view of the directions suggested, the Child Welfare Committee must directly come under the supervision of the District Judge/Judge of the High Court, it is submitted that the above implementation must also be overseen by a court-monitored mechanism. There must be an annual report by CARA. The said report must be scrutinised by a Secretary in charge of family and social welfare. On 9-9-2009, an office memorandum was issued by the Ministry of Home Affairs.

c
d
e 59. The provisions of the Right of Children to Free and Compulsory Education Act, 2009 are material. By virtue of Section 3 of the Act, every child of the age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. The Central Government has notified the Act in the Gazette on 27-8-2009 and the Act has been brought into force with effect from 1-4-2010.

f 60. It may also be noted that Chapter 6 of the Act has special provisions for protection of the right of children. The National Commission for Protection of Child Rights has already been constituted. The said Commission now receives a statutory status by virtue of this Act. In view of the performance of the present National Commission for Protection of Child Rights, which has taken pioneering efforts, it is expected that on a close interface between the National Commission for Protection of Child Rights, the State Governments and the Ministry of Women and Child Development, positive outcomes should actually be worked out.

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h 61. It is, therefore, necessary that a coordinated effort must be made by the three agencies, namely, the Commission, the Ministry and the State Governments. The learned Solicitor General submitted that the recommendations be implemented by the agencies concerned. In the State/ Union Territory, the responsibility must vest either in the Chief Secretary or a Secretary in charge of children, women and family welfare. It would be open

to the State Government in appropriate cases to nominate a Special Officer for the said purpose not lower than the rank of a Secretary to the State Government. Each State must issue a circular effectively indicating how the recommendations will be implemented. a

62. We accept the submissions of the learned Solicitor General and direct that the said circular shall be issued within 4 weeks from today and a compliance report be filed by the Chief Secretary of each State to this Court.

63. From the above comprehensive submissions made by the learned Solicitor General it is abundantly clear that the Government of India is fully aware about the problems of children working in various places, particularly in circuses. It may be pertinent to mention that the right of children to free and compulsory education has been made a fundamental right under Article 21-A of the Constitution. Now every child of the age of 6 to 14 years has right to have free education in neighbourhood school till elementary education. b
c

64. We have carefully mentioned comprehensive submissions and suggestions given by the learned Solicitor General and others. We plan to deal with the problem of children's exploitation systematically. In this order we are limiting our directions regarding children working in the Indian circuses. Consequently, we direct: d

(i) In order to implement the fundamental right of the children under Article 21-A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.

(ii) The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children be kept in the care and protective homes till they attain the age of 18 years. e

(iii) The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification. f

(iv) The respondents are directed to frame proper scheme of rehabilitation of rescued children from circuses.

(v) We direct the Secretary of the Ministry of Human Resources Development, Department of Women and Child Development to file a comprehensive affidavit of compliance within ten weeks.

65. This petition is directed to be listed for further directions on 19-7-2011. g

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of the victim Harish Chandra Ram. Thereafter in the de novo enquiry, the enquiry officer had taken pains to call Harish Chandra Ram from his native place but he did not appear during the enquiry. It is not the case of the writ petitioner that the disciplinary authority purposely withheld Harish Chandra Ram from appearing in the departmental enquiry. Harish Chandra Ram had given a written complaint, a copy of which was produced during the course of enquiry which supports the charge levelled against the writ petitioner.

12. Further, the writ petitioner in his defence had accepted the detention of Harish Chandra Ram and his release. However, he has denied the allegation of snatching of money from him but from his own defence, it is evident that he had accepted the incident except of course that he had not snatched the money. On the basis of the materials on record, the enquiry officer held the writ petitioner guilty with which the disciplinary authority as also the appellate authority agreed.

13. It is well settled that the High Court while exercising the power of judicial review from the order of the disciplinary authority does not act as a court of appeal and appraise evidence. It interferes with the finding of the enquiry officer only when the finding is found to be perverse. We are of the opinion that the Division Bench of the High Court erred in setting aside the order of the learned Single Judge and quashing the order of compulsory retirement. The finding recorded by the enquiry officer is based on the materials on record and on proper appreciation of evidence which cannot be said to be perverse calling for interference by the High Court in exercise of its power of judicial review.

14. In the result, the appeal is allowed, the impugned order is set aside but without any order as to costs.

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(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

BUDHADEV KARMASKAR

Appellant:

Versus

STATE OF WEST BENGAL

Respondent.

Criminal Appeal No. 135 of 2010[†], decided on February 14, 2011

A. Constitution of India — Art. 21 — Weaker sections of society, Protection of — Prostitutes or sex workers, held, also have a right to live with dignity under Art. 21 — Therefore, all State Governments and Central Government directed to take steps for their rehabilitation — Immoral Traffic (Prevention) Act, 1956 — Ss. 15 to 17 — Crimes Against Women and Children — Trafficking and Prostitution (Paras 14 to 17 and 2)

[†] From the Judgment and Order dated 25.7.2007 of the High Court at Calcutta in CRA No. 487 of 2004

Sarat Chandra Chattopadhyay: *Shrikant* and *Devdas*; Sahir Ludhianvi: *Chakle*; Dostoyevsky: *Crime and Punishment*; Historical character Amrapali. referred to

- a **B. Penal Code, 1860 — S. 302 — Murder of sex worker/prostitute — Conviction confirmed — Eyewitnesses (PWs 2, 4, 7 and 8) deposing that accused beat deceased sex worker with fists and legs and she fell down on the floor — Accused then brutally banging her head on wall and floor several times due to which victim bled profusely — Victim being brought to hospital where she was found “dead on arrival” — Blood oozing out from her ear and nostril with swelling on left eyeball and left eyebrow — Injuries report and medical evidence corroborating testimony of eyewitnesses — High Court upholding conviction under S. 302 and sentence of life imprisonment, held, justified — Appellant-accused committed murder in a brutal manner of a helpless woman and deserves no sympathy from court — Injuries show brutality of crime (Paras 5 to 13)**

SS-1D/A/47331/SR

c

Advocates who appeared in this case :

Lajja Rani, Advocate, for the Appellant;

T.C. Sharma and Ms Neelam Sharma, Advocates, for the Respondent.

ORDER

- d 1. Heard the learned counsel for the appellant. This appeal has been filed against the impugned judgment and order dated 25-7-2007 passed by the High Court of Calcutta in CRA No. 487 of 2004. The facts have been set out in the impugned judgment and hence we are not repeating the same here except wherever necessary.

- e 2. This is a case of brutal murder of a sex worker. Sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution.

- f 3. In the novels and stories of the great Bengali writer Sarat Chandra Chattopadhyay, many prostitutes have been shown to be women of very high character e.g. Rajyalakshmi in *Shrikant*, Chandramukhi in *Devdas*, etc. The plight of prostitutes has been depicted by the great Urdu poet Sahir Ludhianvi in his poem *Chakle* which has been sung in the Hindi film *Pyasa* “Jineh naaz hai Hind per wo kahan hain” (simplified version of the verse “Sana khwan-e-taqdees-e-mashrik kahan hain”).

- g 4. We may also refer to the character Sonya Marmelodov in Fyodor Dostoyevsky’s famous novel *Crime and Punishment*. Sonya is depicted as a girl who sacrifices her body to earn some bread for her impoverished family. Reference may also be made to Amrapali, who was a contemporary of Lord Buddha.

- h 5. In the present case, the incident happened on 17-9-1999 at about 9.15 p.m. The deceased Chhaya Rani Pal alias Buri was living in a red light area and was a resident of Room No. 8 of Premises No. 19, Jogen Dutta Lane in

Calcutta. She was evidently a sex worker. The appellant Budhadev kicked her with fists and legs, and she fell down on the floor. The appellant then caught her by her hair and banged her head against the floor and the wall several times which left the victim bleeding from her ear, nose and head. The incident was witnessed by four persons, PW 2, Abida; PW 4, Maya; PW 7, Asha and PW 8, Parvati.

6. PW 2 Abida has deposed that she saw the appellant-accused catching the victim by her hair and banging her head against the wall. The victim was profusely bleeding through her nose and mouth. On seeing this, Abida started shouting and then the accused pushed her and went down and fled away.

7. PW 8 Parvati saw the victim being mercilessly beaten by the appellant-accused, and the same is the evidence of PW 7 Asha. In the post-mortem, as many as eleven injuries on the body of the victim were found, eight of which were on various parts of the face and forehead.

8. The police was informed about the incident over the telephone as is evident from the testimony of PW 2 Abida. After the police arrived on the spot, sample of the blood spilled from the body of the victim was collected and photographs taken. The victim was brought by Asha Khatoon and others to the hospital where she was found "dead on arrival". Blood was oozing out from her ear and nostril. There was swelling on the left eyeball and left eyebrow. Thus, the medical evidence corroborates the ocular testimony.

9. PW 10, Dr. Amitava Das, the Medical Officer who held the post-mortem examination of the dead body of deceased Chhaya Rani Pal found the following injuries on her person:

(1) Abrasion 1" x ½" over the nose just below the nasal bridge.

(2) Abrasion ½" x ½" over left side forehead ½" above left eyebrow 3" left to midline.

(3) Abrasion ½" x ½" over left side of forehead just over the left eyebrow 2" left to midline.

(4) Bruise 2" x 1" over left upper eyelid.

(5) Bruise 2" x 1" over anterior aspect of mid part of nose.

(6) Abrasion ½" x ¼" over right side of forehead 1" above right eyebrow 2" right to midline.

(7) Abrasion 2" x 1" over right side of face just below the right eye and just right to outer canthus of right eye.

(8) Lacerated wound ½" x ¼" x scalp over left parietal region 4½" left to anterior midline and 2" below left parietal eminence.

(9) Abrasion 3" x ½" over posterolateral aspect of right forehead 1" below right elbow.

(10) Abrasion 1" x ½" over anterior medial aspect of lower part of right forearm 1" above right wrist.

(11) Abrasion 4" x 3" over upper part of posterior aspect of right thigh 7" above right knee joint.

10. On dissection, the doctor found the following injuries:

- a (1) Haematoma 3½" x 2" in the scalp tissue over right frontal region.
 (2) Haematoma 3½" x 2" in the scalp tissue over left frontal region.
 (3) Haematoma 3½" x ½" in the scalp tissue over left parietal region.
 (4) Fissured fracture 3" long more or less longitudinal over left parietal temporal bone.
 (5) Haematoma 2" x 1" in the scalp tissue over right parietal region.
- b (6) Subdural haemorrhage present involving the right parietal and temporal lobe.
 (7) Lacerated wound ½" (half) x ¼" x substance over right parietal lobe of brain substance.

c The abrasions were non-scabbed and red in colour. The bruises were dark red in colour. The margins of the lacerated wounds were irregular and red in colour. All the injuries showed signs of vital reactions. No other injury except those described could be detected even on careful dissection and examination.

d **11.** PW 10 Dr. Amitava Das, Medical Officer of Mauza Burdwan Medical College, opined that the death was due to the effect of the injuries as noted ante-mortem in nature: that all the injuries as noted in the post-mortem examination report might be caused if a person is pushed against the wall and it may be homicidal in nature.

e **12.** The injuries abovementioned show the brutality of the crime. The head of the deceased was battered again and again in a hideous and barbaric manner. The trial court has rightly convicted the appellant under Section 302 of the Penal Code, 1860 and sentenced him to life imprisonment and the High Court has not committed any error in upholding the conviction and sentence imposed by the trial court.

f **13.** We find no reason to disbelieve the testimony of the eyewitnesses in this case, namely, PW 2, PW 7 and PW 8 which corroborates the medical evidence. The appellant-accused has committed murder in a brutal manner of a helpless woman and deserves no sympathy from this Court. For the reasons given above, this appeal is dismissed.

g **14.** 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 the "prostitutes" as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

h **15.** As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.

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(2011) 11 SCC

16. Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the woman will not be able to feed herself.

17. We propose to have the response of the Centre and the States in this regard and hence the case shall be listed before us again on 4-5-2011 to be taken up as the first case on which date the first compliance report, indicating therein the first steps taken by the Central and the State Governments in this regard, shall be submitted. Issue notice to the Central Government and all the State Governments which will also file responses by the date fixed for hearing.

(2011) 11 Supreme Court Cases 542

(BEFORE H.S. BEDI AND C.K. PRASAD, JJ.)

NACHHATTAR SINGH AND OTHERS

Appellants;

Versus

STATE OF PUNJAB

Respondent.

Criminal Appeal No. 808 of 2005[†], decided on February 3, 2011

Penal Code, 1860 — Ss. 306 & 498-A and S. 113-A, Evidence Act, 1872 — Abetment of suicide by meting out cruelty — Nature of proof required — Presumption under S. 113-A, Evidence Act, 1872 — When can be invoked — Conviction of parents-in-law of deceased, reversed — “Cruelty” — What amounts to — Held, “cruelty” under S. 498-A means any wilful conduct which is of such nature as is likely to drive a woman to commit suicide or to cause grave injury or danger to her life or person — Further held, such wilful conduct should be of such nature as would provoke a person of common prudence to commit suicide — Difference of opinion within a family on everyday mundane matters would not fall within said category — On facts held, merely because appellants (in-laws of deceased) wanted deceased, as a good daughter-in-law to look after them in old age and not to take up job and shift residence, could not be said to be infliction of such cruelty as amounted to abetment of suicide — Presumption under S. 113-A, Evidence Act cannot thus be drawn — Evidence Act, 1872, S. 113-A

(Paras 6 and 7)

Appeal allowed

P-D/A/47464/SR

Advocates who appeared in this case :

Rahul Sharma, Abhishek Anand and P.N. Puri, Advocates, for the Appellants;
Kuldip Singh, Advocate, for the Respondent.

[†] From the Judgment and Order dated 16-9-2004 of the High Court of Punjab and Haryana at Chandigarh in Crl. A. No. 88 SB of 1991

2015 SCC OnLine Ori 472

In the matter of an application under Section 482 of the Code of
Criminal Procedure, 1973
(BEFORE S.K. MISHRA, J.)

Dharmendra Kumar Beuria & other Petitioners

v.

State of Orissa Opposite Party

For the petitioners - M/s. G.N. Mishra, D.N. Pattanayak

For the opposite party - Addl. Standing Counsel

Criminal Misc. Case No. 3401 of 2015

Decided on November 20, 2015

S.K. MISHRA, J.:— The petitioners are charge-sheeted for the offence under Sections 324, 326, 366/34 of the Penal Code, 1860, hereinafter referred to as the 'IPC' for brevity, read with Sections 16, 17 and 18 of the Bonded Labour System (Abolition) Act and Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000. After submission of charge-sheet, the learned SDJM, Bhubaneswar has taken cognizance of the offences mentioned above on 14.10.2014 in C.T. Case No. 459 of 2014, arising out of Chandrasekharpur P.S. Case No. 36/2014.

2. The learned counsel for the petitioners confined his argument only to the cognizance of offence under Sections 326 and 366 of the IPC. He concedes that as far as other offences are concerned, he is not advancing any argument for quashing of those offences. It is stated by the learned counsel for the petitioners that the ingredients of offence under Section 326 of the IPC are not fulfilled. Hence, cognizance of offence under Section 326 of the IPC should be quashed. It is also contended that the ingredients of offence under Section 366 of the IPC are singularly lacking in this case. So, order taking cognizance of the offence in that Section is also bad and is to be quashed.

3. This case was initiated on the FIR lodged by the Child Welfare Committee (CWC), Bhubaneswar, Dist : Khurda on 08.02.2014. It is alleged in the FIR that the victim girl, aged about 12 years was rescued by the police and was produced before the CWC on 06.02.2014.

4. It is alleged that in her statement, the victim girl stated that she is 4th child of Ananta Lohara and Kanakalata Lohara of Vill : Mugapala, P.S. : Kuakhia, District : Jajpur. Her father is a daily labourer and he was having difficulty to look after his eight children. The sister of her father, namely, Tara Lehar brought the victim to her home and she was

studying Class-III in Kamarda Cromite Prathamik Vidyalay, At : Kumarda, P.O. : Kansa, P.S. Tamka, Dist : Jajpur. It is further alleged in the FIR that as Tara Lehar required money for her daughter's marriage, she sold Saraswati-victim girl to the present petitioners, namely, D.K. Behuria and his wife Sagarika Sahoo, who are residing At : 13/9, BDA Colony, Chandasekharapur, Bhubaneswar for Rs. 15,000/- . It is alleged that this was done without the knowledge of her father.

5. The Child Welfare Committee alleged in the FIR that the victim girl has been working as a bonded labour with the aforesaid couple for the last two months. She was used to clean their home, wash their clothes, clean the toilet and did all other household chores as well as she looked after their baby. It is further alleged that she has been physically tortured by both the petitioners. As a result of such assault, she has got several marks and grievous injury over her body. In these two years, she was not allowed to meet her father. She has not even spoken to them. It is further alleged that when she cries with pain in her body, her employer threatened her that if she tells about the torture they will put her parents and herself in prison. Therefore, it is alleged that she was living with a traumatic state of mind with fear and pain.

6. On 06.02.2014, it was alleged that she was thrown out from the employer's house. As a result, she got an opportunity to escape from the bonded slavery and the story of her suffering and cruelty by her employer came to light. The Committee took the view that it is a gross violation of child right. In the aforesaid facts, this Court is at loss to understand why the aunt (Pisi) of the victim girl, whose name is Tara Lehar has not been arrayed as an accused in this case as there is specific allegation that she sold her to the present petitioners. The investigation of the case has not directed in that line also and even if materials on record the learned SDJM, Bhubaneswar mechanically took cognizance of the offence and did not thought proper to issue process against the said Tara Lehar.

7. In course of hearing, the Court carefully examined the statement of the victim girl. It is apparent from her statement that when she was very young her mother died of lighting. Thereafter, Tara Bati Das, who happens to be her aunt, took her to Lambay. She was plucking flowers in the morning and it was going to the house of relations of the petitioners. On 07.05.2012, she came to the house of the present petitioners. The petitioners engaged her in all kinds of domestic work like washing of latrine, cleaning of house, looking after the baby girl of the petitioners. In the meantime, the said Tara Lehar took Rs. 15,000/- towards the service rendered by the victim to the petitioners. In her statement she has narrated the torture meted out to her and how she was assaulted by the petitioners and ultimately she was driven out on

07.01.2014 after inflicting injuries on her body. Then, she came out of their house and asked some people present in the street about way to Jajpur. When the public saw that she has sustained injuries, she was taken to child line. The child line approached C.W.C. and C.W.C. lodged an FIR as narrated above.

8. Now, the question remains to be seen whether offence under Section 326 of the IPC is made out or not. Section 326 of the IPC provides for punishment causing grievous hurt by dangerous weapons or means. In this case, a careful examination of the injury report reveals that the victim girl sustained several injuries including cut injuries. None of those injuries is grievous. So, the essential ingredients to attract offence under Section 326 of the IPC are singularly lacking. Hence, the order taking cognizance of offence under Section 326 of the IPC is bad in law. Section 366 of the IPC provides for kidnapping, abduction or inducing woman to compel her marriage. It is appropriate to quote the exact provision. It reads as follows : -

"366. Kidnapping, abducting or inducing woman to compel her marriage etc. - whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

9. The essential ingredients of this Section is that kidnapping must have with intent that she can be compelled or knowing it to be likely that she will be compelled to marry a person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse. So, the essential requirement of Section 366 of the IPC as distinguished from the fact of the case is that the girl or woman shall be put to sexually illicit intercourse or to take compel her marriage against her marriage. This is not the allegation of the prosecution in the present case. In this connection, the Court takes note of the reported case of *R.P. Kapur v. The State of Punjab*, AIR 1960 SC 866. In the aforesaid case, the Hon'ble Supreme Court held that it is well-established that the inherent jurisdiction of High Court can be exercised to quash a proceeding in a proper case either to prevent the abuse of

the process of any court or otherwise to secure the ends of justice. The Supreme Court further held that ordinarily the criminal proceeding instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, the Apex Court indicated certain type of cases where proceeding can be quashed by in exercise of inherent jurisdiction of the court. It is appropriate to take note of the exact words used by the Hon'ble Supreme Court. It reads as follows:

"xxx...we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under s.561-A the High Court would not embark upon an enquiry as to whether

the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained...xxx." (Emphasis Supplied.)

10. As far as the present case is concerned, it comes into the 2nd category annunciated by the Hon'ble Supreme Court. It is apparent from the materials available on records, i.e. FIR, statements of the victim girl and other witnesses that the offence under Sections 326 and 366 of the IPC are not made out. So, the order passed by the learned SDJM, Bhubaneswar so far as it relates to taking cognizance offences along with other offences is bad. So, the order of taking cognizance so far as it relates to offence under Sections 326 and 366 of the IPC is bad and the same requires to be quashed. However, in course of examining the case, this Court also took the pains to examine Section 370 of the IPC as to whether it is attracted or not. It is necessary for properly appreciating the provision to quote the same in its entirety.

"370. Trafficking of person.-(1) whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-

1. using threats, or
2. using force, or any other form of coercion, or
3. by abduction, or
4. by practising fraud, or deception, or
5. by abuse of power, or
6. by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1. The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2. The consent of the victim is immaterial in determination of the offence of trafficking.

2. Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

3. Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to

imprisonment for life, and shall also be liable to fine.

3. Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

4. Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

5. If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

6. When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine." (Emphasis Added)

11. It is apparent from the above provision that any person for the purpose of exploitation, recruits, transports, harbours, transfers, or receives any person by using threat, force, or by abduction or by practising fraud or deception or by abuse of power or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

12. Explanation-1 provides that exploitation in this case includes any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. Explanation-2 provides that consent of the girl is immaterial in determination of the offence of trafficking.

13. As far as Sub-section (4) provides for where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. The offence is cognizable, non-bailable and triable by Court of Session.

14. After careful examination of Section 370 of the IPC, this Court finds it appropriate to find out whether the ingredients are prima facie available in this case or not. There is no dispute that there is severe allegation, which is supported by independent materials that the victim girl was exploited and harboured as a person similar to slave. Secondly,

it is also apparent from the records that the petitioners by giving money (payments) obtained consent of the person having control over the victim. So, there is prima facie material before the Court indicating that the victim girl was, for the purpose of exploitation, recruited and harboured in the house of the petitioners by inducing, i.e. payment of money and the exploitation is akin to slavery or practices similar to slavery or servitude. This Court is of the opinion that the ingredients of Section 370 of the IPC are made out. Hence, this Court finds that the act of the police officer in not charging the petitioners under Section 370 of the IPC and instead of charging them under Sections 326 and 366 of the IPC is illegal.

15. On the basis of the aforesaid discussion, facts of law and citations, this Court is of the opinion that taking of cognizance of offences under Sections 326 and 366 of the IPC by the learned SDJM, Bhubaneswar is illegal and requires to be quashed. However, to prevent abuse of process of law, necessary directions be given to the learned Magistrate to examine the records in the light of the observations made in this judgment and if he finds that a prima facie case under Section 370 of the IPC is made out, he should pass appropriate orders thereon.

16. Accordingly, the CRLMC is disposed of quashing the cognizance of offence under Sections 326 and 366 of the IPC with a direction to learned SDJM to re-examine the records so far as it relates to a commission of offence under Sections 363 and 370 of the IPC and pass appropriate orders.

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PRAJWALA v. UNION OF INDIA (*Dave, J.*)

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(2015) 17 Supreme Court Cases 29

(BEFORE ANIL R. DAVE, MADAN B. LOKUR AND KURIAN JOSEPH, JJ.)

a PRAJWALA .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 56 of 2004, decided on December 9, 2015

b **A. Crimes Against Women and Children — Trafficking — Need of proper investigating agency — Central Government to expeditiously set up proposed Organised Crime Investigating Agency (OCIA) before 30-9-2016 and it would be made functional before 1-12-2016 (Para 2)**

c **B. Crimes Against Women and Children — Trafficking — Need of comprehensive legislation — Committee constituted for said purpose by MWCD — Directions to Committee — Committee to work on making of appropriate law expeditiously within six months — Terms of reference specified therefor (Paras 3 to 9)**

[**Ed.:** *Bachpan Bachao Andolan v. Union of India*, (2014) 16 SCC 612 and connected matters, *Bachpan Bachao Andolan v. Union of India*, (2014) 16 SCC 616 and *Bachpan Bachao Andolan v. Union of India*, (2015) 13 SCC 39 may be referred to for extensive directions on these issues.]

d SS-D/56958/SR

The Judgment of the Court was delivered by

e **ANIL R. DAVE, J.**— Heard the learned counsel. We have gone through the affidavit dated 16-11-2015 filed on behalf of the Ministry of Women and Child Development, Government of India.

2. It has been submitted in the said affidavit that the Ministry of Home Affairs shall set up the “Organised Crime Investigating Agency” (OCIA). We hope that before 30-9-2016, OCIA shall be set up and also hope that it is made functional before 1-12-2016 looking to the importance of the issue before us.

f **3.** We also record the fact, as mentioned in the office memorandum dated 16-11-2015, that the Ministry of Women and Child Development has taken a policy decision to constitute a Committee under the chairmanship of the Secretary, Ministry of Women and Child Development, Government of India, for preparing a comprehensive legislation dealing with the subject of trafficking.

g **4.** The aforesaid Committee is to work on the following terms and reference:

(i) To study the various Acts/legislations under the purview of different Ministries/Departments relating to various aspects of trafficking.

h (ii) To consider the gaps in the existing legislation, from the point of view of prevention, pre-rescue, rescue, post-rescue and rehabilitation aspects.

(iii) To strengthen victim protection protocol so as to ensure that the victims are treated as victims and not as offenders.

(iv) To draft a comprehensive legislative framework covering all aspects of trafficking, as may be considered necessary. a

(v) To provide for adequate shelter homes for the rescued victims.

(vi) To prepare a comprehensive policy for law-enforcing agencies, including for lady police officers for handling the victims of trafficking.

5. We are sure that the Committee shall do the needful at an early date so that appropriate law can be enacted on the subject. We hope that the Committee shall prepare and submit its report preferably in six months. b

6. In view of the above development in the matter, this petition does not survive. The writ petition is, accordingly disposed of.

7. We record our appreciation for Prajwala and Dr Sunitha Krishnan for bringing such an important and humanitarian issue to our notice and for able assistance rendered by the learned Senior Counsel, Mr Dushyant Dave and Ms Indu Malhotra, learned Additional Solicitor General Mr N.K. Kaul and learned Advocate Ms Aparna Bhat, National Legal Services Authority and other learned advocates in the process of disposing of this case relating to social problems. c

IAs Nos. 3 to 5 of 2015 (for impleadment) d

8. A statement has been made on behalf of the Union of India that if any suggestion is made by anybody including the applicants to the Ministry of Home Affairs, the same will be looked into.

9. In view of the above statement made on behalf of the Union of India, IAs Nos. 3 to 5 of 2015 are disposed of. e

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2017 SCC OnLine Ker 21219 : (2018) 1 KLJ 146 : (2017) 4 KLT
1153 : 2018 AIR CC 2119

In the High Court of Kerala at Ernakulam
(BEFORE K. VINOD CHANDRAN, J.)

Moideen E.M., S/o Muhammed, Aged 48 years,
Eangath House, Varavoor, Pilakode P.O., Thrissur
District Petitioner(s)

By Adv. Sri. C.M. Mohammed Iquabal

v.

1. State of Kerala, Represented by the Secretary to the Health and Family Welfare Department, Government Secretariat, Thiruvananthapuram, PIN-695 001.
2. The Secretary, Health and Family Welfare Department, Government Secretariat, Thiruvananthapuram-695 001.
3. The District Level Authorization Committee for Transplantation of Human Organs, Thrissur, Thrissur Medicalcollege Hospital, Post Thrissur-680 020, Represented by its Chairman.
4. Local Approval Committee of Organ Transplantation, Westfort Hi-Tec Hospital, Thrissur, PIN-680 002, Represented by its Chairman.
5. Press Council of India, Soochna Bhavan, 8-C.G.O. Complex, Lathi Road, New Delhi-110 003, Represented by its Secretary.
6. The Nodal Officer, Knos, Deceased Donor Multi Organ Transplantation Programme, Government of Kerala.

Additional 6th Respondent is Impleaded as Per
Order Dated 08.11.2017 Respondent(s)

R1 to R4 & R6 by Senior Government Pleader Smt. K.R. Deepa.

W.P. (C). Nos. 33801 of 2017-A, 34533 of 2017-N, 34764 of 2017-U, 34995 of 2017-Y, 35057 of 2017-F, 35239 of 2017-D, 35505 of 2017-K, 35544 of 2017-P, 35561 of 2017-U, 35747 of 2017-P, 36077 of 2017-H, 36080 of 2017-H, 36087 of 2017-I, 36120 of 2017-M, 36236 of 2017-D & 36409 of 2017-A

Decided on November 24, 2017

The Judgment of the Court was delivered by

K. VINOD CHANDRAN, J.:— In conflict is the law; when the petitioners attempt to bring into confluence the profoundest of all human emotions: “sacrifice” and the urge innate in every living being; to live on. The petitioners in these 16 writ petitions are all persons who are disabled with renal complaints and need, according to their doctors, kidney transplantation. The writ petitions seek permission to make publications in print media, seeking a kidney from willing altruistic donors from the public. This Court has been permitting such publications by orders looking into the provisions of the Transplantation of Human Organs and Tissues Act, 1994 [for brevity “the Act”]; finding that such publication is not prohibited by law so long as it does not invite ‘supply for payment’ or ‘offers such supply’ or ‘indicate willingness to initiate or negotiate any arrangement’; looking at Section 19(1)(f).

2. I was cautioned by the submission, of a learned Government Pleader in one of such cases; relating to transplant of organs, that though the publications may not have an indication explicitly; it could lead to a payment or arrangement; which by law has been prohibited by the Act. There are no safeguards to prohibit commercial dealings in human organs and tissues once the publication has been permitted; was the compelling argument. Looking into the orders passed, this Court finds that there is no declaration of law and if there had been, there was no requirement for the subsequent, frequent petitions.

3. On being so cautioned, this Court had proposed a hearing on the aspect, and had also impleaded the Nodal Officer, Kerala Network for Organ Sharing (KNOS), which is in charge of the Deceased Donor Multi Organ Transplantation Programme, Government of Kerala. This Court also had interaction with the State Nodal Officer of the KNOS and Deputy District Medical Officer, Ernakulam; the District Nodal Officer. A statement has also been placed on record by the Nodal Officer KNOS.

4. While so in the last one week, there are 17 writ petitions filed, which were posted together and heard on 15.11.2017. Quite tragically, one of the petitioners died in the meanwhile and that writ petition was dismissed as infructuous. Expediency, either way, is the need of the hour and hence the learned Counsel for the petitioners and the learned Government Pleader were heard.

5. The learned Counsel were unanimous in their submission that there is no prohibition in the Act from making publication. Section 19 was specifically referred to and it was pointed out that only publications inviting donors for consideration is prohibited by legislation. Even the Legislature recognized the fact that there will be willing donors in the society who would sacrifice their organ; willingly to sustain another person's life. The petitioners herein beseech such donation on altruistic

motives alone; which is a special reason as spoken of in the Act. They do not propose any consideration to be paid or any arrangement to be made, for such transplant. They pin their last hopes on altruistic persons who would willingly so sacrifice their organs to sustain the life of another. The publications only seek a response from the innate goodness of human beings; which this Court cannot ignore nor can the law makers.

6. It is submitted that there is a prevalence of renal complaints; especially with the changing life style. The deceased donor transplant scheme formulated by the State is unable to meet the demands of the rising number of patients; who are the expectant recipients. It is also submitted that a transplantation from a living donor is more advisable than one from a cadaver. The donors also have a support system in the form of societies and associations formed to help and assist them and it is a proved fact that a live donor still has a life expectancy of 15-20 years. A centralized system of organ transplant from living persons, as proposed by this Court at the time of hearing, with anonymity of the donor and recipient being the standard, is unworkable insofar as there could be totally unrelated persons who would come forward for a donation to a particular (directed) individual for reasons other than genetic or legal relationships. There should be more education of the masses as to organ transplantation and the benefits derived therefrom as has been done in the case of blood donations. There is no prohibition as such from making publications and the media refuse; more for fear of prosecution, especially in the context of a Circular issued by the Government. The Circular, which goes against the provisions of the Act cannot be sustained, argue petitioners.

7. The statement filed by the KNOS asserts that there can be no permission granted for publication since it would definitely lead to commercial arrangements. The gullible and the poor; who are a majority, could be easily tempted and if agreeing to a transplant on an arrangement, would have absolutely no remedy to realize whatever the arrangement be, since commercial dealings in human organs are prohibited by law. It is stated that dialysis is an effective alternate treatment and a patient could survive for many years on regular dialysis. The statistics of kidney transplant in the period 2011-2017 in the various hospitals show that unrelated transplant is on the increase. Due to this the deceased organ transplants have come down considerably; to 16, upto October of 2017, while it was 72 in 2016. Yet again while 605 patients in the waiting list of deceased organ transplantation died; in the period 2011-2017 the unrelated kidney donation was 1692. The statistics are alarming and disturbing in so far as an additional 1692 persons; the living donors, are put at risk medically. The public notices hence are not desirable and would go

against the spirit of the enactment prohibiting commercial dealings in organs and it would only aid exploitation of the poor and gullible; who would also be rendered physiologically impaired.

8. Addressing the contention that the media houses do not accept any requests for publications for reason of a Circular issued by the Government and for fear of penal action; the learned Government Pleader produced the Circular which reads as under:

“Text in vernacular.”

9. This Court finds the Circular to be in tandem with the legislation. One often sees financial help being sought for, by patients living in impecunious circumstances through proper press releases. There cannot be any commercial transactions inferred, for reason of the very financial state of the patient. The media presumably, are resisting for fear of penal action or it could also be on ethical issues. If either be the case it would not be proper for this Court to direct publication. To prevent a penal action or to absolve a person from the consequences of a crime, it will not be proper for this Court to exercise the discretionary extra ordinary jurisdiction. Nor could it overstep the ethical concerns of a group or individual, especially when it is difficult for the person seeking invocation of such remedy, as in this case, to assert a right conferred on him to make a publication. There is no law permitting publication of advertisements with transplantation requests.

10. This Court has to pertinently notice that there is a rise in organ donation for purely altruistic motives. They willingly sacrifice their organs for the survival of another, but ideally it is not to a known person. These are called non-directed donations and is covered by the “special reasons”; though the term is not specifically defined, under S. 9(3). Also under 9(3) is covered the directed donation which is to a known person, by reason of “affection or attachment”. I am not called upon to examine the motivation behind such donations; which definitely is not for material benefits. Approval for such a transplantation is also to be given by the Authorization Committee. The Transplantation of Human Organs Rules, 1998 (for short Rules) prescribe an elaborate procedure to ensure inter alia that there is no consideration passed. The issue dealt with here is of publications, inviting donors with altruistic motives to donate an organ to an identified individual.

11. The law specifically prohibits commercial dealings in human organs and that is how the Preamble of the Act speaks. Emphatically it is to be observed that it is not an enactment against exploitation. That is to say, however large or generous the compensation is, it is not to be permitted, since there can be no sale of organs. When the legislation intends to prohibit every commercial transaction, then the provisions are to be interpreted to serve that which is intended.

12. It is pertinent that even in the case of deceased donors, for removal of organs for therapeutic purposes, the law intends a consent from the deceased, during his life time or his death bed, (S.3(1A) & (2)) which should not have been revoked before death. If there is no consent expressed, then, if the deceased had never objected, nor are any of his relatives objecting; only then could the removal be effected (S.3(3)). The authority to give consent on behalf of a deceased minor are the parents (S.3(7)). Even in the case of unclaimed bodies, if there is a possibility of anybody claiming the body, there is an interdiction on the authorized officer from permitting removal of organs (S.5). In the case of a living donor a transplant of an organ removed can only be done, if the recipient is a near relative (S. 9(1)). When the recipient is not a near relative, consent alone cannot be a ground since the Parliament prescribed that it can only be on an approval of the Authorization Committee constituted under the Act and Rules. The law makers were aware of the misuse that could be perpetrated on the mere consent of a living donor. The law hence does not permit transplant from a live donor on a mere consent or even an informed consent; on altruistic motives; it would have to be approved by the Authorized Committee.

13. This Court cannot ignore the plight of the petitioners nor can it shut its eye to an evil that could be perpetrated by providing a field to overstep the law. When permitting publications seeking altruistic donors, it cannot be ensured that; what the law prohibits will not be occasioned. Developments in aspects of human life bring within its wake, problems arising from misuse, abuse and flagrant violations of accepted civilized social ethics; especially in the field of medicine. Though a minority, there is a sizable human population who, are born with or by accident have, one or more of their faculties impaired. The developments in the medical field have done wonders for them. Coupled with their will to overcome their adversities, they have excelled in life and their chosen vocation; bettering their more fortunate fully rounded brethren. The possibility of extending life on another mans vitals; but has opened up new possibilities and equally deadly consequences.

14. It was argued that a live donor has life expectancy for 15 to 20 years. Essentially the argument accepts that a healthy man's life is put at risk. It is to say that in the prime of youth or in middle age, the life expectancy is reduced and confined to a maximum of 15 to 20 years. However there is no material placed before me as to any reduced life expectancy nor the contrary. Suffice it to say, the argument is not worthy. Be that as it may, it cannot be ignored that the removal of an organ from a living person will also bring within its wake psychological problems. This together with the physiological, would have its impact in

the family and will slowly spread into the society. When it is for a commercial consideration, it is definitely actuated by life's immediate adversities; to tide over which, the donor consents to organ donation. This cannot be termed to be a proper consent on free will nor is it one for affection or attachment as spoken of in S. 9(3). It is also not a 'special reason' as understood from the general tenor of the Act. Even when considering removal of organs after death, if it comes to the knowledge of the Appropriate Authority that the deceased in his life time had objection to transplantation after death; then it cannot be done. This is the rigor brought in by law. In that context if publications are permitted without any explicit offer of consideration or an arrangement; can it be prevented, when the live donor contacts the expectant recipient directly, is the vexing question the answer to which is an emphatic 'NO'. The enactment is a perfect example of social engineering and it is not for this Court to interfere with such a law on misplaced sympathies without looking at the consequences and the possible evil it could unleash.

15. Altruistic donations are on a higher plane and reaffirms the faith in humanity. There is an argument addressed on educating society as to the benefits behind organ transplantation. Yes, there has to be more awareness, mostly on deceased donation of organs; the benefits of which are overwhelming. There can be no equation to an act of blood donation, which permissible quantity, studies reveal, is replaced in four hours. The procedure for blood donation and transplantation of an organ has no similarity. While the risk in blood donation is negligible, the risk of an invasive surgery is much more in transplantation.

16. Can it be authoritatively stated, that out of the two, one kidney is a surplus? The renal parameters of a donor are assessed at the time of transplant and it does not take into account the medical complications that may arise in future due to the stress on the remaining organ. There is also an element of risk to the donor who is subjected to a surgical procedure and recovery therefrom. Quests in life are many and varied, for the haves, but for most; the have-nots, it is "a better tomorrow". To loose hope in life and to sell ones own organ to achieve better living conditions is not a happy situation. Live organ transplantation for consideration, other than love, affection or a willing sacrifice, is abhorrent to the concept of a healthy, civilized society.

17. In the present batch there is one petitioner who had one transplantation and is now seeking another. The batch also disclose four petitioners in the age group of 20 to 30 and four between 30 to 40. The majority, eight, are above 45. Statistically the sample is 1% (16) of the live transplants that occurred in the 6 year period between 2011-2017, which is 1692. Definitely there is an increase in the demand for transplantation. Publications inviting live donors is prohibited under the

Act to prevent commercial transactions or arrangements. Even if there is no explicit offer of any benefits, before the issue reaches the Authorization Committee there could be an arrangement arrived at. There can be no publication to precipitate altruism, which has to come from within and cannot be directed, against a particular individual whom the donor has never come across in life. The prayer for permitting publications; for the reasons stated above, cannot be allowed.

18. Altruistic donations to maintain its purity, according to World Health Organization should be non-directed. The World Health Organization [for brevity "WHO"] has issued the Guiding Principles [for brevity "GP"] for Organ Donation, of which those relevant are extracted hereunder: —

GP 3

Donation from deceased persons should be developed to its maximum therapeutic potential, but adult living persons may donate organs as permitted by domestic regulations. In general living donors should be genetically, legally or emotionally related to their recipients.

Live donations are acceptable when the donor's informed and voluntary consent is obtained, when professional care of donors is ensured and follow-up is well organized, and when selection criteria for donors are scrupulously applied and monitored. Live donors should be informed of the probable risks, benefits and consequences of donation in a complete and understandable fashion; they should be legally competent and capable of weighing the information; and they should be acting willingly, free of any undue influence or coercion.

GP 5

Cells, tissues and organs should only be donated freely, without any monetary payment or other reward of monetary value. Purchasing, or offering to purchase, cells, tissues or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned.

The prohibition on sale or purchase of cells, tissues and organs does not preclude reimbursing reasonable and verifiable expenses incurred by the donor, including loss of income, or paying the costs of recovering, processing, preserving and supplying human cells, tissues or organs for transplantation.

GP 6

Promotion of altruistic donation of human cells, tissues or organs by means of advertisement or public appeal may be undertaken in accordance with domestic regulation.

Advertising the need for or availability of cells, tissues or organs, with a view to offering or seeking payment to individuals for their cells, tissues or organs, or, to the next of kin, where the individual is deceased, should be prohibited. Brokering that involves payment to such individuals or to third parties should also be prohibited.

GP 9

The allocation of organs, cells and tissues should be guided by clinical criteria and ethical norms, not financial or other considerations. Allocation rules, defined by appropriately constituted committee, should be equitable, externally justified, and transparent.

GP 10

High-quality, safe and efficacious procedures are essential for donors and recipients alike. The long-term outcomes of cell, tissues and organ donation and transplantation should be assessed for the living donor as well as the recipient in order to document benefit and harm.

The level of safety, efficacy and quality of human cells, tissues and organs for transplantation, as health products of an exceptional nature, must be maintained and optimized on an ongoing basis. This requires implementation of quality systems including traceability and vigilance, with adverse events and reactions reported, both nationally and for exported human products.

GP 11

The organization and execution of donation and transplantation activities, as well as their clinical results, must be transparent and open to scrutiny, while ensuring that the personal anonymity and privacy of donors and recipients are always protected”.

19. These are the guiding principles which should regulate any live transplant. This Court is of the opinion that any publication permitted could lead to negotiations and merely because there is no explicit offer in the advertisements, it cannot be inferred that there would not be any passing of consideration or an arrangement negotiated. Truly altruistic motives will also not be directed against an individual and life of one is as precious of yet another.

20. The factors favouring donation to a particular individual is purely medical. The age of a potential recipient, his medical condition, the compatibility with the donor termed medically as ‘matching’, the family situation, and any other relevant factor. As far the donor, anonymity rules out the consent being on account of anything other than free will. This would have to be done by an impartial, qualified body of people. As to the deceased donations there is a body in existence, the KNOS, who decide on the recipient when an organ is made available in the

unfortunate circumstance of a life extinguished. The Government has formulated the procedure for Transplantation of Human Organs to carry out its Cadaver Organ Transplantation Programme by G.O.(M.S.) No. 37/2012/H&FWD dated 04.02.2012. The G.O. provides for registration of intending recipients through the hospitals and a prioritization based on the condition of the patient. This shall be followed in the case of live donations also till the Government brings out separate procedures for living altruistic donations. The KNOS can be entrusted with this onerous responsibility also, for the present, in view of the prevalent requests for transplantation.

21. The petitioners can register themselves with the KNOS, through the hospitals indicating their blood type or whatever details are required for organ transplantation. The KNOS shall make periodic press releases seeking willingness for donation of organs on purely altruistic motives. Any application received shall be processed, initially with a psychological evaluation and then finding a suitable registered individual requiring donation. The identification of the recipient and the cross match for deciding compatibility shall be done with a team of Doctors as decided by the Nodal Officer and the expenses incurred shall be reimbursed by the intended recipient. The entire procedure shall be carried out ensuring anonymity of the donor and the expected recipient and eventually with approval from the Authorization Committee. Authorization Committees have been constituted by the State at the State and District level who shall deal with the individual cases referred to it. The Guidelines for Authorization Committees brought out by Notification No. 14931/S2/2009/H&FWD dated 19.11.2010 shall apply in these cases also. The State can bring out fresh procedure and guidelines, in consultation with the Advisory Committee as constituted under G.O.(M.S.) No. 37/2012/H&FWD dtd.04.02.2012. The Chief Secretary shall take expeditious steps to formulate a procedure and bring out guidelines for altruistic non-directed donations; with anonymity maintained of the donor and the recipient. The State Government shall also ensure that there is a regular follow up of the donor and the recipient, for statistical purposes and also to provide a support system for the donor. A fund could also be created to accept donations from the public or under Corporate Social Responsibility to provide a support system for those donors who are motivated only by altruism.

22. The writ petitions are disposed of, declining the permission sought to make publications; but with the alternate measure of registration with the KNOS as directed herein above. No order as to costs.

regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.

GURIA SWAYAM SEVI SANSTHAN v. SATYABHAMA

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(2018) 13 Supreme Court Cases 387

(BEFORE ARUN MISHRA AND DR D.Y. CHANDRACHUD, JJ.)

a GURIA SWAYAM SEVI SANSTHAN .. Appellant;

Versus

SATYABHAMA AND ANOTHER .. Respondents.

Criminal Appeals No. ... of 2017[†] with No. ... of 2017[‡], No.

b ... of 2017^{††}, No. ... of 2017^{‡‡}, No. ... of 2017^{†††}, No. ... of 2017^{‡‡‡}, No. ... of 2017^{††††}, No. ... of 2017^{‡‡‡‡}, No. ... of 2017^{†††††}, No. ... of 2017^{‡‡‡‡‡}, No. ... of 2017^{††††††}, No. ... of 2017^{‡‡‡‡‡‡}, decided on February 13, 2017

Criminal Procedure Code, 1973 — S. 439 — Bail — Grant of, by High Court — In a mechanical manner, without considering seriousness of crime — Approach of High Court not proper — Orders granting bail, set aside

c — Case of human trafficking and forcing minor girls into prostitution — Accused persons were charged under Ss. 370 and 373 IPC and Ss. 3 to 7 and 9, Immoral Traffic (Prevention) Act, 1956 — Accused persons were arrested in aforesaid crime for human trafficking and forcing minor girls into prostitution — As many as 41 minor girls were rescued during raid, who all were kept confined and were subjected to torture and harassment — Allegedly, growth hormones were given to L, a nine-year-old girl for purpose of prostitution and similar treatment was given to others — They were forced and were actually put into prostitution — They were kept hungry, intoxicated with drugs, etc. — There is a gang which is operating to force minor girls into prostitution and involved in human trafficking — High Court granted bail to aforesaid accused persons

d Considering seriousness of allegations, held, High Court ought not to have granted bail in a mechanical manner, without even noticing facts of case — Approach of Court, cannot be said to be proper at all, while enlarging accused persons on bail in such a serious crime — Hence, orders passed, granting bail to accused persons, stands set aside — Further, prosecution as well as trial court, directed to examine material witnesses first — Trial court also directed to record evidence at least for ten days in one month — In aforesaid manner,

g † Arising out of SLP (Crl.) No. 8671 of 2016. Arising from the impugned final Judgment and Order in *Satyabhama v. State of U.P.*, 2016 SCC OnLine All 2485 (Allahabad High Court, CRM:BA No. 23801 of 2016, dt. 27 7 2016)

‡ Arising out of SLP (Crl.) No. 8677 of 2016

†† Arising out of SLP (Crl.) No. 8674 of 2016

‡‡ Arising out of SLP (Crl.) No. 8673 of 2016

††† Arising out of SLP (Crl.) No. 8676 of 2016

‡‡‡ Arising out of SLP (Crl.) No. 8675 of 2016

†††† Arising out of SLP (Crl.) No. 8672 of 2016

h ††††† Arising out of SLP (Crl.) No. 8679 of 2016

‡‡‡‡ Arising out of SLP (Crl.) No. 8680 of 2016

†††††† Arising out of SLP (Crl.) No. 8678 of 2016

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SUPREME COURT CASES

(2018) 13 SCC

let trial be concluded as expeditiously as possible — In case of undue delay in trial for no fault on their part, it would be open to accused persons to approach Supreme Court — Penal Code, 1860 — Ss. 370 and 373 — Crimes Against Women and Children — Immoral Traffic (Prevention) Act, 1956 — Ss. 3 to 7 and 9 — Crimes Against Women and Children — Bail (Paras 2 to 4)

Satyabhama v. State of U.P., 2016 SCC OnLine All 2485. *reversed*

Appeals allowed

Y-D/59314/SR

Advocates who appeared in this case :

Anuj Kapoor, Ms Tanima Kishore and Ms Sridevi Panikkar, Advocates, for the Appellant; Ratnakar Dash and Pramod Swarup, Senior Advocates (Ardhendumauli Kr. Prasad, Abhishek Kr. Singh, Ameet Singhy, Praveen Swarup, Sunil Kr. Jha, Amreender Kr. Choubey, S.K. Pathak and Ms Seita Vaidialingam, Advocates) for the Respondents.

Chronological list of cases cited

on page(s)

1. 2016 SCC OnLine All 2485. *Satyabhama v. State of U.P. (reversed)*

388c-d, 388f-g

ORDER

1. Leave granted. The appellant has questioned the order¹ passed by the High Court of Allahabad in the various bail applications alleging release of the accused persons on bail. The accused persons have been charged with commission of offence under Sections 370 and 373 of the Penal Code, 1860 (in short "IPC") and Sections 3, 4, 5, 6, 7 and 9 of the Immoral Traffic (Prevention) Act, 1956 (in short "the Act"). Under Section 6 of the Act, punishment is up to life imprisonment and minimum sentence is of seven years. The facts indicate that the accused persons have been arrested in the aforesaid crime for human trafficking and forcing minor girls into prostitution. As many as 41 minor girls were rescued during the raid which was conducted on 1-5-2016 and all were kept confined and were subjected to torture and harassment. It was also alleged that growth hormones were given to Laxmi, a nine-year-old girl for purpose of prostitution and similar treatment was given to others. They were forced and were actually put into prostitution. They were kept hungry, intoxicated with drugs, etc. There is a gang which is operating to force minor girls into prostitution and involved in human trafficking.

2. We have heard the learned counsel for the parties and have gone through the orders¹ passed by the High Court and considering the seriousness of the allegations, we are of the opinion that the High Court ought not to have granted the bail in a mechanical manner without even noticing the facts of the case. The approach of the Court cannot be said to be proper at all while enlarging the accused persons on bail in such a serious crime. In the circumstances without commenting on the merits of the case, we deem it appropriate to set aside the orders passed of grant of bail to the accused persons.

3. It is stated that in the trial court charges have been framed. In the circumstances, as it appears, large number of witnesses have to be examined. It

¹ *Satyabhama v. State of U.P.*, 2016 SCC OnLine All 2485

a is stated that 15-2-2017 is the date for recording of evidence of the witnesses. We direct the prosecution as well as the trial court to examine the material witnesses first and also direct the trial court to record the evidence at least for ten days in one month. In the aforesaid manner, let the trial be concluded as expeditiously as possible. Suffice it to observe that nothing mentioned in the order shall be deemed to be an expression on merits of the case.

b **4.** In case there is an undue delay in the trial for no fault on their part, it would be open to the accused persons to approach this Court. It is assured that the accused persons and their counsel will cooperate with the trial.

5. The appeals are allowed. The impugned orders are set aside.

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2022 SCC OnLine SC 189

In the Supreme Court of India
(BEFORE L. NAGESWARA RAO AND B.R. GAVAI, JJ.)

SMW (C) No(s). 6/2021

In Re Children in Street Situations

([Only W.P. (CrI.) No. 274 of 2020 is Listed Under this Item])

With

W.P.(CrI.) No. 274/2020 (PIL-W)

(IA No. 139277/2021 - Exemption From Filing Affidavit

IA No. 10286/2021 - Exemption From Filing Affidavit

IA No. 8311/2021 - Exemption From Filing Affidavit

IA No. 97311/2020 - Grant of Interim Relief)

SMW (C) No(s). 6/2021, W.P. (CrI.) No. 274 of 2020, W.P.(CrI.) No. 274/2020
(PIL-W), IA No. 139277/2021, IA No. 10286/2021, IA No. 8311/2021 and IA No.
97311/2020

Decided on February 1, 2022

Criminal Law — Practice and Procedure — Evidence — Human Trafficking — Child
victims/witness — Testimony via Video Conferencing

ORDER

W.P.(CrI.) No. 274/2020

1. This Writ Petition has been filed for the following reliefs: —

“(a) Issue a writ of mandamus or a writ/direction of a similar nature directing that during the COVID-19 pandemic, the recording of evidence of child victims/witnesses of human trafficking across Districts/States/Countries, including statements under Section 164 of the Cr.P.C., be ordinarily undertaken via video-conferencing from a government facility within the local jurisdiction of the residence of such children;

(b) Issue a writ of mandamus or a writ/direction of a similar nature directing that the recording of statements/evidence of child witnesses/victims of trafficking across Districts/States/Countries via video-conferencing, even after the COVID-19 pandemic abates, either take place via a Commission or in the Court complex/CWC nearest to the child’s place of residence;

(c) Issue a writ of mandamus or a writ/direction of a similar nature directing the Respondents to ensure adequate infrastructure coverage in district courts across the country for the creation of a robust video-conferencing mechanism;

(d) Issue a writ of mandamus or a writ/direction of a similar nature directing the Respondent No. 3 (the National Commission for the Protection of Child Rights) to formulate guidelines for the recording of the testimonies and Section 164, Cr.P.C. statements of such child witnesses/victims via video-conferencing during and after the COVID-19 pandemic, in view of the principle of “the best interests of the child”.”

2. Mr. Gaurav Agarwal, learned Amicus Curiae, proposed a pilot project, after having detailed discussions with the counsel appearing for the Petitioners. For the purpose of the pilot project, the learned Amicus Curiae selected four cases. Out of these, trial had commenced in two cases with respect to which, it was requested that directions be given for examination of witnesses by video conferencing. SC No. 151 of

2019 (*State v. Rahmatulla*) arises out of FIR No. 612 of 2018 dated 05.12.2018, registered under Sections 75/79 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act"), Sections 3/3A/14 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 ("CLA"), Sections 16/17/18 of the Bonded Labour System (Abolition) Act, 1976 ("BLA") and Sections 370/374 of the Penal Code, 1860 ("IPC"). The brief facts of the said case are that on 05.12.2018, 11 children engaged in stitching work of suit/coat covers were rescued by a surprise rescue operation from premises in Kirawal Nagar, North East Delhi, PS Khajuri Khas. The rescued children were sent to their native places, i.e., Sitamarhi and East Champaran Districts of Bihar. The case was pending in the court of Additional District Judge, Karkadooma, New Delhi. The second case bearing Case No. 52 of 2019 (*State v. Mohd. Sherjahan*) relates to FIR No. 20 of 2019 registered in Jaipur under Sections 370 (5)/344/374 of the IPC, Sections 3/14 of the CLA and Sections 75/79 of the JJ Act. The Anti-Human Trafficking Unit rescued four children on 08.01.2019, who were forced to make bangles in a confined room at Jaipur. They were not permitted to move outside, not given sufficient food and forced to work under threat. The rescued children were sent to their homes at Patna and Gaya in Bihar. The trial in the said case was due to be conducted in POCSO Court-2, Jaipur.

3. The learned Amicus Curiae submitted that the pilot project which would be in three stages, with the first stage focusing on assessment of state of infrastructure at the Court Point and the Remote Point. The Court Point is in the cities or places where the trial has to take place and the Remote Point is the district/Taluk court complex or the office of the District Legal Services Authority near the place of residence of the victims/witnesses. Availability of necessary equipment for video conferencing, along with other facilities integral to the process, was to be ascertained in the first stage. The second stage involved the Judge at the Court Point fixing a date for examination of the witnesses and thereafter, issuing summons to the witnesses. The suggestion made by the learned Amicus Curiae is that through the summons, the witnesses be intimated about (i) the address of the Remote Point and date and time of hearing; (ii) name, contact details and a brief explanation of the role of the Remote Point Coordinator ("RPC"); and (iii) the requirement to carry a proof of identification. The third stage pertained to the actual examination of the child witnesses at the Remote Point and the procedures to be followed to ensure that the witnesses are examined *in camera* and without any influence.

4. After being satisfied with the trial run of examination of child witnesses at remote points, the learned Amicus Curiae in consultation with Ms. Anitha Shenoy, learned Senior Counsel appearing for the Petitioners, submitted a draft Standard Operating Procedure ("SOP"), with five stages, on 12.04.2021. By order dated 26.10.2021, this Court directed the draft SOP to be served on all the State Governments/Union Territories as well as the High Courts for their comments. After receiving responses from the High Courts, the learned Amicus Curiae submitted a note with a modified draft SOP for recording evidence of children through video conferencing. The draft SOP as suggested by the learned Amicus Curiae is as under:

"1. It is suggested that testimony of children, who are victims of inter-state/inter-district child trafficking, is recorded through video conferencing either at the video conferencing room of the court complex in the district or vulnerable witness room in the court complex of the district or the office of DLSA in the district where the child is residing.¹

2. To facilitate the above, it is prayed that the Ld. District Judges of all districts may ascertain the availability of video conferencing facility in the district/Taluk court complex or DLSA office and communicate the same to the jurisdictional High Court. The High Court may be requested to place the said information on its website on or before 30.04.2022. Further, it is prayed that efforts should be made to ensure

that such video-conferencing infrastructure/facility is created in every district, especially in those states where the incidence of child trafficking cases is high.

3. The Secretary, DLSA of the district can be requested to be the Remote Point Coordinator (RPC) for recording of the testimony of child witnesses. However, if the Chairman of the DLSA considers necessary or desirable, he/she may appoint a Retired judicial Officer as a Remote Point Coordinator. It is prayed that the Hon'ble High Courts may place the aforesaid information i.e. the names and contact details of the RPC of each district on the website alongwith the information in para 2 above.

4. When an offence of inter-state/inter-district child trafficking is taken up for trial by a Court, and if the Court point and the remote point have video conferencing facilities, the Trial Court should ordinarily give preference to examination of the child witness through video conferencing.

5. The authorized officer at the Court Point may get in touch with the RPC at the Remote Point and work out all modalities for recording of the child witness statement through video conferencing.

6. If video conferencing is feasible, a date and time be fixed by the trial court for examination of the witness(es). Summons may be issued to the child witness(es) to present himself/herself for evidence before the RPC. The summons may be served in addition through the local process server of the remote point. The witness would be required to come with identification documents. The summons would also have the name and contact details of the RPC at the Remote Point and would also mention that the witness can take help of legal aid or other assistance through the Secretary, District Legal Service Authority, if required.

7. The child witness shall be entitled to the presence of a support person as defined in the Protection of Children from Sexual Offences Rules, 2020 or any other applicable laws/guidelines or as allowed by the Trial Court. Further, best practices that are required to be followed in recording the evidence of child witnesses should continue to be followed even during the recording of the testimony through video conferencing. These include, ensuring that the child witness is provided diet money on the basis of the distance travelled by him or her to reach the remote point, the presence of a police officer at the remote point to ensure that the child witness does not come in contact with the accused (if out on bail) or any relative of the accused, and any other best practice required by the law/relevant guidelines/being followed by the States.

8. Copy of documents, if any, required to be marked or shown to the witness may be transmitted by the Court electronically to the RPC. The RPC at the Remote Point would assist in examination of the witness and ensure that no tutoring takes place and no unauthorized person or recording device is present in the room.

9. The RPC may take all measures possible and shall seek the assistance of the support person to ensure that the child witness is comfortable. Questions posed by the Public Prosecutor/Defense Counsel may be put to the Ld. Trial Judge, who in turn will put them to the witness and the Trial Court would record the testimony of the witness. The RPC may help with translation or take the assistance of a translator/special educator if required or render any other assistance which the Learned Trial Court may require.

10. On completion of recording of evidence, the deposition will be sent by the Trial Court on email to the RPC at the Remote Point who shall take a print-out and read the same out to the witness. After ascertaining the deposition is correct and verified as under law including the affixation of the child's thumb impression/signature, the RPC may certify the same and send the deposition back, in a secure manner, to the Trial Court by Speed Post and by electronic means as

permitted by law. An original may also be kept by RPC in case the Speed Post is misplaced for some reason.

11. Whenever a Trial Court proposes to record the testimony of a child witness, who is residing in another State, an intimation of the same should also be given to the Registrar of the High Court of the Court point. The Ld. Registrar may intimate the same to the Ld. Registrar of the High Court of the Remote Point with a request to render all assistance possible for recording of the testimony of the child.

12. This Standard Operating Procedure is only a broad guideline. The method and manner of recording of testimony be dependent upon the video conferencing rules framed by the respective High Courts, which would be kept in mind while recording the testimony of the child witness. It should be kept in mind that the recording of the testimony should be done expeditiously, without undue delay.

1 It can also be done at Taluk level as in some cases, video conferencing room can be available in a court complex at Taluk level or Sub Divisional level."

5. Article 24 of the Constitution of India prohibits employment of a child below the age of 14 years in any factory or mine. Article 39(f) of the Constitution obligates the State to provide opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity and to ensure that childhood and youth are protected against exploitation and against moral and material abandonment. The United Nations Convention on the Rights of Child stresses the need for protection of children from violence and exploitation. The CLA was introduced with the intention to ban the employment of children, *i.e.*, those who have not completed their fourteenth year, in specified occupations and processes and to lay down enhanced penalties for employment of children in violation of the provisions of the said Act. Section 3 thereof, as amended with effect from 01.09.2016, imposes a bar on employment of a child in any occupation or process, except where children help their families or family enterprises or work as artists in the audio-visual entertainment industry and where such work does not affect their school education. The Government of India, by a resolution dated 26.04.2013, adopted the National Policy for Children, 2013 ("2013 Policy"). The 2013 Policy was made to guide and inform all laws, policies, plans and programmes affecting children. According to the 2013 Policy, the best interest of the children is a primary concern in all decisions and actions affecting the child, whether taken by legislative bodies, courts of law, administrative authorities, public, private, social, religious or cultural institutions. Further, the State committed to ensure that all out-of-school children such as child labourers, migrant children, trafficked children, children of migrant labour, street children, child victims of alcohol and substance abuse, children in areas in civil unrest, orphans, children with disability (mental and physical), children with chronic ailments, married children, children of manual scavengers, children of sex workers, children of prisoners, etc. are tracked, rescued, rehabilitated and have access to their right to education.

6. Taking note of employment of children in fire-cracker factories of Sivakasi, Tamilnadu, this Court in *M.C. Mehta v. State of Tamil Nadu*⁴ issued the following directions to the State Governments:

"33. To give shape to the aforesaid directions, we require the States concerned to do the following:

- (1) A survey would be made of the aforesaid type of child labour which would be completed within six months from today.*
- (2) To start with, work could be taken up regarding those employments which have been mentioned in Article 24, which may be regarded as core sector, to determine which hazardous aspect of the employment would be taken as criterion. The most hazardous employment may rank first in priority, to be followed by comparatively less hazardous and so on. It may be mentioned*

here that the National Child Labour Policy as announced by the Government of India has already identified some industries for priority action and the industries identified are as below:

The match industry in Sivakasi, Tamil Nadu.

The diamond polishing industry in Surat, Gujarat.

The precious stone polishing industry in Jaipur, Rajasthan.

The glass industry in Firozabad, Uttar Pradesh.

The brass-ware industry in Moradabad, Uttar Pradesh.

The handmade carpet industry in Mirzapur-Bhadohi, Uttar Pradesh.

The lock-making industry in Aligarh, Uttar Pradesh.

The slate industry in Markapur, Andhra Pradesh.

The slate industry in Mandsaur, Madhya Pradesh.

- (3) The employment to be given as per our direction could be dovetailed to other assured employment. On this being done, it is apparent that our direction would not require generation of much additional employment.*
- (4) The employment so given could as well be the industry where the child is employed, a public undertaking and would be manual in nature inasmuch as the child in question must be engaged in doing manual work. The undertaking chosen for employment shall be one which is nearest to the place of residence of the family.*
- (5) In those cases where alternative employment would not be made available as aforesaid, the parent/guardian of the child concerned would be paid the income which would be earned on the corpus, which would be a sum of Rs. 25,000 for each child, every month. The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education.*
- (6) On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make him a better citizen. It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out.*
- (7) A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. Further, in view of the magnitude of the task, a separate cell in the Labour Department of the appropriate Government would be created. Monitoring of the scheme would also be necessary and the Secretary of the Department could perhaps do this work. Overall monitoring by the Ministry of Labour, Government of India, would be beneficial and worthwhile.*
- (8) The Secretary to the Ministry of Labour, Government of India would apprise this Court within one year from today about the compliance of aforesaid directions. If the petitioner would need any further or other order in the light of the compliance report, it would be open to him to do so.*
- (9) We should also like to observe that on the directions given being carried out, penal provision contained in the aforesaid 1986 Act would be used where employment of child labour, prohibited by the Act, would be found.*
- (10) Insofar as the non-hazardous jobs are concerned, the Inspector shall have to see that the working hours of the child are not more than four to six hours a day and it receives education at least for two hours each day. It would also be seen that the entire cost of education is borne by the employer."*

7. The International Labour Organization proposed 2021 as the International Year

for the elimination of Child Labour. The International Year was adopted by the UN General Assembly. All the member states were asked to take effective measures to eradicate forced labour and human trafficking. The number of children labourers has risen in the last four years globally. According to data released by agencies the problem of Child Labour in India is persisting inspite of the best efforts of the Government. Covid-19 had a devastating effect on children from the lower strata of society who have been suffering due to the loss of employment of their parents & closure of schools which has forced them into labour for survival. We have highlighted the problem for the purpose of reiterating the importance of protection of children and rescuing and rehabilitating them.

8. At present, we are concerned with obviating difficulties to victims of trafficking with respect to travelling long distances for the purpose of giving evidence in trial courts. Though, the public-spirited Petitioners were concerned with the safety of the trafficked children being forced to travel long distances for giving evidence during the COVID-19 pandemic, we are of the opinion that the suggestions made by the learned Amicus Curiae, in consultation with Ms. Shenoy, relating to the SOP should be put in practice as a regular feature. The said procedure need not be restricted only to the period affected by the COVID-19 pandemic. The permissibility of recording evidence through video conferencing has been considered by this Court in *State of Maharashtra v. Dr. Praful B. Desai*², *Sakshi v. Union of India*³ as well as *Eera v. State (NCT of Delhi)*⁴. In *Sampurna Behura v. Union of India*⁵, this Court encouraged the use of technologies in court proceedings by stating as under:

"77. The use of technology, both by the JJBs as well as by the CWCs is extremely important and we are disheartened to note from the affidavits and submissions made by MWCD that there is an acute shortage of computers and peripherals with the JJBs and CWCs. Technology is important not only for the effective functioning of the JJBs and CWCs, but also to deal with issues that would arise from time to time concerning the tracing and tracking of missing children, the rescue of children working in hazardous industries, trafficked children, children who leave the Child Care Institutions, victims of child sexual abuse and follow-up action, among several other requirements. It is well known that our country is a technological powerhouse and if we are unable to take advantage of the resources available with us and fully utilise the benefits of technology through computers and the internet for the benefit of children, our status as a technological powerhouse would be in jeopardy and would remain only on paper. Data, particularly of the magnitude of the kind that we are concerned with, can be easily collected through the use of computers and the internet. This would be of great assistance in planning and management of resources and MWCD and others concerned with child rights must take full advantage of this.

78. That apart, there can be no doubt that the use of computers and peripherals would make an immense contribution to the administrative functioning of the JJBs and CWCs. Both the Government of India and the State Governments need to look into this and provide necessary software and hardware to the JJBs and the CWCs for obvious reasons. We were informed by the learned counsel that the police authorities in Telangana and Andhra Pradesh in consultation with the Juvenile Justice Committee of the High Court have made considerable use of information and communication technology and we are of the view that innovative steps must be encouraged. Similarly, the use of videoconferencing could also be considered in appropriate cases where some inconvenience to the juvenile in conflict with law necessitates the use of videoconferencing facilities."

9. We have carefully examined the draft SOP which contains minute details about steps to be taken for recording the testimony of child witnesses at Remote Points. Responses have been filed by the High Courts. There is no objection taken by any High

Court to the SOP being put in practice immediately. We direct that the SOP, as has been reproduced above, shall be followed in all criminal trials where child witnesses, not residing near Court Points, are examined and not physically in the courts where the trial is conducted. We direct the RPCs to ensure that child-friendly practices are adopted during the examination of the witnesses.

10. A direction was sought by the learned Amicus Curiae regarding the source of payment of honorarium to the RPCs. We are informed by the learned Amicus Curiae that a daily honorarium of Rs. 1500/- was paid to the RPCs who were appointed as such during the pilot project. For the present, we are of the opinion that the RPCs shall be paid Rs. 1500/- per day as honorarium. We are in agreement with Ms. Shenoy that Section 312 of Code of Criminal Procedure empowers the Criminal Court to direct the Government to pay the expenses of the witnesses attending any inquiry, trial or other proceedings.

11. We requested learned Amicus Curiae who also appeared on behalf of NALSA, to get instructions regarding the willingness of NALSA to bear the expenditure relating to the payment to be made to the Remote Point Coordinator. Learned Amicus Curiae on instructions from NALSA suggested the following:

- (1) NALSA would pay Rs. 1,500/- per day to the Remote Point Coordinator (RPC) whenever the RPC is required for the purposes of examination of the child witness(es) through video conferencing.
- (2) NALSA would provide legal assistance to the child on the days when he/she comes from his/her examination, if the child is otherwise not represented by a counsel.

12. We appreciate the stand taken by NALSA to strengthen the video conferencing facilities in DLSA offices in the States of Uttar Pradesh, Bihar, West Bengal, Odisha and Assam, to begin with to ensure that in case video conferencing facility in the court complex is not available, video conferencing facility in DLSA office can be utilized for recording of the evidence of the child witness.

13. NALSA has also come forward to place the details regarding the availability of video conferencing facility for recording of statement of child witnesses in the offices of DLSA and court complex and the name and contact number of the RPC on its website and the website of State Legal Services Authority (SLSA) by 30.04.2022.

14. The concerned judicial officer at the Remote Point and the trial Court shall ensure that the recording of evidence shall be in camera wherever necessary.

15. List this matter on 2nd May, 2022 at the end of the Board.

¹ (1996) 6 SCC 756

² (2003) 4 SCC 601

³ (2004) 5 SCC 518

⁴ (2017) 15 SCC 133

⁵ (2018) 4 SCC 433

2022 SCC OnLine SC 360

In the Supreme Court of India
(BEFORE UDAY U. LALIT, S. RAVINDRA BHAT AND P.S. NARASIMHA, JJ.)

Sartaj Khan ... Appellant;
Versus

State of Uttarakhand ... Respondent.

Criminal Appeal No. 852 of 2018
Decided on March 24, 2022

The Judgment of the Court was delivered by

UDAY U. LALIT, J.:— This appeal under Section 379 of the Criminal Procedure Code, 1973 read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 is directed against the judgment and order dated 07.12.2017 passed by the High Court of Uttarakhand at Nainital in Government Appeal No. 139 of 2016.

2. The case of the prosecution as set out in the judgment under appeal was as under:

"2. The case of the prosecution, in a nutshell, is that at 11 : 00 AM, S.I. Manju Pandey, In-charge Human Trafficking Unit Sharda Bairaj, Banbasa along with other police officials reached at Sharda Bairaj near Indo-Nepal border towards eastern side to check the illicit human trafficking. One volunteer namely Meera Sauda was also with them. They were checking the people coming from Nepal border. At about 13 : 30 hours, a secret information was received that an Indian boy was trying to import a minor girl of Nepal origin for the purpose of exploitation. The information was acted upon and one girl was noticed near a cart selling snacks towards the eastern side of Sharda Barrage. The name of the girl was ascertained. She disclosed her name "X X X"¹ R/o Village Koteshwar, District Kathmandu, Nepal, aged about 15 years. The investigation was carried out by maintaining all decency through Meera Sauda, who was well conversant with Hindi and Nepali languages. She disclosed to the police party that on 10.04.2015, she came all alone to see her uncle namely Arjun Sharma, who was a teacher in Lamki (Nepal). On 11.04.2015 at about 10 : 00 AM, she was having ice-cream from a cart at Atariya Bus stand. A boy came and stood by her side. He also started having the ice-cream. He tried to entice her. He allured her that he would take her to Banbasa in India where she can do shopping. They would stay in a hotel at Banbasa and in the morning, he would send her back to Atariya, Nepal. She trusted him. The boy brought her from Atariya, Nepal to Mahendra Nagar. He started pressing her breast in the bus. She told him not to do so. Thereafter, at Mahendra Nagar, he made her to sit on a horse cart, which was going towards India. They reached Banbasa bridge at about 13 : 45 hours. The gate was closed. Many horse carts and vehicles were parked. There was lot of rush. The boy got down from the horse cart and told her that there was police checking. He tutored her to tell the police that she was going to Banbasa for shopping. He started walking ahead. He told her that he would see her after some distance. Thereafter, they searched the boy. They reached near canal gate. The boy was standing near the tree facing towards bridge. "X X X" recognized the boy and told that he was the same boy, who has enticed her to come from Nepal. The boy was arrested. He disclosed his name Sartaj Khan, S/o Sardar Khan, R/o Mohalla Bhure Khan, P.S. Khakhra, District Pilibhit, Uttar Pradesh. He was aged 30 years. He admitted his guilt. The respondent and girl were brought to the office for

counseling. Other police officials also reached the spot. It was, prima facie, found that the boy had brought the girl to India for exploitation. The personal search of the respondent was carried out. One pocket diary, one packet of condom, two man force tablets, Indian and Nepal currency and two mobile phones were found from his possession. The seizure memo was prepared. One copy of the same was handed over to the respondent. PW2 "X X X" was medically examined by PW4 Dr. Vinod Kumar Joshi.

3. The FIR was registered. The investigation was carried out and the challan was put up after completing all the codal formalities.

4. The prosecution has examined as many as six witnesses in its support.

5. Thereafter, the statement of respondent was recorded under Section 313 of Cr.P.C. He denied the case of the prosecution. According to him, he was falsely implicated."

3. The appellant was tried in the Court of Special Sessions Judge, Champawat, in Special Sessions Trial No. 07 of 2015 for having committed the offence punishable under Sections 363, 366-B, 370(4), 506 of the Penal Code, 1860 ("IPC" for short) and Section 8 of the POCSO Act,

4. In support of its case, the prosecution relied upon the testimony of PW1 Manju Pandey, who along with PW3 Meera Saud had initially interacted with the victim who was examined as PW2. The evidence of PW3 Meera Saud was as under:

"That on 11.04.2015, I was present in my office. S.I. Manju Pandey, Constable Bhuvan Rana, Constable Laxman Chand, constable Ganesh Singh Bisht and constable Ravi Joshi and driver Heera Singh were also present. We all were carrying out checking. The gate for the entry to Nepal was closed. It was about 1 : 00 or 1½ pm. It was day time. We reached a little towards Nepal. Some person came to meet Manju Pandey and told that one girl is standing near the cart. We all went near to the said chaat stall.

The chaat cart was in front towards of the custom office. I know Nepalese language. One girl about 14-15 years old was standing near the chaat cart. When I asked the name and address of the said girl in Nepalese language then she told her name is "X X X" and she is resident of Koteshwar, Kathmandu. And she told that on 10.04.2015 she was coming to Lamki in a bus from Kathmandu (Nepal) to meet her uncle and when she reached Atariya she was standing and having ice-cream from a cart and then she met with a boy who asked her to come to Banbasa, and he would make her roaming and shopping and would send her back to Atariya.

Thereafter we both boarded on a bus to Mahindra Nagar from there. Then we reached Mahindra Nagar. That boy fed me food in Mahindra Nagar. Thereafter we sat on a horse cart to India from Mahindra Nagar bus stand. When we reached towards Nepal in Banbasa then this boy asked me to stay there as the checking is going on ahead and he will meet me ahead. She told that she does not know the name of the boy. She can recognise after seeing him.

Thereafter, we all along with the girl came towards the canal after crossing the bridge in Manju Pandey's vehicle. When we reached at canal gate then the said girl pointed towards a boy and said that this is the same boy who is standing with his face towards canal and brought me. Thereafter the said boy was encircled and apprehended by the policemen and was taken to the Manju Pandey's office. A counselling was conducted there. After some time, Circle Officer and the Project Director Mr. Janak Chand, and Secretary Bhuvan Chand Gadkoti from our office came there. The CO reached in one hour and the officers from our office reached in 20-25 minutes.

Thereafter, when people from our society in Nepalese and CO made inquiry with "X X X" then she told the same thing as mentioned above. And a document of joint

inquiry was prepared. We all put our signatures on it. It is marked as Exhibit Ka-1 on the record. It is verified by me today. Thereafter the lady sub inspector prepared the memo of recovery of the prosecutrix and memo of arrest of the accused after arresting the accused. It was signed by the policemen and the people who were present at the time of the counselling. It is identified by me today. It is marked as exhibit Ka-2. The CO did not sign it. Manju Pandey had searched the accused. And she sealed the articles such as mobile etc. which was recovered from him.

Thereafter we went to police station Banbasa along with the prosecutrix and the accused with policemen. The sub inspector got the report registered and handed over the prosecutrix and the accused to the police station."

5. As regards the age of the victim, PW4 Dr. Vinod Kumar Joshi, who was one of the Members of the Board which had medically examined her, stated as under:

"The prosecutrix was medically fit in my opinion. Thereafter, on the basis of the report with regard to the age of "X X X" received from CMO Udham Singh Nagar by SI Meenakshi Nautiyal, PS Loha Ghat which is document no. 5Ka/16 5Ka/18, report of Radiologist district hospital Udham Singh Nagar on X-Ray from is document no. 5Ka/17 which is perused by CMO Udham Singh Nagar and the report of dental surgeon district hospital Udham Singh Nagar which is document no. 5Ka/19, one supplementary report with regard to the age of "X X X" was prepared by me which is document no. 5Ka/22. On which I found the age of "X X X" to be about 17 years old. On which, I identify my handwriting and signature and the signature of SI Meenakshi Nautiyal. It is marked as exhibit Ka-6."

6. The Trial Court having acquitted the appellant of the charges levelled against him, the State of Uttarakhand preferred the Government Appeal No. 139 of 2016 challenging the acquittal.

7. After considering the material on record and the rival submissions, the High Court found that the Trial Court had not considered the material evidence on record. Having analyzed the reasons which had weighed with the Trial Court, the High Court found that the decision of the Trial Court was perverse and the case of the prosecution deserved to be accepted. Allowing the appeal vide its judgment under appeal, the High Court set-aside the order of acquittal and convicted the appellant of the offences punishable under Sections 363, 366-B, 370(4) and 506 of the IPC, and under Section 8 of the POCSO Act. He was awarded substantive sentence of 7 years imprisonment under the first, imprisonment for 10 years under the second, imprisonment for 10 years under the third, and, imprisonment for one year under the fourth count of the offences punishable under the IPC. In respect of the offence punishable under Section 8 of the POCSO Act, he was awarded imprisonment for three years. All the sentences were to run concurrently.

8. Being aggrieved, the instant appeal has been preferred.

9. We have heard Mr. Jitendra Mohan Sharma, learned Senior Advocate in support of the appeal, and, Mr. Jatinder Kumar Bhatia, learned Advocate for the State.

10. Mr. Jitendra Mohan Sharma, learned Senior Advocate submits *inter alia*:

- (a) The requirements under Section 188 of the Criminal Procedure Code, 1973 were not satisfied and no sanction in terms of said Section was placed on record; and that in the absence of such sanction, the appellant could not have been tried.
- (b) There was no allurement which was extended by the appellant and the victim had gone from Kathmandu to Atariya covering the distance of more than 650 kms. on her own.
- (c) The age of the victim was definitely beyond 18 years of age and, as such, the offence would not come under Section 370(4) of the IPC.

11. The submissions are countered by Mr. Jatinder Kumar Bhatia, learned counsel

for the State. He strongly submits that the view taken by the High Court does not call for any interference.

12. Section 188 of the Code is to the following effect:

"188. Offence committed outside India.—When an offence is committed outside India—

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

13. In terms of Section 188, even if an offence is committed outside India, (a) by a citizen whether on the high seas or anywhere else or (b) by a non-citizen on a ship or aircraft registered in India, the offence can still be tried in India provided the conditions mentioned in said Section are satisfied. The Section gets attracted when the entirety of the offence is committed outside India; and the grant of sanction would enable such offence to be enquired into or tried in India.

14. As the facts and circumstances of the case indicate, a part of the offence was definitely committed on the soil of this country and as such going by the normal principles the offence could be looked into and tried by Indian courts. Since the offence was not committed in its entirety, outside India, the matter would not come within the scope of Section 188 of the Code and there was no necessity of any sanction as mandated by the proviso to Section 188. We, therefore, reject the first submission advanced by Mr. Sharma.

15. Coming to the second submission, it is true that the victim had traveled on her own from Kathmandu to Atariya. However, the evidence on record completely establishes that she was lured into coming to India. The offences alleged against the appellant were thus rightly invoked and fully substantiated.

16. As regards the third submission, the evidence on record is absolutely clear that the age of the victim was below 18 years of age. The medical board had not only done the radiological tests but had also undertaken dental test on the basis of which her age was found to be below 18 years.

17. In the circumstances, sub-section 4 of Section 370 IPC would definitely get attracted. Said Section 370(4) postulates minimum sentence of 10 years. Viewed thus, the sentences awarded to the appellant cannot be termed to be excessive on any count.

18. We, therefore, see no reason to take a different view in the matter. Affirming the view taken by the High Court, we dismiss the appeal.

19. The appellant shall serve out the sentence awarded to him.

¹ Identity of the prosecutrix/victim is not being disclosed.

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SUPREME COURT CASES

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2J

(BEFORE J.B. PARDIWALA AND R. MAHADEVAN, JJ.)

PINKI

.. Appellant;

a

Versus

STATE OF UTTAR PRADESH AND ANOTHER

.. Respondents.

Criminal Appeals No. 1927 of 2025^{†1} with Nos. 1928 of 2025^{†2},
1929 of 2025^{†3}, 1930 of 2025^{†4}, 1931 of 2025^{†5}, 1932 of 2025^{†6},
1933 of 2025^{†7}, 1934 of 2025^{†8}, 1935 of 2025^{†9}, 1936 of 2025^{†10},
1937 of 2025^{†11}, 1938 of 2025^{†12}, 1939 of 2025^{†13}, 1940 of 2025^{†14},

b

†1 Arising out of SLP (Crl.) No. 1658 of 2025. Arising from the Judgment and Order in *Santosh Saini v. State of U.P.*, 2023 SCC OnLine All 5397 (Allahabad High Court, Criminal Misc. Bail Application No. 47159 of 2023, dt. 13-12-2023) [Reversed]

†2 Arising out of SLP (Crl.) No. 592 of 2025. Arising from the Judgment and Order in *Sanjay Modanwal v. State of U.P.*, 2024 SCC OnLine All 8139 (Allahabad High Court, Criminal Misc. Bail Application No. 18231 of 2024, dt. 12-8-2024) [Reversed]

c

†3 Arising out of SLP (Crl.) No. 590 of 2025. Arising from the Judgment and Order in *Praveen Modanwal v. State of U.P.*, 2024 SCC OnLine All 8142 (Allahabad High Court, Criminal Misc. Bail Application No. 25766 of 2024, dt. 26-7-2024) [Reversed]

†4 Arising out of SLP (Crl.) No. 4660 of 2025. Arising from the Judgment and Order in *Jagveer Baranwal v. State of U.P.*, 2024 SCC OnLine All 8418 (Allahabad High Court, Criminal Misc. Bail Application No. 50911 of 2023, dt. 15-2-2024) [Reversed]

d

†5 Arising out of SLP (Crl.) No. 4661 of 2025. Arising from the Judgment and Order in *Mahesh Rana v. State of U.P.*, 2024 SCC OnLine All 8449 (Allahabad High Court, Criminal Misc. Bail Application No. 51016 of 2023, dt. 7-2-2024) [Reversed]

†6 Arising out of SLP (Crl.) No. 4662 of 2025. Arising from the Judgment and Order in *Yashoda Devi Pandit v. State of U.P.*, 2024 SCC OnLine All 8451 (Allahabad High Court, Criminal Misc. Bail Application No. 53108 of 2023, dt. 4-1-2024) [Reversed]

†7 Arising out of SLP (Crl.) No. 4664 of 2025. Arising from the Judgment and Order in *Mukesh Pandit v. State of U.P.*, 2024 SCC OnLine All 8452 (Allahabad High Court, Criminal Misc. Bail Application No. 53348 of 2023, dt. 16-2-2024) [Reversed]

e

†8 Arising out of SLP (Crl.) No. 4665 of 2025. Arising from the Judgment and Order in *Santosh Gupta v. State of U.P.*, 2024 SCC OnLine All 8441 (Allahabad High Court, Criminal Misc. Bail Application No. 19579 of 2024, dt. 20-5-2024) [Reversed]

†9 Arising out of SLP (Crl.) No. 4666 of 2025. Arising from the Judgment and Order in *Gudiya Devi v. State of U.P.*, 2023 SCC OnLine All 5396 (Allahabad High Court, Criminal Misc. Bail Application No. 46240 of 2023, dt. 7-12-2023) [Reversed]

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†10 Arising out of SLP (Crl.) No. 1667 of 2025. Arising from the Judgment and Order in *Anuradha Devi v. State of U.P.*, 2024 SCC OnLine All 8447 (Allahabad High Court, Criminal Misc. Bail Application No. 50428 of 2023, dt. 30-1-2024) [Reversed]

†11 Arising out of SLP (Crl.) No. 4668 of 2025. Arising from the Judgment and Order in *Jagveer Baranwal v. State of U.P.*, 2024 SCC OnLine All 8453 (Allahabad High Court, Criminal Misc. Bail Application No. 54874 of 2023, dt. 12-2-2024) [Reversed]

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†12 Arising out of SLP (Crl.) No. 4670 of 2025. Arising from the Judgment and Order in *Manish Jain v. State of U.P.*, 2024 SCC OnLine All 8445 (Allahabad High Court, Criminal Misc. Bail Application No. 291 of 2024, dt. 27-2-2024) [Reversed]

†13 Arising out of SLP (Crl.) No. 4671 of 2025. Arising from the Judgment and Order in *Nandlal Ram v. State of U.P.*, 2024 SCC OnLine All 8446 (Allahabad High Court, Criminal Misc. Bail Application No. 42319 of 2023, dt. 14-3-2024) [Reversed]

†14 Arising out of SLP (Crl.) No. 4672 of 2025. Arising from the Judgment and Order in *Kuldeep Ram v. State of U.P.*, 2024 SCC OnLine All 8450 (Allahabad High Court, Criminal Misc. Bail Application No. 51046 of 2023, dt. 25-4-2024) [Reversed]

h

1941 of 2025^{†15}, 1942 of 2025^{†16}, 1943 of 2025^{†17},
1944 of 2025^{†18}, decided on April 15, 2025

a A. Criminal Procedure Code, 1973 — S. 439 — Grant of bail, in cases of child trafficking — Matters to be considered by Court — Law clarified

— Setting aside of such bail in appeal after considering serious nature of crime, roles of accused and when there found callous approach and failure to impose requisite conditions on part of the High Court

b — Bail granted in case of child trafficking, registered under Ss. 363, 311 and 370(5) IPC — Cancellation sought by the victims of the crime, more particularly the kith and kin of the children who came to be trafficked — Bail granted to all the accused by the High Court mainly considering certain aspects

c Firstly, the accused not named in the FIR and their names disclosed by a co-accused — Secondly, victim not recovered from the custody of the accused and similarly situated co-accused already granted bail — Thirdly, there found no material evidence regarding tampering of evidence or intimidating of witness in previous criminal cases — Lastly, while granting bail, the High Court also considered, “bail is a rule, jail is an exception”

d — Held, Art. 23 prohibits “traffic in human beings and other similar forms of forced labour” — Trafficking, held, necessarily involves movement/ transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialisation — Further, abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users, etc. held, exploit the vulnerability of the trafficked person — Income generated by trafficking, held, comparable to the money generated through trafficking in arms and drugs — Trafficking, held, now defined as an organised crime against humanity — Further, trafficking in human beings, held, take place for the purpose of exploitation which in general could be categorised as: (a) sex-based, and (b) non-sex based

f Former category, held, includes trafficking for prostitution, commercial sexual abuse, paedophilia, pornography, cyber sex, and different types of disguised sexual exploitation that take place in some of the massage parlours, beauty parlours, bars, and other manifestations like call girl racket, friendship clubs, etc. — Non-sex based trafficking, held, could be for different types of

g †15 Arising out of SLP (Crl.) No. 4673 of 2025. Arising from the Judgment and Order in *Santosh Gupta v. State of U.P.*, 2024 SCC OnLine All 8455 (Allahabad High Court, Criminal Misc. Bail Application No. 16387 of 2024, dt. 6-5-2024) [**Reversed**]

†16 Arising out of SLP (Crl.) No. 4674 of 2025. Arising from the Judgment and Order in *Manish Jain v. State of U.P.*, 2024 SCC OnLine All 8438 (Allahabad High Court, Criminal Misc. Bail Application No. 17559 of 2024, dt. 27-5-2024) [**Reversed**]

†17 Arising out of SLP (Crl.) No. 4675 of 2025. Arising from the Judgment and Order in *Santosh Gupta v. State of U.P.*, 2024 SCC OnLine All 8440 (Allahabad High Court, Criminal Misc. Bail Application No. 18846 of 2024, dt. 19-6-2024) [**Reversed**]

h †18 Arising out of SLP (Crl.) No. 4676 of 2025. Arising from the Judgment and Order in *Shivam Gupta v. State of U.P.*, 2024 SCC OnLine All 8443 (Allahabad High Court, Criminal Misc. Bail Application No. 26287 of 2024, dt. 18-7-2024) [**Reversed**]

servitude, like domestic labour, industrial labour, adoption, organ transplant, camel racing, marriage related rackets, etc. — However, growing trafficking in women, held, principally for the purpose of prostitution — What makes women and girls vulnerable, held, economic distress, desertion by their spouses, sexually exploitative social customs and family traditions — Though SITA, 1956 amended in 1986 as ITPA, addresses trafficking and prostitution, it does not prohibit prostitution per se, but forbids commercialised vice and soliciting

Held, India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organised and a commercialised vice — However, it held, commits itself to opposing trafficking as enshrined in Art. 23 which prohibits trafficking in human beings

— Among other circumstances, the factors to be borne in mind while considering an application for bail, held, firstly, whether there is any prima facie or reasonable ground to believe that the accused had committed the offence — Secondly, nature and gravity of the accusation — Thirdly, severity of the punishment in the event of conviction — Fourthly, danger of the accused absconding or fleeing, if released on bail — Fifthly, character, behaviour, means, position and standing of the accused — Further, likelihood of the offence being repeated and the reasonable apprehension of the witnesses being influenced and danger, of course, of justice being thwarted by grant of bail, held, also relevant consideration while granting bail

A cognizable offence, held, made out at the outset with the kidnapping of children, multiple transactions of the sale of children ultimately handing over custody illegally — Further, as per reporting in the newspaper “*Times of India*”, a huge gang found dangerously operating within and outside Delhi and found selling trafficked infants and children in different States for sums ranging from Rs 5,00,000 to 10,00,000 — Further, as per this reporting, some of the arrested accused persons found habitual offenders — Further, as per the reporting, one A who was earlier arrested by CBI in a similar case of human trafficking also involved in the present incident

— Resultantly, considering the serious nature of the crime and the *modus operandi* adopted by the accused persons, the High Court held to have dealt with all the bail applications in a very callous manner — Outcome of this callous approach on the part of the High Court, held, ultimately paved way for many accused persons to abscond and thereby put the trial in jeopardy — Further, these accused persons, held, a big threat to the society wherever they are in the country — They held having exhibited a tendency of committing a particular nature of crime, namely, child trafficking — All that the High Court did was to direct the accused persons to remain present before the trial court — In none of the impugned orders there found a condition of marking presence at the police station concerned as a result, the police lost track of all these accused persons — Held, the least that was expected of the High Court while granting bail to all the accused persons was to impose a condition on each of them to

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mark their presence once in a week at the police station concerned so that the police can keep a check over the movements of all the accused persons

- a* Accused *S* claims to be a poor man and a father of four minor daughters
Prima facie, he found longing for a son and even went to the extent of purchasing a trafficked minor male child from two co-accused, namely, *J* and *AD* (a nurse serving in certain primary health centre) for Rs 4,00,000
Considering his role, he held equally responsible — Held, he may not be directly involved in actual kidnapping of the minor male child but at the same time prima facie knowledge could definitely be imputed to him that the minor child he was purchasing for Rs 4,00,000 was a trafficked child
- b* — Accused *M* appears to be one of the kingpins in the entire racket and one of the key players in the organised inter-State child-trafficking racket — Prima facie evidence revealed that he actively managed the illegal operations, coordinating the sale and purchase of trafficked children across regions — He along with two co-accused, namely, *V* and *S* found frequently working for the purpose of trafficking minors and selling them for huge amount — Prosecution alleged that between March and April 2023 he sold multiple trafficked children for the amount ranging between Rs 40,000 and Rs 2,60,000
- c* Further, accused *AD* and *J* found directly involved in child trafficking
Evidence on record indicated more than prima facie involvement of *J* in collusion with *AD* — Further, prima facie the evidence also revealed that the police retrieved one of the trafficked child directly from the custody of *J*
Child found from the custody of *J* at a point of time when *J* and his accomplices were negotiating for the sale of the said child
- d* — Certain restrictions or limitations, on the exercise of personal liberty, by the State or other such human agency, held, necessary elements, in the interest of liberty of a well-ordered society or societal interest — Held, though liberty of a person should not be lightly dealt with, the concept of liberty is not in the realm of absolutism but is a restricted one — Cry of the collective for justice, its desire for peace and harmony and its necessity for security, held, cannot be allowed to be trivialised — Life of an individual living in a society governed by the rule of law, held, has to be regulated — Such regulations which are the source in law, held, subserve the social balance and function as a significant instrument for protection of human rights and security of the collective
- e* Held, this is because, fundamentally, laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest — Further held, individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society — Prospect of greater justice, held, requires that law and order should prevail in a civilised milieu — Resultantly, considering entire factual and the legal position, impugned order granting bail to the accused, held, not justified and set aside
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- h*

— Penal Code, 1860 — Ss. 370 and 370-A (as added by amendment in 2013) — Nyaya Sanhita, 2023 — Ss. 143 and 144

Crimes Against Women and Children Prostitution/Trafficking
Human and Civil Rights Right against Infracton of the Person
Against Rape, Sexual Offences & Harassment, Cybersex Offences/Child
Pornography, etc. Suppression of Immoral Traffic in Women and Girls
Act, 1956 Immoral Traffic (Prevention) Act, 1956 Constitution of
India Arts. 15(3), 21, 23, 24 and 39 Child Labour/Child/Juvenile
homes/Orphanages/Exploitation/Trafficking/Pornography/Sexual Abuse
International Law — International Humanitarian Law — UN Protocol to
Prevent, Suppress and Punish Trafficking in Persons, Especially Women and
Children
(Paras 41 to 80)

Held :

The Indian Constitution specifically bans the trafficking of persons. Article 23, in the Fundamental Rights, Part III of the Constitution, prohibits “traffic in human beings and other similar forms of forced labour”. Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement/transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialisation. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users, etc. exploit the vulnerability of the trafficked person. *Trafficking shows phenomenal increase with globalisation.* Increasing profit with little or no risk, organised activities, low priority in law enforcement, etc. aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs. Trafficking in human beings take place for the purpose of exploitation which in general could be categorised as: (a) sex-based, and (b) non-sex based. The former category includes trafficking for prostitution, commercial sexual abuse, paedophilia, pornography, cyber sex, and different types of disguised sexual exploitation that take place in some of the massage parlours, beauty parlours, bars, and other manifestations like call girl racket, friendship clubs, etc. Non-sex based trafficking could be for different types of servitude, like domestic labour, industrial labour, adoption, organ transplant, camel racing, marriage related rackets, etc. But the growing trafficking in women is principally for the purpose of prostitution. (Para 54)

Prostitution is an international problem. However, we are aware of the fact that it is legalised in many countries around the globe. Unfortunately, society remains tolerant of this abominable crime against women. There are assorted ways of getting women into prostitution that are common to many countries; then there are particular unique methods varies to a country. Probably, the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions. In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all the countries concerned. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes;

a family expectations and pressure; resignation and acclimatisation to the lifestyle. The two principal Indian laws that addresses the trafficking and prostitution in particular are the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) and the Immoral Traffic (Prevention) Act, 1956 (ITPA), colloquially called PITA, and amendment to SITA. Neither law prohibits prostitution per se, but both forbids commercialised vice and soliciting. (Para 54)

b India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organised and a commercialised vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of All Forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). A trafficked victim is, therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The Constitution of India, under Article 23 specifically prohibits trafficking in human beings. (Para 54)

d The Supreme Court is absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. e In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations f which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. This is because, fundamentally, laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "*it is regulated freedom*". (Para 65)

g It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts h and see to it that contagious crimes do not become epidemic. In an organised

society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated: “*Personal liberty is the right to act without interference within the limits of the law.*” (Para 66) a

Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act. (Para 67) b

Bachpan Bachao v. Union of India, 2010 SCC OnLine Del 4613; *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115; *Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 416 : (2012) 3 SCC (Cri) 1172; *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899, *followed*

Sanjay v. State of U.P., 2024 SCC OnLine SC 5022, *considered*

Santosh Sao v. State of U.P., 2023 SCC OnLine All 5397; *Sanjay Modanwal v. State of U.P.*, 2024 SCC OnLine All 8439; *Praveen Modanwal v. State of U.P.*, 2024 SCC OnLine All 8442; *Jagveer Baranwal v. State of U.P.*, 2024 SCC OnLine All 8448; *Mahesh Rana v. State of U.P.*, 2024 SCC OnLine All 8449; *Yashoda Devi Pandit v. State of U.P.*, 2024 SCC OnLine All 8451; *Mukesh Pandit v. State of U.P.*, 2024 SCC OnLine All 8452; *Santosh Gupta v. State of U.P.*, 2024 SCC OnLine All 8441; *Gudiya Devi v. State of U.P.*, 2023 SCC OnLine All 5396; *Anuradha Devi v. State of U.P.*, 2024 SCC OnLine All 8447; *Jagveer Baranwal v. State of U.P.*, 2024 SCC OnLine All 8453; *Manish Jain v. State of U.P.*, 2024 SCC OnLine All 8445; *Nandlal Ram v. State of U.P.*, 2024 SCC OnLine All 8446; *Kuldeep Ram v. State of U.P.*, 2024 SCC OnLine All 8450; *Santosh Gupta v. State of U.P.*, 2024 SCC OnLine All 8455; *Manish Jain v. State of U.P.*, 2024 SCC OnLine All 8438; *Santosh Gupta v. State of U.P.*, 2024 SCC OnLine All 8440; *Shivam Gupta v. State of U.P.*, 2024 SCC OnLine All 8443; *Manish Jain v. State of U.P.*, 2023 SCC OnLine All 5398; *Santosh Saw v. State of U.P.*, 2023 SCC OnLine All 5395, *reversed* c

John C. Nimmo: *The Works of the Right Honourable Edmund Burke: A Letter to a Member of the National Assembly*, Vol. 4 (London): Quentin Skinner: *The Paradoxes of Liberty*, The Tanner Lectures on Human Values (Harvard University, 24-10-1984-25-10-1984), *referred to* d

B. Penal Code, 1860 — Ss. 363, 311 and 370(5) — Complaints regarding missing children and trafficking — Direction issued for handling such complaints e

— Held, if a complaint with regard to any missing children is made in a police station, the same should be reduced into a first information report and appropriate steps should be taken to see that follow-up investigation is taken up immediately thereafter — Further, directed in case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise — Further, directed that whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under S. 154 CrPC — However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of S. 155 CrPC, upon making an entry in the book to be maintained for the purposes of S. 155 CrPC, and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint f

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— Criminal Procedure Code, 1973 — Ss. 154 and 155

a — Penal Code, 1860 — Ss. 370 and 370-A (as added by amendment in 2013) — Nyaya Sanhita, 2023 — Ss. 143 and 144

— Crimes Against Women and Children — Prostitution/Trafficking — Human and Civil Rights — Right against Infracton of the Person — Against Rape, Sexual Offences & Harassment, Cybersex Offences/Child Pornography, etc. — Suppression of Immoral Traffic in Women and Girls Act, 1956

b Immoral Traffic (Prevention) Act, 1956 — Constitution of India — Arts. 15(3), 21, 23, 24 and 39 — Child Labour/Child/Juvenile homes/Orphanages/Exploitation/Trafficking/Pornography/Sexual Abuse — International Law — International Humanitarian Law — UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Para 33)

c *Bachpan Bachao Andolan v. Union of India*, (2014) 16 SCC 616 : (2015) 3 SCC (Cri) 552, followed

C. Penal Code, 1860 — Ss. 370 and 370-A (as added by amendment in 2013) — Trafficking in persons — Definition — Scope and nature

d In addition to the conventional understanding of trafficking being synonymous to sex trafficking and forced labour, trafficking, held, includes other forms as long as there is “recruitment, transportation, transfer, harbouring or receipt of person” for the purposes of exploitation using threat, using force, forms of coercion, abduction, fraud, deceit, abuse of power or vulnerability or consideration to get consent — Definition, held, inclusive in nature giving room for emerging forms of exploitation to be included as trafficking in persons — Consequently, an exercise to understand the expanse of trafficking, held, e needs to intrinsically examine the means of the process of engagement without getting limited to the form

Nyaya Sanhita, 2023 — Ss. 143 and 144 — UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children — Art. 3 — Supplementing the UN Convention against Transnational Organised Crime

f — Crimes Against Women and Children — Prostitution/Trafficking — Human and Civil Rights — Right against Infracton of the Person — Against Rape, Sexual Offences & Harassment, Cybersex Offences/Child Pornography, etc. — Suppression of Immoral Traffic in Women and Girls Act, 1956 — Immoral Traffic (Prevention) Act, 1956 — Constitution of India — Arts. 15(3), 21, 23, 24 and 39 — Child Labour/Child/Juvenile homes/Orphanages/Exploitation/Trafficking/Pornography/Sexual Abuse (Paras 23 and 55)

Held :

h International conventions exist to punish and suppress trafficking especially against women and children [*Ref:* UN Protocol to Prevent, Suppress and Punish Trafficking in Persons also referred as the Palermo Protocol on Trafficking.] Trafficking is now defined as an organised crime against humanity. The convention

being an international convention is limited to cross-border trafficking but does not address trafficking within the country. The definition of trafficking is significant: “The recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” (Para 55)

Bachpan Bachao v. Union of India, 2010 SCC OnLine Del 4613, *considered*

D. Penal Code, 1860 — S. 370 — Scope of — Whether a customer at a brothel comes within the purview of S. 370 — A customer at a brothel, held, comes within the purview of S. 370 because trafficking also includes prostitution, the reason being that it is one type of exploitation (Para 35.11)

Vinod v. State of Gujarat, 2017 SCC OnLine Guj 446, *considered*

E. Constitution of India — Arts. 15(3), 23, 24 and 39 — Malpractices and trafficking in children in connection with adoption of Indian children by foreigners and its commercialisation — Safeguards delineated to protect the welfare of the children

— Held, include, amongst several others, the requirement that foreigners wishing to adopt be sponsored by relevant licensed agencies in their own country, that no adoption application from a foreigner should be entertained directly by any adoption agency in India — Further held, that agencies working on inter-country adoptions and licensed by the Government of India must meet certain stipulated criteria and undertake specific responsibilities in ensuring the safety and well-being of adopted children, and that all inter-country adoption proceedings must be approved by the local courts — Penal Code, 1860 Ss. 370 and 370-A (as added by amendment in 2013) — Nyaya Sanhita, 2023, Ss. 143 and 144 (Para 26)

Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 241, *relied on*

F. Constitution of India — Arts. 15(3), 23, 24 and 39 — Trafficking in children — Purpose of trafficking — Children, held, being trafficked for: (i) Sexual exploitation, (ii) Forced labour, (iii) Begging and petty crimes, (iv) Armed conflict, (v) Child marriage, and (vi) Illegal adoption — Each of the above, held, having further manifestations within itself — Penal Code, 1860 — Ss. 370 and 370-A (as added by amendment in 2013) — Nyaya Sanhita, 2023, Ss. 143 and 144 (Paras 27 and 28)

G. Constitution of India — Arts. 15(3), 23, 24 and 39 — Trafficking in children — Working definition — Scope along with forms and purposes of child trafficking

Held, three significant elements constitute trafficking — Firstly, action involving recruitment and transportation — Secondly, means employed such

as force, coercion, fraud or deception including abuse of power and bribes

Thirdly, preliminary purpose being of exploitation including prostitution, etc. — Internationally, there held a working definition of child trafficking — Held, the working definition is clear because it incorporates the above three elements — In June 2001, India held to adopted the Palermo Protocol to evolve its working definition of child trafficking — Forms and purposes of child trafficking, stated Penal Code, 1860 Ss. 370 and 370-A (as added by amendment in 2013) — Nyaya Sanhita, 2023 — Ss. 143 and 144 — UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Art. 3 Supplementing the UN Convention against Transnational Organised Crime (Para 55)

Held :

The forms and purposes of child trafficking may be:

- (a) Bonded labour;
- (b) Domestic work;
- (c) Agricultural labour;
- (d) Employment in construction activity;
- (e) Carpet industry;
- (f) Garment industry;
- (g) Fish/Shrimp export; and
- (h) Other sites of work in the formal and informal economy.

Trafficking can also be for illegal activities such as:

- (a) Begging;
- (b) Organ trade; and
- (c) Drug peddling and smuggling.

Trafficking can be for sexual exploitation i.e.

- (a) Forced prostitution;
- (b) Socially and religiously sanctified forms of prostitution;
- (c) Sex tourism; and
- (d) Pornography.

Child trafficking can be to aid entertainment in sports:

- (a) Circus/Dance troupes; and
- (b) Camel jockeying.

Some problem of “trafficking” is highlighted only to show the plight of children and women, who are taken as domestic help by dubious placement agencies and forced into flesh trade. (Para 55)

Bachpan Bachao v. Union of India, 2010 SCC OnLine Del 4613, considered

h

H. Constitution of India — Arts. 15(3), 23, 24 and 39 — Trafficking in children — Crimes commonly concurrent with child trafficking — Scope of

Held, some crimes that are commonly concurrent with child trafficking, or which child trafficking may initially appear to be are: (A) Domestic violence; (B) Child abuse or neglect; (C) Child sexual abuse; (D) Child pornography; (E) Child labour violations

— Penal Code, 1860 — Ss. 370 and 370-A (as added by amendment in 2013) Nyaya Sanhita, 2023 Ss. 143 and 144 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children — Art. 3 — Supplementing the UN Convention against Transnational Organised Crime (Para 55)

Bachpan Bachao v. Union of India, 2010 SCC OnLine Del 4613, considered

I. Juvenile Justice (Care and Protection of Children) Act, 2015 — S. 68 — Central Adoption Resource Authority — Status of, as per S. 68, held to be of a statutory body with the mandate to promote and regulate adoptions, facilitate inter-State adoptions, frame regulations on adoption related matters and regulate inter-country adoptions (Para 29)

J. Juvenile Justice (Care and Protection of Children) Act, 2015 — S. 58(1) — Adoption of a child — Whether permissible irrespective of religion — JJ Act, 2015, held, a secular Act and as per S. 58(1), any person irrespective of religion, held, entitled to adopt a child (Para 30)

K. Juvenile Justice (Care and Protection of Children) Act, 2015 — S. 56(3) — Applicability of enactment to adoptions under the Hindu Adoption and Maintenance Act — As per S. 56(3), nothing in the Act, held, shall apply to adoptions under the Hindu Adoptions and Maintenance Act, 1956 (Para 30)

L. Juvenile Justice (Care and Protection of Children) Act, 2015 — S. 56(4) r/w S. 68 — Inter-country adoptions — Held, required to be done as per the provisions of the Act and the Adoption Regulations framed by Central Adoption Resource Authority (Para 30)

M. Juvenile Justice (Care and Protection of Children) Act, 2015 — S. 38 — Categories of children available for adoption — As per S. 38, orphaned, abandoned and surrendered children who are declared legally free for adoption by the Child Welfare Committee, held, can be placed for in-country and inter-country adoption (Para 30)

N. Juvenile Justice (Care and Protection of Children) Act, 2015 — S. 61 — Issuance of adoption order by the Court — Duty of Court under provision — Under S. 61, before issuing an adoption order, the court, held, required to satisfy itself that there is no payment or agreement to pay or reward any consideration from the prospective adoptive parents to the Specialised Adoption Agency, except towards the permitted adoption fees or service charge or childcare corpus (Para 30)

O. Criminal Procedure Code, 1973 — Ss. 437 and 439 — Grant of bail — Key factors or relevant principles, need to be kept in mind while granting bail, reiterated (Paras 56 to 62)

a

Held :

The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. (Para 57)

b

c

It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

d

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

e

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger of justice being thwarted by grant of bail. (Para 60)

f

Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240 : 1978 SCC (Cri) 115;

Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280 : 2001 SCC (Cri) 674; *Ram*

Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 : 2002 SCC (Cri) 688; *Prasanta*

Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765; *Brijmani*

Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170, *followed*

Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856; *Pappu Singh v. State of Bihar*,

2021 SCC OnLine Pat 2857, *held, overruled*

Patrick Devlin: "The Criminal Prosecution in England" (Oxford University Press, London

1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54, *referred to*

g

P. Criminal Procedure Code, 1973 — Ss. 437 and 439 — Grant of bail — Necessity of recording reasons — Held, grant of bail though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course — Therefore, order for bail bereft of any cogent reason, held, cannot be sustained — Further held, although a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case,

h

yet the court is required to indicate the prima facie reasons justifying the grant of bail — Thus, where a High Court grants bail mechanically, such order, held, would suffer from the vice of non-application of mind, rendering it illegal (Paras 58, 59 and 60)

Ram Govind Upadhyay v. Sudarshan Singh. (2002) 3 SCC 598 : 2002 SCC (Cri) 688; *Kalyan Chandra Sarkar v. Rajesh Ranjan.* (2004) 7 SCC 528 : 2004 SCC (Cri) 1977; *Prasanta Kumar Sarkar v. Ashis Chatterjee.* (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765, followed

Q. Criminal Procedure Code, 1973 — S. 439 — Grant of bail — Determining factors for ascertaining judicial exercise of discretion — Held, true test to ascertain whether discretion has been judiciously exercised or not is to see whether the court has been able to strike a balance between the personal liberty of the accused and the interest of the State, in other words, the societal interests — Each bail application, held, should be decided in the facts and circumstances of the case having regard to the various factors germane to the well-settled principles of grant or refusal of bail — Constitution of India, Art. 21 (Para 81)

R. Criminal Procedure Code, 1973 — S. 439(2) — Cancellation of bail — Distinction with exercise of jurisdiction in nullifying an order granting bail in an appeal — Considerations that guide the power of an appellate court in assessing the correctness of an order granting bail, held, stand on a different footing from an assessment of an application for the cancellation of bail — Correctness of an order granting bail, held, is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail — Test, held, is whether the order granting bail is perverse, illegal or unjustified — An application for cancellation of bail, held, is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted (Paras 61 and 63)

Held :

While elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order dehors reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum. As noted in *Gurcharan Singh*, (1978) 1 SCC 118, when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under Section 439(2) CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima facie case against the accused. (Para 63)

Bhoopendra Singh v. State of Rajasthan. (2021) 17 SCC 220; *Mahipal v. Rajesh Kumar.* (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558; *Manoj Kumar Khokhar v. State of Rajasthan.* (2022) 3 SCC 501 : (2022) 2 SCC (Cri) 1; *Gurcharan Singh v. State (UT of Delhi)*, (1978) 1 SCC 118 : 1978 SCC (Cri) 41, followed

S. Penal Code, 1860 — Ss. 363, 311 and 370(5) — Prosecution for child trafficking — Directions issued to the States, the trial courts, the High Courts and the parents across the country

a

— While setting aside order granting bail to the accused, State Government directed to provide police protection to the victims and their families pending the trial at the earliest so as to prevent tampering of the evidence — Further, the State Government also directed to ensure that the trafficked children are admitted in schools in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and continue to provide support for their education

b

Further, at the end of the trial, the trial court concerned directed to pass appropriate orders as regards compensation to the victims under the provisions of the BNSS, 2023 including under the Uttar Pradesh Rani Laxmi Bai Mahila Evam Bal Samman Kosh managed by the Land Welfare Committee — Further, all the State Governments across the country directed to look into the Report of BIRD dated 12-4-2023 more particularly the recommendations, as reproduced in para 37 of this judgment — All the State Governments directed to study the entire Report and start implementing each of the recommendations by working out appropriate modalities in that regard — Constitution of India, Arts. 15(3), 21, 23, 24 and 39 (Paras 37, 84.6 to 84.12 and 93)

c

d

Held :

The Supreme Court directs all the High Courts across the country to call for the necessary information as regards the status of the pending trials relating to child trafficking. Once each of the High Courts is able to collect the necessary data as regards the status of the trials, a circular thereafter shall be issued on its administrative side to all the trial courts concerned to complete the trials within a period of six months from the date of the circular and if need be, by conducting the trials on day-to-day basis. Each of the High Courts shall thereafter forward a report to the Supreme Court as regards the compliance of the directions contained in the circular. (Para 84.12)

e

The Supreme Court wants to convey a message to one and all more particularly the parents across the country that they should remain extremely vigilant and careful with their children. A slight carelessness or negligence or laxity on their part may prove to be extremely costly. The pain and agony which any parents may have to face when the child dies is different from the pain and agony that the parents may have to face when they lose their children to such gangs engaged in trafficking. When the child dies, the parents may with passage of time resign to the will of the Almighty but when the child is lost and not found they have to suffer the pain and agony for the rest of their life. It is worst than death. Therefore, we humbly urge to one and all to remain very cautious and vigilant. (Para 93)

f

g

T. Penal Code, 1860 — Ss. 363, 370 and 370-A (as added by amendment in 2013) — Child trafficking from hospitals — Directions issued for taking action against the hospital

— Held, if any newborn infant is trafficked from any hospital, the immediate action against the hospital should be suspension of licence to run the hospital over and above other actions in accordance with law — When any lady

h

comes to deliver her baby in any hospital, held, it is the responsibility of the administration of the hospital to protect the newborn infant in all respects — Nyaya Sanhita, 2023 — Ss. 143 and 144 — UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children — Art. 3 Supplementing the UN Convention against Transnational Organised Crime Constitution of India, Arts. 15(3), 21, 23, 24 and 39 (Para 94)

Sunita Devi v. State of U.P., 2023 SCC OnLine All 5400; *Gaudiya Devi v. State of U.P.*, 2023 SCC OnLine All 5393; *Mahesh Rana v. State of U.P.*, 2023 SCC OnLine All 5394; *Sangeeta Devi v. State of U.P.*, 2023 SCC OnLine All 5432; *Anuradha Devi v. State of U.P.*, 2023 SCC OnLine All 5399, *held, overruled*

Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. U.N. Doc. A/HRC/34/55 (22-12-2016); Charlie Custer, "Kidnapped and Sold : Inside the Dark World of Child Trafficking in China", *The Atlantic* (25 7 2013), *referred to*

Appeals allowed

SK-D/72461/CR

Advocates who appeared in this case :

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5. 2024 SCC OnLine All 8450. *Kuldeep Ram v. State of U.P. (reversed)* 331a, 371f
6. 2024 SCC OnLine All 8449. *Mahesh Rana v. State of U.P. (reversed)* 331a, 372b
7. 2024 SCC OnLine All 8448. *Jagveer Baranwal v. State of U.P. (reversed)* 331a, 370e-f
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34. (2014) 16 SCC 616 : (2015) 3 SCC (Cri) 552, *Bachpan Bachao Andolan v. Union of India* 344d
35. (2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172, *Ash Mohammad v. Shiv Raj Singh* 385a
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- g 41. (1994) 3 SCC 569 : 1994 SCC (Cri) 899, *Kartar Singh v. State of Punjab* 388a-b
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- h

The Judgment of the Court was delivered by

J.B. PARDIWALA, J.— For the convenience of exposition, this judgment is divided in the following parts:

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2. Leave granted in all the special leave petitions. Since the issues raised in all the captioned appeals are identical, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

1 *Sanjay v. State of U.P.*, 2024 SCC OnLine SC 5022

2 *Santosh Sao v. State of U.P.*, 2023 SCC OnLine All 5397

3. These appeals arise from various orders^{2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19} passed by the High Court of Judicature at Allahabad releasing
a 13 accused persons on bail in connection with FIR No. 201/2023, FIR No. 193/2023, FIR No. 76/2023, FIR No. 74/2023 and FIR No. 50/2023, respectively, registered for the offence punishable under Sections 363, 311 and 370(5) of the Penal Code, 1860 (for short “IPC”).

4. These appeals have been filed by the victims of the crime, more particularly the kith and kin of the children who came to be trafficked, praying
b for cancellation of bail granted by the High Court to the 13 accused persons referred to above. In all these appeals Respondent 2 is the particular original accused.

5. Although notice has been served to each of the accused persons, yet only three accused, namely, Santosh Sao, Jagveer Baranwal and Manish Jain
c appeared before this Court for the purpose of opposing the plea for cancellation of bail. The others have thought fit not to appear either in person or through an advocate, to oppose these appeals seeking cancellation of bail.

6. We take notice of the fact that upon completion of investigation of all the three first information reports referred to above, charge-sheets came to be filed
d in the Court of Special Chief Judicial Magistrate, District Varanasi, Additional Chief Judicial Magistrate, Court No. 5, District Varanasi and Chief Judicial Magistrate, District Varanasi, respectively.

7. The criminal cases, as on date, are pending for committal to the Court of Session. We also take notice of the fact that many of the accused persons, after
e being released on bail, have absconded and their whereabouts are not known to the police.

- f**
- 2 *Santosh Sao v. State of U.P.*, 2023 SCC OnLine All 5397
 - 3 *Sanjay Modanwal v. State of U.P.*, 2024 SCC OnLine All 8439
 - 4 *Praveen Modanwal v. State of U.P.*, 2024 SCC OnLine All 8442
 - 5 *Jagveer Baranwal v. State of U.P.*, 2024 SCC OnLine All 8418
 - 6 *Mahesh Rana v. State of U.P.*, 2021 SCC OnLine All 8449
 - 7 *Yashoda Devi Pandit v. State of U.P.*, 2024 SCC OnLine All 8451
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- 10 *Gudiya Devi v. State of U.P.*, 2023 SCC OnLine All 5396
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- 17 *Manish Jain v. State of U.P.*, 2024 SCC OnLine All 8438
 - 18 *Santosh Gupta v. State of U.P.*, 2024 SCC OnLine All 8440
 - 19 *Shivam Gupta v. State of U.P.*, 2024 SCC OnLine All 8443

A. Factual background

8. Before we proceed further, we must give a fair idea as regards the three FIRs. a

(i) FIR No. 193/2023 (in Sanjay v. State of U.P. and Anr.)

9. The present case pertains to an inter-State child-trafficking racket which profits from kidnapping, buying and selling of minor children, especially those children who come from an impoverished background.

9.1. The appellant, Sanjay is a rag picker residing in Varanasi. He was sleeping on the pavement with his wife and four-year-old son, Rohit. On the morning of 15-5-2023, they woke up to find that their son was missing. Initially, the police report indicated that the complaint filed by the appellant was one of a missing child, however, further investigation revealed that the case was one of child-trafficking as detailed in the Memo of Recovery in FIR No. 193/2023 as follows: b

“Today on 21-5-2023, I, Inspector-in-Charge, Ramakant Dube with my companion SI Prakash Singh, SI Prabhakar Singh, SI Shivam Shrivastav, Constable Mrityunjay Prasad, Constable Shivnand in Government Jeep No. UP 65 AG 0882 with Driver Constable Mahender Patel, departed from police station for prevention of crime, night patrolling in search of wanted criminals, were present at the Kamachha crossing. That we received an information via an informer that the video regarding child kidnapping which was viral on social media, a person involved in kidnapping of the said child is heading towards garbage place on the way of Nawab Ganj and could be caught if immediate action is taken. Believing this information, informed the fellow officials about this and after proper search of each other, reached the garbage place along with the informer and hid ourselves behind garbage place and started waiting for the arrival of that man. After some time, a person was seen coming from Ujala Hospital side. The informer pointed towards this man saying that he is the man who has stolen the child and went away from there. We police officials were waiting for that person to come closer. On coming more closer, we caught him immediately using all the necessary force. The caught person after being searched and enquired about his name and address stated his name as Santosh Gupta, son of Tulsi Gupta, resident of Sinduriya Pokhari Shivdaspur, Police Station Manduadih, age 42 years. When he was searched, then a Samsung keypad Mobile No. 9260964142, IMEI 357116099227517/357117099227515 was found from right pocket of his pants and two notes of 50-50 rupees each were found from left pocket of his pants. On strict interrogation he stated that we have a gang. We steal small children and sell them in Rajasthan, Bihar, Jharkhand to childless couples with the help of our agents for two lakhs to ten lakhs and the amount received is equally distributed among us. On 14-5-2023 night at about 3 o'clock I and my accomplice Vinay Kumar Mishra, son of late Rajesh Kumar Mishra, resident of Sinduriya Pokhari, Police Station Manduadih, Varanasi stole a 4-year-old child sleeping in with a husband-wife on the c
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a road near Ram Chander Shukla crossing, took him in an Ertiga car Vehicle No. UP 65 ER 5183 and kept him with my accomplice Sikha Modanwal, wife of Sanjay Modanwal, resident of Sinduriya, Shivdaspur, Manduadih Varanasi. We sell them with the help of agents who are already connected with us. I have sent the Ertiga car Vehicle No. UP 65 ER 5183 to Rajasthan to sell the child. I have removed the vest of the child whom we stole from Ram Chandra Shukla crossing and has kept it at my house and kept him with Shikha making him wear other clothes. Then we kept the child with b our companions Mahesh Rana, resident of District Kodarma, Jharkhand, Yashoda Devi, wife of Mukesh Pandit, resident of District Hazaribagh, Jharkhand, Sunita Devi, wife of Mahesh Rana, District Giridih, Jharkhand and Mukesh Pandit, who help me to steal and sell the children and my son Shivam Gupta used to be with us in stealing and selling the children. c Few days ago, we stole a small girl from Chowkaghat, a boy from under Alopibagh Overbridge, a boy and a girl from near Vindhyachal Station and a small boy from Nadesar and a small girl from Nagwa Lanka and sold them with help of my accomplices. Two children out of these were sold to Manish Jain, Paras, Ghanshyam and Jagbir Baranwal at Jaipur. Rest of the children have been sold to Sunita Devi, Yashoda Pandit, Mahesh Rana, resident of Koderma, Mukesh Mandit and Mahesh Rana, residents of d Giridih. I can get the vest of child, who was stolen by us from Ram Chander Shukla crossing, recovered from my home. Thereafter with the hope of recovery of the clothes of kidnapped child, we went to the house of the accused with the police force. The accused going ahead gave a dusty white-coloured vest near the cupboard, on the neck and arm of which, a black band was available and he stated it to be the vest of the same child whom e they stole on 14-5-2023. In the meantime, the complainant along with his wife arrived there and after looking at the vest, stated that this vest belongs to my son Rohit. He was wearing this same vest when he was stolen. The abovementioned vest was taken into police custody and kept with mobile in a plastic box and sealed and the currency notes recovered while searching were kept in an envelope and sealed. The accused was informed about his f act as a crime under Sections 363, 311 IPC and he was taken into police custody at 4 o'clock. The orders and directions of the Supreme Court and National Human Rights Commissions were strictly obeyed during arrest and recovery. The memo was prepared on directions of me the Inspector in the light of torch and streetlight by SI Shivam Shrivastav. Arrest memo was prepared on spot. The information of arrest of the accused was given g to his father-in-law Gopal Shah. Memo is being read over and signatures are being obtained from all concerned. A copy of memo is being given to the accused."

h **9.2.** There are in all 14 accused persons who have been charge-sheeted in connection with FIR No. 193/2023 registered with PS Bhelupur, Varanasi referred to above. Out of the 14 accused persons, the bail of 5 accused persons have already been cancelled by this Court.

9.3. The charge-sheet came to be filed against the accused persons on 17-7-2023 for the offence punishable under Sections 363, 311, 370(5) IPC. However, the charges are yet to be framed on account of the persistent failure on part of the accused persons to appear before the trial court concerned. a

9.4. The High Court had granted bail to several accused persons, namely, Sunita Devi, Gudiya Devi, Manish Jain, Mahesh Rana s/o Ramlal Rana, Sangeeta Devi, Anuradha Devi and Santosh Sao, vide orders dated 12-12-2023²⁰, 4-10-2023²¹, 21-11-2023²², 8-11-2023²³, 15-12-2023²⁴, 15-12-2023²⁵, 9-11-2023²⁶, respectively, which were challenged before this Court vide SLPs (Crl.) Nos. 1041-1047 of 2024. Subsequently, vide order dated 24-9-2024¹, this Court was pleased to set aside the orders granting bail to the accused persons in SLPs (Crl.) Nos. 1041, 1042, 1044, 1045 and 1046 of 2024, respectively, with the direction to the accused persons to surrender forthwith. The special leave petition bearing SLP (Crl.) No. 1043 of 2024 (R-2 Manish Jain) and criminal appeal bearing Crl.A. No. 4002 of 2024 arising out of SLP (Crl.) No. 1047 of 2024 (R-2 Santosh Sao) are before us for consideration. Since the accused persons in SLPs (Crl.) Nos. 1041, 1042, 1044, 1045 and 1046 of 2024, respectively, failed to surrender and no action was taken by the police in furtherance to the aforesaid order, a miscellaneous application bearing No. 309 of 2025 came to be filed seeking appropriate directions to the State Police machinery to file a status report. It was only after this Court directed the respondent State to file an affidavit indicating the steps taken to comply with the aforesaid order, that the necessary action was taken to arrest the accused persons. They were arrested after more than five months from the passing of the order. It is pertinent to mention that the accused persons failed to surrender despite non-bailable warrants (for short “NBW”) being issued against them from the Court of the CJM, Varanasi. As per the status report filed by the State, five accused persons, namely, Sunita Devi, Gudiya Devi, Mahesh Rana s/o Ramlal Rana, Sangeeta Devi and Anuradha Devi have been arrested. b
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(ii) *FIR No. 50/2023 (in Samsher Singh v. State of U.P. and Anr.)*

10. The present case also pertains to the inter-State child-trafficking racket which is alleged to have been run by the same accused persons against whom FIR No. 193/2023 was registered at PS Bhelupur, Varanasi. During the police investigation of FIR No. 193/2023, the present FIR No. 50/2023 came into the light. f

10.1. The appellant, Samsher Singh is a labourer who makes his living while taking shelter on the streets under Andhrapul Bridge in Varanasi. On 28-3-2023, his one-year-old daughter, Mohini, was kidnapped and upon g

20 *Sunita Devi v. State of U.P.*, 2023 SCC OnLine All 5400

21 *Gudiya Devi v. State of U.P.*, 2023 SCC OnLine All 5393

22 *Manish Jain v. State of U.P.*, 2023 SCC OnLine All 5398

23 *Mahesh Rana v. State of U.P.*, 2023 SCC OnLine All 5394

24 *Sangeeta Devi v. State of U.P.*, 2023 SCC OnLine All 5432

25 *Anuradha Devi v. State of U.P.*, 2023 SCC OnLine All 5399

26 *Santosh Sao v. State of U.P.*, 2023 SCC OnLine All 5395

1 *Sanjay v. State of U.P.*, 2024 SCC OnLine SC 5022 h

a realising the same, the appellant and his wife started searching for their child frantically but were unable to locate her. Desperate and with no leads, the appellant filed a police complaint on 29-5-2023 at PS Chetganj, Varanasi.

10.2. There are 7 accused persons who have been charge-sheeted in FIR No. 50/2023 registered at PS Chetganj, Varanasi. Out of the 7 accused persons, the bail orders passed by the High Court of 3 accused persons are under challenge before us.

b 10.3. The charge-sheet came to be filed against the accused persons on 16-9-2023 for the offence punishable under Sections 363, 311 and 370 IPC. Thereafter, supplementary charge-sheets dated 19-3-2024, 5-6-2024 and 12-8-2024, respectively, came to be filed under Sections 363, 311 and 370 IPC, respectively. However, the charges are yet to be framed on account of non-appearance of the accused persons before the court concerned.

c 10.4. It is only after the intervention of this Court that the child was traced and found on 20-3-2025 from the custody of accused Anil Prasad Baranwal, r/o Krishna Nagar, Kolkata, West Bengal.

(iii) *FIR No. 201/2023 (in Pinki v. State of U.P. and Anr.)*

d 11. The present case also pertains to the inter-State child-trafficking racket which is run by the same accused persons against whom FIR No. 193/2023 was registered at PS Bhelupur, Varanasi. During the police investigation of FIR No. 193/2023, it was revealed that the present FIR No. 201/2023 had been registered at PS Cantt., Varanasi against the gang members of the same child-trafficking racket. On 29-4-2023, Smt Pinki's one-year-old child, Bahubali, was kidnapped from Nadesar Cantt., Varanasi while the minor boy-child was sleeping beside the appellant (Smt Pinki), by the same members of the organised inter-State child-trafficking ring. Upon discovering that her son went e missing at 2.30 a.m., the appellant filed a police complaint the following day at PS Cantt., Varanasi, leading to the registration of FIR No. 201/2023 dated 30-4-2023.

f 11.1. Initially, the police report indicated that the complaint filed by the appellant was one of a missing children, however, further investigation revealed that the case was one of child-trafficking as detailed in the Memo of Recovery in FIR No. 201/2023 as follows:

g "Today on 2-6-2023, I SI Saurabh Pandey along with my companion SI Vaibhav Shukla, Constable Anuj Kushvaha and Lady Constable Rubi Singh, departed from Police Station Cantt., Commissionerate Varanasi on dated 29-5-2023 via GD 070 for investigation of present case and in hope of recovery of kidnapped child and arrest of accused as per the information provided by the accused arrested in FIR No. 193/23 under Sections 363/177/370(5) IPC, namely, Shikha Gupta and Manish Kumar Jain, etc. for searching and clue, reached at Police Station Chandwara, District Kodarma, Jharkhand on 30-5-2023 and with the help of local police were busy in attempt to recovery of child and arrest of accused, then h from Police Station Cantt. Constable Prem Shankar Patel and SI Anand

Chaurasiya, Constable Sachin Singh, Constable Sumit Sahi Police Station Bhelupur, Commissionerate Varanasi and SI Ram Upadhyay, Constable Ejaz Hussain Police Station Chetganj, Commissionerate Varanasi met us at Chandwara Highway in search of kidnapped children and in search of clue. At that time from Prayagraj Police SI Pavan Kumar Singh with his companions SI Vikas Yadav with SOG SI Dinesh Singh, Constable Rakesh Dube, Constable Piyush Vajpeyi, Driver Manoj Kumar Singh in Vehicle No. UP 70 AG 2572, with team in search of child Shani Bind related to FIR No. 76/23 under Section 363 IPC Police Station Daraganj, Commissionerate Prayagraj, met with us. There only, Inspector Madhav from Mirzapur Police along with Head Constable Lal ji Yadav, Constable Brij Kishore Sharma, SI Daya Shankar Ojha, Lady Constable Raksha Yadav, Driver Constable Prabhu Narayan with Vehicle No. UP 32 BG 7504 in FIR No. 74/23 under Section 363 IPC Police Station Vindhyaachal, District Mirzapur for searching the kidnapped child Kajal, met with us. We all police officials after sharing the information about kidnapped children and arrest of accused, with the help of Chanwara Police, for searching of kidnapped children and arrest of accused, were present at highway. Then an informer came and told us that Anuradha Nurse, you are searching for, is present at highway in front of Global Nursing Home for going somewhere, if you move immediately then she might be caught. On believing this information, after joint planning, we all police officials moved ahead with informer. On highway only, signalling towards a lady, the informer told that she is Anuradha Nurse whom you are searching and then the informer went away from there. Then we police officials went ahead towards that lady. That lady was enquired about her name and address with the help of Lady Constable Rubi Singh and also was searched. Then she stated her name as Anuradha Devi, wife of Yogender Singh, aged 37 years, resident of Village and Post Office Lupung, Police Station Katkam Sandi, District Hazaribagh, Jharkhand. While searching two android mobile were found from her left hand (1) Oppo CPH2269, IMEI No. 86205005576687J/S62050055766881 and (2) Samsung SM-GEIOF, IMEI No. 358972081446914/358973081446912 were recovered. Informing about the abovementioned incident, questions were asked from abovementioned Anuradha, then she told that I have purchased many children through Madan Baranwal, Manish Jain, Jagvir Baranwal, Ghanshyam and Gudiya and sold ahead. Then I, the SI, asked her about the child who was stolen from Nadesar Cantt. after showing his picture in the mobile then she said that this one-year baby was sold to me by Jagvir in 2.5 lakhs rupees. I have sold this child further in 3.5 lakhs through Kuldeep Paswan, resident of Markacho to his some known one. After that the picture of the child stolen from Prayagraj was shown to Anuradha and she replied that she had sold this child to Santosh Sao of Majhgawan and still the child is with him. Thereafter Bhelupur Police and SI Ram Upadhyay asked her about the girl child stolen from Choukaghat, Varanasi, then she said that about this girl, only Madan Baranwal can tell

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a you about this child who is the relative of Jagvir and Manish Jain. After that Mirzapur Police showed the picture of the girl child kidnapped from their area and enquired about her, then Anuradha said that Jagvir and Gudia had sold a four-five year old child to her in 45 thousand rupees and she sold her to Sangeeta, wife of Tulsi Rana, resident of Pogdanda working at Health Sub-Centre. I was involved in the purchase and sale of many other children. I can get recovered the children kept with Santosh and Sangeeta and can get Jagvir and Gudia arrested. Thereafter, after keeping Anuradha under supervision, we reached the place told by her at Manjhgawa at the house of Santosh Sav where Anuradha signalled towards a person who was carrying a child and told that this is the same child who was stolen from Prayagraj. On this we police officials enquired about the child from Santosh Sav through different questions. He stated his name as Santosh Sav, son of Bihari Sav aged 37 years, resident of Manjhgawa, Post Office Kako, Police Station Tilaiya Dam, District Kodarma, Jharkhand and when c he was asked about the child strictly then he stated that he purchased the child for Rs 4 lakhs from that Anuradha who has come with you. Thereafter SI Pavan Kumar Singh sent the photo of child to her parents and got the child identified through video call from his father Vishnu Bind where he identified the child as his son Shani Nishad and the child also started d weeping after getting emotional while seeing his parents on video call. Thereafter the child was taken in security by Constable Piyush Vajpeyi and Santosh Sav was kept in supervision of Constable Rakesh. We police officials moved ahead with all of them. Anuradha further informed that the baby of Vindhyaachal is still with Sangeeta Devi. On believing her, we departed for the village of Sangeeta Devi, namely, Pogdanda. Outside e of village only we saw a lady carrying a child in her lap. Signalling towards her Anuradha told that she is Sangeeta and the same child, about whom she was telling about. Thereafter, that lady was asked about her name and address and about that child with the help of Lady Constable Raksha Yadav. She told that my name is Sangeeta Devi, wife of Tulsi Ram, age 34 years, resident of Village Pogdanda, Police Station Jainagar, f District Kodarma. A mobile from her left hand Samsung Galaxy MOIS, IMEI 356148114500231/356149114500239, Mobile No. 990595469 was recovered. On being enquired about the child, she stated that she had purchased the child for Rs 55 thousand from the same Anuradha who was with us and now I was going to searching a customer for selling the child while you caught me. Thereafter, the recovered child was handed g over in security of Constable Prem Shankar Patel and Sangeeta Sao was handed over in the monitoring of Lady Constable Raksha Yadav and departed in search for the house of Gudiya as per the information given by Anuradha and after informing Police Station Tilaiya, reached the house of Gudiya at Gandhi School Road, Tilaiya, Kodarma where she was found present. She was brought with Lady Constable Rubi Singh after informing h Police Station Tilaiya, we departed towards Police Station Chandwara. We reached near Chandwara Police Station, a person was walking on the road,

signalling towards whom Anuradha said that he is Jagvir about whom I was telling. Thereafter that person was stopped by us and he was told about the incident and inquired. Then that person was shocked on seeing Anuradha, Gudiya, Sangeeta and recovered children and accepted his mistake and apologised for his mistake and told that my name is Jagvir Baranwal, son of Sahdev Modi, aged 41 years, resident of Village Mahugai, Post Office and Police Station Chandwara, District Kodarma, Jharkhand. One of my relatives is Manish Kumar Jain, resident of Jaipur, through him I came into contact with a lady from Banaras, namely, Shikha Gupta who with the help of her companions Vinay, Tannu and Santosh steal children and used to give to me and I with the help of Gudiya and Anuradha sell them after finding customers. Thereafter Jagvir Baranwal was searched and from his right hand a Galaxy A 30S, IMEI No. 35857711144744/358578101144742 Android was found. Then Gudiya, who was with us, apologised stating that she knew Madan Baranwal, Jagvir Baranwal, Manish Jain and Anuradha for a long time and I help to sell children with help of them and I receive commission for that. My name is Gudiya Devi, wife of Sakal Dev Yadav, age 30 years, resident of Gandhi School Road, Tilaiya, Kodarma. Sir, I also have a keypad mobile, I am giving the same to you. When keypad mobile was seen, it was of blue-coloured NOKIA keypad mobile IMEI of which is 357749105458963. Santosh Sao who was present with us also recovered a keypad mobile. When it was seen, it was found black-coloured ITEL Mobile, the IMEI of which is 357278443860326/357278443860334. The accused present on spot Jagvir Baranwal and Santosh Sav abovementioned and accused Anuradha Devi, Sangeeta Devi and Gudiya Devi abovesaid were told about Sections 363/311/370 IPC and taken into police custody at 1105 hrs. During the arrest and recovery of children, people were gathered there who were told for witness but in fear of evil and good, they went away from there. The orders and directions of the Supreme Court and Human Rights Commissions were obeyed. Memo of recovery and arrest was prepared on spot and was read over and signature are being obtained and recovered mobiles phones were sealed and stamped. Information of arrest will be given to the family members through proper channel. A copy of memo for accused is being given to Jagvir Baranwal with their consent.”

11.2. There are ten accused persons who have been charge-sheeted in connection with FIR No. 201/2023 registered at PS Cantt., Varanasi. Out of the ten accused persons, the bail orders of three accused persons have been cancelled by this Court in proceedings arising out of FIR No. 193/2023. The legality and validity of the bail orders passed by the High Court as regards six co-accused is now falling for our consideration.

11.3. The charge-sheet came to be filed against the accused persons on 7-9-2023 for the offence punishable under Sections 363, 311 and 370(5) IPC, respectively. However, the charges are yet to be framed on account of non-appearance of the accused persons before the court concerned.

12. The details of the committal court proceedings as regards the aforementioned three FIRs are as follows:

- a* “(i) *FIR No. 193/2023*
Before Special CJM, District Varanasi
Criminal Case No. 93745/2023
Cause title: *State v. Anuradha Devi & Ors.*
Stage: For committal
b NDOH: 21-4-2025.
- c* “(ii) *FIR No. 50/2023*
Before Additional CJM, Court No. 5, District Varanasi
Criminal Case No. 113651/2023
Cause title: *State v. Manish Jain & Ors.*
Stage: For committal
NDOH: 1-4-2025
- d* “(iii) *FIR No. 201/2023*
Before CJM, District Varanasi
Criminal Case No. 118963/2023
Cause title: *State v. Kuldeep Paswan alias Kuldeep Ram & Ors.*
Stage: For committal
NDOH: 3-4-2025”

e **B. Child trafficking**

f (i) *Global context*

13. The UN Convention on the Rights of the Child, 1989 (CRC), recognises the importance of family and the importance for a child to grow in a family environment.²⁷ It also casts a duty on the State to ensure that children should not be separated from their parents against their will except when it is in the best interests of the child. Adoption is considered an alternate care mechanism for children who are unable to live with their parents due to various circumstances and adoption is preferred over institutionalisation.

- g* 14. In 1993, the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption²⁸ was introduced to have a global regulatory system to ensure that adoptions take place through a State-approved mechanism and inter-country adoptions take place after exhausting adoption/placement opportunities domestically. The principle of “*subsidiarity*” is one of the guiding principles of this Convention. The States which have signed and ratified these Conventions have also framed domestic

h ²⁷ Convention on the Rights of the Child, 20-11-1989 : 1577 UNTS 3, Articles 7 and 8.

²⁸ Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, 29-5-1993 : 1870 UNTS 167.

regulations conforming to the international conventions and created institutions to implement the same.

15. In the year 2000, there was a global acknowledgment of trafficking in persons was taking diverse forms and hence, it was collectively decided that studying and recognising the trafficking processes vis-à-vis the purpose for which such trafficking was being done, was important. This enabled recognising a pattern used by traffickers for different end results. In “the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” supplementing the UN Convention against Transnational Organised Crime, “*trafficking*” has been defined under Article 3 of the Protocol as follows:

“(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in sub-paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in sub-paragraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.”

16. Over the years, demands for adoption of children have increased and there is a significant waiting period for prospective parents to adopt. At any given point in time, there are parents waiting for at least 3-4 years to adopt. Even after being processed and children being matched, the necessary verification processes also take a long time. Such long delays have created an increase in the demand for children who are declared legally fit for adoptions, and has consequently attracted trafficking of children for the purpose of adoption.

17. In 2016, in her thematic report, the UN Special Rapporteur on the sale of children, child prostitution and child pornography, documented illegal adoptions and concluded that “*adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adaptability, falsification of official documents or coercion, and any illicit activity or practice, such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption, constitute illegal adoptions and must be prohibited, criminalised and sanctioned as*

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a *such*".²⁹ The Report documents demand for children as a major enabling factor for the criminal networks to engage in large-scale abduction and sale of children.

18. There is global recognition for the duality of the crime committed during the course of illegal adoption, namely, illegal adoption where the parent has participated in the commercial transaction of transferring custody of the child or cases where the parent does not have any financial gain but the adoption itself is illegal.

b 19. There are sporadic reports of cases of kidnapping for placing children in adoption. A documentary filmmaker has written about cases in China where children went missing/were kidnapped and placed in adoptions in the United States.³⁰ There are various reports of Ukrainian children being kidnapped and placed in Russia and Guatemalan children kidnapped and placed in illegal adoptions abroad.

c (ii) *Child trafficking in India*

20. Article 23 of the Constitution of India recognises trafficking and prohibits the same. Article 23 reads thus:

d "23. *Prohibition of traffic in human beings and forced labour.* (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

e (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

f 21. The identification of forced labour, specifically in 1950 indicates that at that time, trafficking was confined to certain forms. Trafficking in Persons (for short "TIP") in India has taken diverse forms and almost each of them is prevalent across the country. An overall analysis of trafficking patterns across States reiterates the prevalence of trafficking in large numbers with the number of cases sharply rising with time. What is of concern is the rapid spread of the problem with previously unknown factors getting embedded in the web of traffickers. Changing trafficking patterns have brought along changes in the traffickers, their modus operandi, their manipulation of the victims and their understanding of the limitations in the criminal justice system. As the instances shared hereinabove indicate, the traffickers are operating with impunity and have deftly adapted to the advances in technology using it to their benefit.

g 22. Following the definition in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against Transnational Organised Crime and after signing

h ²⁹ Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. U.N. Doc. A/HRC/34/55 (22-12-2016).

³⁰ Charlie Custer. "Kidnapped and Sold : Inside the Dark World of Child Trafficking in China". *The Atlantic* (25-7-2013).

and ratifying, the Indian Government adapted by way of an amendment in 2013 to the Penal Code added Sections 370 and 370-A of the Penal Code. Subsequently, the enactment of the new criminal laws essentially replicated the same provisions that were existing as Section 370 and 370-A IPC, respectively, into Sections 143 and 144 BNS, respectively.

23. Trafficking in persons now is more expansively defined. In addition to the conventional understanding of trafficking being synonymous to sex trafficking and forced labour, trafficking includes other forms as long as there is “recruitment, transportation, transfer, harbouring or receipt of person” for the purposes of exploitation using threat, using force, forms of coercion, abduction, fraud, deceit, abuse of power or vulnerability or consideration to get consent. The definition is inclusive in nature giving room for emerging forms of exploitation to be included as TIP. Consequently, an exercise to understand the expanse of trafficking needs to intrinsically examine the means of the process of engagement without getting limited to the form.

24. In the present child kidnapping racket, the traffickers are well networked through their smartphones sharing information, photographs, transferring money, sharing locations, etc. Their operations, the relative ease with which they are able to operate and procure buyers for selling the children outside their States indicate that they are aware of the technology, they recognise demand, and they recognise the need to operate as a network.

25. It is critical to note the number of cases that were tracked in such a short time span. This indicates that these kidnappings have been taking place in large numbers on a regular basis and there is an urgent need to consolidate these cases and examine them to be able to identify patterns.

26. Child selling is not new to this country. There was a time when children were being sold as part of inter-country adoptions and this Court had passed detailed judgments acknowledging the same. This Court in *Lakshmi Kant Pandey v. Union of India*³¹ dealt with the issue of malpractices and trafficking in children in connection with adoption of Indian children by foreigners and its commercialisation. This Court took note of the fact that large amounts were being demanded by ill-equipped and sometimes even undesirable organisations or individuals camouflaging trafficking and sale of children as inter-country adoption. In order to protect the welfare of children, this Court, in consultation with several social and child welfare institutions, laid out a comprehensive framework of normative and procedural safeguards for regulating inter-country adoption as protection against abuse, maltreatment or exploitation of children and to secure them a healthy, decent family life. While formulating standards and procedures, this Court referenced various relevant laws and policies including Articles 15(3), 24, and 39 of the Indian Constitution regarding child welfare, and the principles embodied in the UN Declaration on the Rights of the Child (1959). The delineated safeguards include, amongst several others, the requirement that foreigners wishing to adopt be sponsored by relevant licensed agencies in their own country, that no adoption application from a foreigner

³¹ (1984) 2 SCC 244

a should be entertained directly by any adoption agency in India, that agencies working on inter-country adoptions and licensed by the Government of India must meet certain stipulated criteria and undertake specific responsibilities in ensuring the safety and well-being of adopted children, and that all inter-country adoption proceedings must be approved by the local courts.

27. Over the years, human trafficking has manifested into various forms of exploitation and child trafficking has increased. It has been documented that children are being trafficked for:

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- (i) Sexual exploitation;
 - (ii) Forced labour;
 - (iii) Begging and petty crimes;
 - (iv) Armed conflict;
 - (v) Child marriage; and
 - (vi) Illegal adoption.
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d 28. Each of the above has further manifestations within itself. Trafficking for forced criminality is raising at alarming levels since traffickers have realised the protections offered to children in the juvenile justice system in many jurisdictions. A protection mechanism for children is exploited as a safe haven for committing heinous crimes.

e 29. Following the judgment in *Lakshmi Kant Pandey*³¹ in the year 1990, the Central Adoption Resource Authority (CARA) was set up by the Government of India to regulate, monitor and promote adoption of orphaned, abandoned or surrendered children. Initially, CARA was registered as a society under the Societies Registration Act, 1860. Over the years, CARA processes were made an intrinsic part of the juvenile justice system. Through Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the JJ Act, 2015"), CARA attained the status of a statutory body with the mandate to promote and regulate adoptions, facilitate inter-State adoptions, frame regulations on adoption related matters and regulate inter-country adoptions.

f 30. The JJ Act, 2015 is a secular Act which specifies in Section 58(1) that any person irrespective of religion can adopt a child. Section 56(3) of the Act states that nothing in this Act shall apply to adoptions under the Hindu Adoption and Maintenance Act (HAMA). As per Section 56(4) of the JJ Act, 2015, all inter-country adoptions are done as per the provisions of the Act and the Adoption Regulations framed by CARA. The categories of children available for adoption are seen from a reading of Section 38 of the JJ Act, 2015 as per which orphaned, abandoned and surrendered children who are declared legally free for adoption by the Child Welfare Committee can be placed for in-country and inter-country adoption. The eligibility criteria for prospective adoptive parents is prescribed under Section 57 and the procedure for adoption by Indian prospective adoptive parents living in India is given in

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31 *Lakshmi Kant Pandey v. Union of India*, (1984) 2 SCC 244

Section 58 of the JJ Act, 2015, respectively. Under Section 61 of the JJ Act, 2015 before issuing an adoption order, the court is required to satisfy itself that there is no payment or agreement to pay or reward any consideration from the prospective adoptive parents to the Specialised Adoption Agency, except towards the permitted adoption fees or service charge or childcare corpus. a

31. Due to the checks and balances provided in the statute and CARA Regulations, adoption becomes a long-drawn process and there is a huge waiting list for parents to adopt children. There are not enough children who are declared “legally free for adoption” under the law. This seems to have led to a demand for children and traffickers taking advantage of this demand. b

32. *Lakshmikant Pandey*³¹ primarily dealt with cases where the biological parents were coerced in diverse ways to part with their children and then those children were given in adoption to prospective parents outside India. In the present set of cases, a cognizable offence is made out at the outset with the kidnapping of children, multiple transactions of the sale of children ultimately handing over custody illegally. c

(iii) Missing children and trafficking

33. In *Bachpan Bachao Andolan v. Union of India*³², this Court dealt with issues regarding the manner in which a complaint about a missing child was being handled by the local police station. The Court heard the National Human Rights Commission and the National Legal Services Authority and issued directions with a view to ensuring that cases of missing children are presumed to be taken as cases of abduction or trafficking unless the investigation shows otherwise. Some of the key directions issued by this Court which are relevant for the present case are: (SCC pp. 618-19, paras 2-3) d

1. ...in case of complaint with regard to any missing children made in a police station, the same should be reduced into a first information report and appropriate steps should be taken to see that follow-up investigation is taken up immediately thereafter. e

2. ... in case of every missing child reported; there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. ... f

... whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under Section 154 CrPC. However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 CrPC, upon making an entry in the book to be maintained for the purposes of Section 155 CrPC, and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint. [...]

³¹ *Lakshmi Kant Pandey v. Union of India*, (1984) 2 SCC 244

³² (2014) 16 SCC 616 ; (2015) 3 SCC (Cri) 552

a 34. Sometime in 2023, the National Human Rights Commission (NHRC) entrusted the study on human trafficking to the Bharatiya Institute of Research and Development (BIRD), New Delhi. The Report filed by BIRD dated 12-4-2023 has recorded the following major findings of the study:

“Preventive Measures, Profile of Victims and Their Exploitation

b 1. NCRB data shows that during 2019, about 3.80 lakhs persons were traced missing and out of them, about 2/3rd were females. Out of total missing persons, a significant number of persons could not be traced out and remained missing. This shows that a large proportion of missing persons particularly women were forced into sexual exploitation trade. The Supreme Court while hearing a case in 2013 directed police that cases of missing children should be treated as abduction or trafficking until proven otherwise, it is yet to become a reality.

c 2. Most of the trafficked respondents (80.7%) were from economically weaker sections i.e. BPL families (50.3%), AAY—Antyodaya Anna Yojana (30.4%) (Poorest of Poor) hailing from rural and semi-urban areas.

d 3. Friends/lovers/brokers/middlemen, strangers and migrant workers recruiters/placement agents were the main persons who initiated victims in trafficking; about 12% victims admitted that their family members are already trafficked.

e 4. About 11% victim respondents were found minor at the time of trafficking and thus, they were accompanied by family members during the course of trafficking. As per NCRB data for 2019 this comes to 44.04% (2914 victims were minor out of total 6616 trafficked victims). Promise for paid work, to pay back or support parents were the main reasons for trafficking in case of minor at the time of trafficking.

f 5. Sexual exploitation, violence, beating, over work and deprivation of sleep and food were some of the types of physical and sexual abuse/violence experienced by trafficking victims and sex workers. About 58% victims also experienced injuries during their trafficking.

6. Victim re-trafficking is a common occurrence, especially in socially and economically disadvantaged areas. As per Report of International Organisation for Migration (IOM), one study found rates of re-trafficking in India to be 25.8 per cent among women trafficked for sexual exploitation; of this figure, 8.4 per cent had been trafficked on three or more occasions.

g 7. There is an increase in the recruitment of vulnerable people for online sexual exploitation by traffickers, as well as a growing market for child sexual abuse material and technology facilitated child sex trafficking.

h 8. Many trafficked people (8%) are still unable to access governmental help due to administrative hurdles especially victims hailing from Bangladesh, Nepal and Myanmar. One of the most difficult parts is determining legal status/identity. Trafficked people are frequently refused State services (e.g., medical, employment, social assistance, kindergarten, etc.) as well as other advantages to which they should be entitled and which are critical in the reintegration process.

9. A negligible proportion (10.8%) of law enforcement agency respondents and 7.6% programme administrators admitted that there has been some kind of vulnerabilities survey in their States; it was reported from Tamil Nadu followed by Assam and Karnataka. a

10. It is reported that domestic work is offered to the majority of trafficked victims or migrant workers, particularly females, by traffickers/ placement agencies/migrant worker recruiters, etc.

11. Domestic workers, caretakers, and those employed in the sex and entertainment industries are largely unprotected by labour laws. Female migrants may be coerced into prostitution or the sale of sexual favours in order to survive or provide for their family, especially if they are forced to migrate or are displaced. Sexual exploitation is a threat to migrant women. b

12. The types of physical and psychological abuse human trafficking victims experience have led to serious mental or emotional health consequences, including feelings of severe guilt, post-traumatic stress disorder, depression, anxiety, substance abuse (alcohol or narcotics), and eating disorders. Victims of trafficking were in need of psychological care as part of comprehensive medical treatment. Stress, depression, sleeplessness, desperation, negative thinking, short-temper and violence and lack of obedience were some of the psychological impacts of human trafficking. c

13. Violent exploitation has resulted in survivors developing a mistrust of care-giving individuals and systems, which has severely hindered the service delivery. d

14. Prolonged physical and mental abuse has affected victim's behaviour in negative ways, having an impact on both physical and emotional responses. Because trafficked persons experienced extreme forms of trauma over long periods of time, their capacities both to understand what has happened to them and to describe their experiences are directly impaired as a result of such abuse. Victims found that it is difficult to make personal sense of the abuse they have experienced, much less tried to explain it to the authorities of shelter home or counsellors. e

15. Social withdrawal, poor communication skills, inability to express feelings, difficulty with adjustment, lack of motivation and aggression, sexual activeness, nightmares, inability to make friendship and frightened of adults and strangers were some of the behavioural impacts reported by victims of human trafficking. f

16. The level of awareness about schemes and programmes among the trafficked victim respondents was reported very low as negligible proportion of respondents were found aware about a few schemes such as Beti Bachao, Beti Padoo, Swadhar Greh, Ujjawala, Child Line and children's homes. A negligible proportion of respondents further reported that they get benefits under Ujjawala, Swadhar, compensation for sexual exploitation and children homes scheme. g

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a 17. Only 3.6% victim respondents were aware about the Compensation Scheme for Women Victims/Survivors of Sexual Assault/ Other Crimes-2018 and only 2.6% respondents got benefitted from the Scheme. The Victim Compensation Scheme established under Section 357-A CrPC by National Legal Services Authority are not reaching the trafficked victims. In the last seven years, between 2012 and 2019, across India, not even 100 victims of human trafficking have been awarded compensation. Out of total 100 applications, only 30 survivors received compensation amount. In 19 States, out of the total fund allocation of Rs 544.53 crores for victim compensation, only 128.27 crores has been utilised and 75 per cent of the funds remain unutilised.

b 18. About 1/3rd victim respondents reported that their family is unwilling to accept them back. However, about 2/3rd victims were willing to join mainstream after exit of the trafficking. Slightly less than 1/3rd victims further reported that they try to escape from destination of trafficking.

c 19. Less than 1/3rd sex workers reported that their families are willing to accept them back in their families. Similarly, majority of rescued victims were found willing to join mainstream as against 1/3rd of sex workers who were willing to join mainstream at the exit of trafficking. More than 2/5th rescued victims attempted to escape from destination of trafficking as against 6% of sex workers who try to escape from the trafficking.

d 20. There are still a lot of social customs/practices that inducts young girls into prostitution.

e 21. Majority of the sex workers were from the age group of 16 years and above at the time of entry in sex profession. However, more than 1/4th respondents were less than 16 years of age.

f 22. There is no sound programme and scheme to prevent second generation of prostitutions.

23. Psychological manipulation, threat of physical violence and pleasure are some of the main habituation factors in sex profession.

24. About 60% sex workers are willing to exit from the profession. Most of the respondents reported that they do not want that their children follow their mother's profession. However, majority of them require the support such as livelihood and accommodation, alternative livelihood and safe and secure place to live in order to exit from the current profession.

g 25. A new form of organised prostitution has emerged in recent years. Gangs involved in organised prostitution are luring customers through internet, text messages and mobile based applications, taking advantage of a loophole in the law which is silent on regulating the proliferation, promotion and advertisement of prostitution on digital platforms and even through leaflets/pamphlets. In the name of cross-gender massage services, organised sexual services are being provided at night clubs, h massage parlours, spas, luxury hotels and resorts, motels, dance bars, private residences, huts and even vehicles, etc.

26. Poverty and illiteracy have been identified as two primary causes of trafficking and primary data simply supports this theory as most of the parents of trafficked victims are illiterate and were living in abject poverty. a

27. About 60% parents of victim respondents said that family members are the facilitators followed by friends/relatives (11.8%), contractors/agents (5.9%) and placement agencies (2.9%). Surprisingly 23.5% respondents reported that their children run away from home.

28. Most of the (about 37%) parents reported that their children were working as forced labour-domestic workers. b

29. About 31% parents reported that their children were working in hazardous industries, metallurgical industries, coal, fertilisers, mining, chemical and petrochemicals, cement and firecracker workshops. As per Census of 2011, this figure is 20.7%.

30. There is a lack of national level campaign against human trafficking and media is silent. c

31. About 2/5th law enforcement agency respondents reported that the problem of human trafficking is serious and this has been taken as priority in their agency. Even less than 1/3rd respondents viewed that human trafficking is very serious problem. It was found more pronouncing in Tamil Nadu followed by Karnataka and West Bengal. d

32. A negligible proportion of law enforcement agency respondents (7.5%) admitted that placement agencies that facilitate migration are registered with law enforcement agency. It was found more pronouncing in Tamil Nadu followed by Karnataka and Maharashtra. Thus, most of the respondents revealed that placement agencies are not registered with them. Thus, there is possibility of exploitation of girls during their migration. e

33. The main reasons for non-stoppable trafficking as per law enforcement agencies were recorded mainly poor economic conditions, social customs, gender inequality, negligible penalties, domestic violence and poor law enforcement. However, prosecuting officers reported that poor economic conditions, poor law enforcement, negligible penalties, corruption, social customs, gender inequalities and inadequate laws are important reasons responsible for human trafficking. f

34. Majority of stakeholders during FGDs informed that it is necessary to identify appropriate points of intervention so that migrants and future migrants are warned about the dangers and repercussions of human trafficking and get information that allows them to seek help if necessary.

35. Poverty, lack of means of livelihood, many girl children, lack of education, child marriages, and domestic violence are some of the major trafficking vulnerabilities. However, trafficking vulnerabilities vary across the stakeholders such as victims, law enforcement agencies and traffickers. g

36. Poverty along with gender discrimination, domestic abuse/violence, organised crime/poor law enforcement, social inequities and cultural practices are some of the supply side factors of human trafficking h

a and cheap labour force, cheap domestic servants/maids, demand for women's sexual services and derived demand-profit and revenue generated by third parties including recruiters are some of the demand side factors responsible for human trafficking identified in this research.

37. Abuse of vulnerability/promise and offering money/jobs, allurements/be funding/enticing with attractive offers, deception, fraud making, false promises of marriage, physical force/use of force and threats were some of the modus operandi of traffickers.

b 38. A negligible proportion of victims (5.3%), traffickers (0.0%), parents (0.7%) and clients (4.8%) respondent were found aware of National Human Rights Commission. The awareness level was found slightly significant among women and children victims followed by clients. The main sources of information about NHRC were reported to be NGOs followed by print media and electronic media.

c 39. About 56% of respondents, who were aware about NHRC, were partially aware of role and functions of NHRC. It was found more pronouncing among the parents followed by women and child victims, law enforcement agencies and clients. Slightly more than 1/3rd respondents were found fully aware of role and functions of NHRC. It was found more pronouncing among the Public Prosecutors followed by programme administrators. About 1/3rd clients and more than 1/4th service providers were not aware at all about the roles and functions of NHRC.

d 40. Insufficient and inadequate laws, poor enforcement, ineffective penalties, minimal chances of prosecution, the relatively low risks involved, corruption and complacency, poor visibility and less debate on the issue, the lack of political will of the Governments to implement policies and to provide adequate services for victims—all has played important role in perpetuating trafficking.

e 41. It has been also expressed by all stakeholders that people who takes up the cudgels against trafficking are in minuscule. It becomes difficult to combat because everyone (trafficking camp) is unified. The profiting families are also reluctant to talk.”

f 35. The Report thereafter talks about law enforcement, traffickers and exploiters. The same reads thus:

“Law Enforcement, Traffickers and Exploiters

g 1. AHTUs in India are special police units, devoted to tackle human trafficking. Following MHA Advisory (July 2020), a recent report of 16 States and UTs suggest that 225 AHTUs existed only on paper, and only 27 per cent of the AHTUs were operational. Most of the AHTUs are designated AHTUs burdened with a lot of other law enforcement activities. The Anti-Human Trafficking Units (AHTUs) are not fully operative and dedicated to human trafficking and in many districts of India, AHTUs have not been established so far.

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2. Anti-Human Trafficking Units (AHTUs) are currently under-resourced as well as undertrained. AHTUs are not fully aware about various legislations and sections dealing with human trafficking. a

3. According to the protocol, rescue teams should include: an official from the Department of Labour, representatives of the CWCs, a local non-profit, a doctor, and a female police officer or volunteer. These individuals must receive training on relevant laws, their individual responsibilities, and trauma prevention strategies. However, research participants reported that, in reality, teams are often too small to cope with the numbers of children needing rescue. Police officers, doctors, and female witnesses only sporadically take part. Key informant data suggests this overreliance leads to ad hoc and under-resourced raids directed by inexperienced or poorly supported workers, a situation that can and does inflict additional trauma on vulnerable children. b

4. The rescue protocol states that details of the rescue and the identities of rescued children must remain strictly confidential, and should not be disclosed to outside parties, including the media. Yet privacy breaches concerning occurrences and information leaks before, during and after raids are frequent. c

5. Service provider respondents stated that employers are often alerted to impending raids, and that unsuccessful rescue operations can increase the risk of employers retaliating against children. d

6. Most of the government official stated that rescue team members directly solicit media involvement so “the public could understand that this type of activity is a crime and punishable offence”. Publicity generates risks of retaliation against rescued children, increased social stigma and difficulty in reintegration. Moreover, widespread sensationalised media coverage of raids plays an important role in simplifying the complex underlying social and economic problems that perpetuate this problem. e

7. Key informant interviews held with police officers, Government Railway Police (GRP) and Railway Protection Force (RPF) and other stakeholders—Child Welfare Committee members, NGO representatives, and vendors in railway stations, reveal that most cases of trafficking are not registered or reported which is the major reason for the declining trend in reported cases of trafficking. It is reported that memo/GD entry is made by GRP/RPF and children are handed over to Child Welfare Committee in most cases. Some of them are left without any enquiry/record. f

8. The terms “human trafficking” and “migration” are being used interchangeably, resulting in the denial of labour rights. It is crucial to understand the difference between “trafficking”, “sex work” and “migration”. g

9. Human trafficking incidents are underreported as a result, the complainant is compelled to file a complaint through court order, while the offending police officers walk free. There are cases of refusal by police to file a complaint on the basis of jurisdiction/area, despite the fact that any h

police station can file a complaint and the investigation can be moved to the appropriate police station.

a 10. There are several reasons for non-registration of cases. It varies from case to case. The police officials are not much aware of Section 370 IPC. It is clearly provided in Explanation 2 to the section that the consent of the victim is immaterial in determination of the offence of trafficking, most of the police officers do not accept it. In *Vinod v. State of Gujarat*³³, the High Court held that a customer at a brothel comes within the purview of Section 370 IPC because trafficking also includes prostitution, the reason being that it is one type of exploitation.

b 11. The police are burdened with so many responsibilities as there are vacancies in police stations. Hence, they are reluctant as they cannot investigate the entire chain which crosses over three to four States. No coordination mechanism is available between source and destination States. Even if victims are rescued and sent back to their home, there is no rehabilitation package under IPC which would result in leaving the victims unprotected. There will be also problem in filing charge-sheet, trial and other proceedings for which the victims will not either coordinate or turn hostile. Corruption, pressure from superiors/politicians and lack of review mechanism force the officers in non-reporting of incidents. Moreover, the child protection mechanisms are very weak and they are not properly enquiring the victims and following the procedures. They do not have any power or authority to influence the police officers.

c 12. The major challenges being faced by agency in encountering with investigation of cases frequently reported of lack of victim cooperation/victim distressed, community ignorance and lack of identity as victims do not identify themselves as a victim. However, other important challenges were reported to be language/cultural barriers, lack of adequate resources, victims do not identify themselves as victims, lack of support with victim support providers, lack of adequate training and knowledge as well as lack of procedures and clear jurisdiction.

d 13. NGOs and service providers reported that most of the AHTU or police relied on NGOs to report victims to the police for action. In some cases, poor inter-State coordination impeded victims' ability to obtain services and participate in civil and criminal cases upon return to their home States. The Odisha Labour Department took steps to improve inter-State coordination on labour trafficking cases by establishing help desks, located in the capital cities of Telangana and Andhra Pradesh, as well as in Delhi, to identify trafficking victims from Odisha.

e 14. International Justice Mission (IJM) and other NGOs reported that some officials in Uttar Pradesh, Tamil Nadu, Telangana and Karnataka treated bonded labour cases as labour exploitation, which meant victims were not identified as bonded labour victims, did not receive "release certificates", and were not eligible for government compensation or

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services. In the Bonded Labour System (Abolition) Act, the definition of accused restricted to the principal employer and leaves traffickers out of the ambit of prosecution. a

15. Labour Department officials do not register FIR in most of the cases as mandated under law as there is confusion and disagreement about who has this responsibility. The resulting consensus is that employers are “rarely” or “never” arrested and unlikely to be convicted. Official figures for 2015 show that nationwide only 55 cases of child trafficking for any purpose 1.09% resulted in convictions out of 5,026 under investigation. b

16. Most of the traffickers during interaction told that they are also involved in drug peddling but they were always arrested on grounds of human trafficking rather than for drug peddling as they get bail easily in trafficking cases. Justice S.K. Panigrahi of Odisha High Court has heavily commented on this issue as reported in *Times of India*, 2-7-2020. Drug trafficking is linked to many forms of trafficking including diverse forms of labour trafficking in agriculture, begging and diverse forms of hard physical labour. c

17. Associations with traffickers with pan India network of traffickers and smugglers is the basic reason for about half of the respondents for getting involved in flesh trade, whereas more than one-third (37%) respondents have reported that earlier they were sex workers/broker/pimps, about 8% have reported that earlier they were brothel owners. 2% respondents were practising their inherited business. d

18. Most of the traffickers (79.6%) reported that they traffic the victims on promise of money/jobs and they directly contact to the family/victims through their placement agencies. Placement agencies are playing a major role in trafficking minor girls as well as children for the purpose of labour, sex slavery and forced marriages. e

19. The traffickers have changed their modus operandi with the changes in law and society. In most of the cases the trafficker is known to the victim who convinces the victim and her/his family and further sell them over to placement agent. f

20. For objecting the work given by placement agencies, the victims are tortured, thrashed and beaten up badly, many times these victim girls report sexual violence and assault by the placement agents and even by their employers. The girls are kept confined in the placement agencies till the time they are sold further. These placement agencies keep on changing their addresses, name and contact details to escape from law. g

21. Most of the traffickers (98%) reported that relatives/family members, neighbour/friends and other middlemen are playing critical role in making women and children more vulnerable to join trafficking.

22. Big profit and lack of alternative livelihood for trafficker are the main reasons for continuity act of human trafficking.

23. Witness turning hostile, protection of victims and witness, court adjournment and victims pleading guilty were some of the major h

difficulties being faced by law enforcement agencies in working with cases of human trafficking.

a 24. The phenomenon of flying sex workers is increasing day by day and has been attributed the reason behind flourishing of brothels.

b 25. More than 2/5th brothel keepers reported that police raids thrice and above in a month in the brothels. The main reasons for police raids were reported to be checking of minor girls, law and order problems and for official figures. More than 1/4th brothel keepers reported that police raids the brothel when monthly quota is not given to them. About 1/4th respondents reported that they are often involved in contact with police. About 30% respondents reported that police are also involved in racket of trafficking.

c 26. Only 7.9% clients reported that they were ever harassed by police and those who were harassed 4.8% clients reported that they were harassed occasionally whereas 3.2% reported that were rarely harassed. Clients those who were harassed by police were asked what was the action taken by police when encountered. 6.3% clients reported that police extracted money from them and 1.6% reported that they were verbally abused.

d 27. Easy bail for traffickers, intimidation and humiliation of victims, and baseless segregation of survivors/accused following rescue operation from brothels during complaint filing are the major gaps in the enforcement mechanism to combat human trafficking.

e 28. Most of the law enforcement agency respondents admitted that the officials of their units/department have received training on the issues of human trafficking. However, a large proportion of respondents in Karnataka, Uttar Pradesh and Tamil Nadu revealed that officers have not received such training.

f 29. Most (84.4%) of the law enforcement agency respondents reported that less than half of the officers in their departments have received training on the issues of human trafficking. In-service, induction, orientation and refresher training were organised on the issues of human trafficking.

f 30. Most of the law enforcement agency respondents (91.4%) revealed that they learn the subject of human trafficking as regular law enforcement activities while about half of the respondents admitted that they learn such knowledge from training, conference and workshops. Thus, about 2/3rd respondents revealed that their knowledge about legislations on human trafficking is at average level.

g 31. Majority of the law enforcement agency respondents (64.5%) reported that Sections 7 and 8 are most commonly used sections of ITPA. However, about 58.1% respondents revealed that Sections 3 and 4 are most commonly used sections of ITPA.

h 32. There is a lack of integrated information system about the trafficked person and the traffickers/brothel owners/operators.

33. Police involvement in perpetuating the practice of trafficking is reported by traffickers, NGOs as well as brothel keepers. Raid and rescue efforts have often resulted in police harassment, detention and abuse of women and minor girls as reported by victims rescued from the brothels of Pune and Mumbai. Although rescue efforts provide an important means of escape for women and minor girls in CS and a pathway to support services, when implemented poorly without sufficient police training and adequate insight about the commercial sex network, it has become traumatising for women and minor girls.

34. It is reported that law enforcement authorities, for example, the police force themselves, have a limited understanding of the prevalence of trafficking of women and minor girls for CSE and tend to be uninformed about their responsibilities under the ITPA towards trafficking. This constitutes yet another challenge in the prevention of trafficking of women and minor girls.

35. The clause under Section 18 ITPA, which allows for the closure of brothels and the eviction of offenders, has been applied sparingly. We have discovered a slew of brothels operating beneath the radar of local cops in Delhi, Mumbai, Pune, Nasik, Kolkata, and others.”

36. The Report has also talked about prosecution of offenders:

“1. Conviction rate in crimes against women and children for the past three years has been low. The conviction rate in cases of crimes like rape, cruelty by husband or his relatives, violation of the Protection of Women from Domestic Violence Act, human trafficking, violation of cyber crimes/the Information Technology Act and the Protection of Children from Sexual Offences Act, have been amongst the lowest. It has been informed by the State Government of Uttar Pradesh that they are conducting prosecution drives to improve the conviction rate in crimes against women and children.

2. According to NCRB data, conviction rate under human trafficking was recorded 42.4 per cent in 2017 which declined to 31.9 per cent in 2018 and further reduced to 20 per cent in 2019. BIRD’s primary data indicates that 20.8% prosecuted persons were convicted. The main reasons for low conviction rate as per Public Prosecutors were recorded witnesses turning hostile (44.8%), poor evidence (20.7%), lengthy court procedure (13.8%), inappropriate charge-sheet (10.3%) and easy bail to traffickers (10.3%). However, reasons for low conviction rate vary across the selected States.”

3. Material evidence, medical examination of victims, suspects and documents and witness evidence are some of the major techniques being used in investigation of crimes related to trafficking. However, techniques of investigation of crimes vary across the States. The State law enforcement agencies reported that forensics plays a critical role in the successful investigation, prosecution and conviction.

- a 4. NGOs have reported that police rarely make the informant NGO witness of the recovery memo or charge-sheet, therefore most traffickers and brothel owners are able to evade legal capture.
- b 5. Most of the rescued victims (56%) have reported that the statement of the complainant/victims is changed or ignored during the investigation, and it is not videographed as required by law. Even if is videotaped, they are not sent to the court with the charge-sheet.
- c 6. Inappropriate charge-sheet, witness turn hostile, poor evidences and lack of victim or witness protection are some of the loopholes in law enforcement mechanism for low rate of prosecution.
- d 7. Service providers, NGOs, parents, programme administrators and Public Prosecutors have reported that at different levels of Government, a lack of comprehensive responsibility for wrongdoing and corruption persisted, contributing to widespread impunity.
- e 8. During FGDs with the service providers, NGOs, parents, programme administrators and Public Prosecutors it was deliberated that the survivors/families are forced to become hostile and refuse to testify in the trial court due to social pressure, threats, intimidation, bribes, police collaboration, protracted trials, cross-cases, and a lack of faith in the criminal justice system, among other things.
- f 9. About 1/4th Public Prosecuting Officers reported that present laws are able to address the issues of human trafficking adequately. It has been noted that law enforcement officials do not take any action against accused persons who provide falsified documents in order to obtain bail. Protection of victims and witness, adequate rehabilitation facilities for victim, victim's access to legal aid, long-term crime control policy and victim's rights are some of the ignored areas in existing laws.
- g 10. Most of the Public Prosecuting Officers (79.3%) admitted that existing laws permit them to use of specialised evidence-gathering techniques in course. It was found more pronouncing in Jharkhand, Karnataka, West Bengal, Maharashtra, Assam and Uttar Pradesh. Witness turning hostile, protection of victim and witness and victim pleading guilty are some of the major difficulties being faced in working with cases of human trafficking.
- h 11. It has been noted that law enforcement officials do not take any action against accused persons who provide falsified documents in order to obtain bail.
12. Majority of the Public Prosecuting Officers (69.6%) reported that less than 25% officers have received training on the issues of human trafficking. Trainings were mainly organised by Department of Justice, service providers and independent trainers. About 79% respondents reported that officers have received training on the issues of human trafficking. It was found more pronouncing in Karnataka followed by West Bengal, Uttar Pradesh and Jharkhand. However, about half of

the respondents in Tamil Nadu and 1/3rd respondents in Assam and Maharashtra revealed that officers have not received such training.

13. Approximate only half of the Prosecuting Officers have received training on the issues of trafficking and prosecution of offenders and those who received the training majority of the respondents (82.6%) revealed that training on the issues of human trafficking has not been effective. a

14. There are major coordination gaps/lacks among NGOs inside States, across States, and across borders, as well as other stakeholders.” b

37. On the subject of effective law enforcement and prosecution, the Report states thus: b

“1. law enforcement officials should treat cases of missing children as abduction or trafficking until proven otherwise as per direction of the Supreme Court in 2013 and search for these people in every possible location. When children disappear, law enforcement agencies should start the missing person’s process, look into what happened, disseminate information, and conduct investigations, collaborating with other agencies as needed. c

2. About 31 per cent parent respondents reported that their children were working in hazardous industries—metallurgical industries, coal, fertilisers, mining, chemical and petrochemicals, cement and firecracker workshops. We recommend that provisions of the Juvenile Justice (Care and Protection) of Children Act, 2000: and the Child Labour (Prohibition and Regulation) Act, 1986: should be implemented in letter and sprits. Violators should be punished. Regular check of hazardous industries/units must be carried out by the Labour Inspectors. d

3. The idea of community policing needs to be made more widely known in order for people and non-governmental organisations to get involved in policing to stop and combat the trafficking of women and children. e

4. Anti-Human Trafficking Units (AHTUs) are currently under-resourced as well as undertrained. There is an urgent need for additional capacity building of AHTUs and providing them adequate funds and infrastructure because “the police lack the means to undertake a thorough investigation if the person is trafficked from another State”. f

5. To address the issue and protect the rights of victims and survivors, comprehensive legislation is required due to the underreporting of human trafficking instances and gaps in other laws. For law enforcement organisations, there is a need for an extensive training and capacity-building programme on the topic of human trafficking. It should be made mandatory for AHTU or the police to report every case of human trafficking. g

6. We advise the police to use the following strategies to win the trust of victims: Assuring victims that they are not the subject of an inquiry. Victims deserve to be treated with respect and decency. Employ a translator h

a if the victims speak different languages, ensuring that the victim's identity and privacy are protected by taking all necessary precautions; keep the accused far enough away from the victims to be safe. Check to see if Section 228-A IPC and Section 21 of the JJ Act are being followed; inform the victims of the investigation's development; keep in mind that the victim takes all of their belongings with them. Do not take offence if traumatised victims behave inappropriately or refuse to interact. Avoid, among other things, using derogatory language or making humiliating gestures or body language. Police officers may be able to overcome these challenges using their knowledge, skilful communication abilities, and information because it is also a question of counselling and persuasion.

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d 7. According to Public Prosecutors, the primary causes for the low conviction rate include witnesses becoming hostile, inadequate evidence, a long court process, an improper charge-sheet, and easy bail for traffickers. The problem of insufficient evidence and improper charge-sheet could be addressed by conducting thorough investigations into human trafficking instances. Because most witnesses and victims become hostile during prosecution, more emphasis should be placed on gathering material evidence, medical examination of victims, suspects, digital videography of investigations and statements of victims and documents supplemented by forensic evidences for filling a charge-sheet instead of a statement under Section 161 CrPC, as this will almost certainly increase the chances of offenders being convicted.

e 8. A qualified and experienced investigative agency, such as the National Investigation Agency (NIA), which has been mandated to look into inter-State and international trafficking crimes, is urgently required for the proper investigation of human trafficking cases. We support the full capacity building of law enforcement and prosecuting organisations, including providing them with state-of-the-art methods and tools for obtaining information and forensic evidence, as well as witness and victim protection, which may lead to a more severe conviction.

f 9. Recruitment agencies, document forgers, brokers, brothel owners, debt collectors, managers and owners of employment agencies, corrupt immigration officials, consular staff, embassy staff, law enforcement officers, border guards who accept bribes in exchange for passports, visas, and safe transit, and all others who are involved by their acts of omission and commission that result in exploitation should be dealt harshly under law.

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h 10. In order to safeguard some victims of human trafficking, prosecutors should set up child-friendly courts, as is done in Telangana and West Bengal. Most of the time, courts should employ videoconferencing to hear testimony from victims who have been reintegrated or repatriated. Since it is essential for convicting traffickers and criminals, victim and witness protection should be carefully considered. Because of poor witness protection and the drawn-out legal process, many victims were reluctant to

take part in trials against their traffickers. As a result, it should be ensured that cases are routinely reviewed by superior authorities.

11. To combat human trafficking, all States and Union Territories should establish an Anti-Human Trafficking Bureau at the State Capital level, as well as independent, non-designated Anti-Human Trafficking Units (AHTUs) at every district level, and use of Women Help Desks to monitor investigations at every police station by a senior officer at State level. Dedicated AHTUs are urgently needed because some AHTUs lacked defined mandates, were not completely focused on human trafficking, and often received requests for assistance months later, limiting the effectiveness of investigations. In a few cases, police allegedly freed alleged sex traffickers on bond right away, allowing them to focus on other crimes. Trafficking investigations are lengthy and complex, and we believe that having full-time resources devoted to these investigations are essential for success. These officials also underscore the need to provide and use undercover assets and to establish and nurture informants and witnesses.

12. Ministry of Home Affairs should collaborate with the Ministry of Railways. The Railway Board should be asked to enlist the help of the Railway Protection Force (RPF) and the Government Railway Police (GRP) to combat human trafficking at railway stations. They should instruct GRP and RPF officials to remain watchful and alert when dealing with such instances and mandatorily report each and every case of human trafficking.

13. Brothels ought to be shut down right away. A thorough action plan needs to be created for this project. Prostitutes and commercial sex workers need to be rehabilitated into other fields in order to improve their livelihoods. The relationship between police and owners of brothels makes things worse. This nexus has to be broken up as soon as feasible.

14. It is advised that rescue teams strictly follow rescue protocols and include a representative from the Department of Labour, representatives from the CWCs, a local non-profit, a doctor, and a female police officer or volunteer. Almost every stakeholder reported that police do not follow standard rescue protocol.

15. Enforcing the law in relation to applicable Acts like CLPRA, BLSA, IPTA, JJA, and IPC involves not only police but also many other authorities involved in the criminal justice system, such as Executive Magistrates, Labour Officials, CWC members, and in-charges of Homes. In order to strengthen the State's investigation and prosecution apparatus in this area, the State Government should create a time-bound action plan.

16. The development of all stakeholders' capacities and a regular programme of gender sensitisation are absolutely necessary.

17. A first information report should be filed in every instance of child labour, the case should be thoroughly investigated, and the offenders should be punished. As a result, there is an urgent need to train and sensitise Labour Department workers on the aforementioned issue.

a 18. The lack of an interpreter who is fluent in the relevant local languages makes it difficult to care for children who have been trafficked from different States. As a result, professional interpreters are required in such situations. At the district level, a database of competent language interpreters should be kept and shared with law enforcement agencies, service providers, and the courts.

b 19. CWCs must be established in each district as soon as possible, according to available guidelines, and multiple appointment practices should be strictly prohibited to eliminate potential conflicts of interest. CWCs should include those who work in the fields of law, medicine, and psychology.

c 20. It is found that almost all CWCs are working in inadequate sittings, some of which are seriously inadequate. To deal with this, three different sorts of sitting venue styles are utilised by several CWCs across the nation. There are further unique sittings available, including rotating and parallel sittings. Each, however, offers a unique set of benefits and drawbacks. A mixed sitting configuration of CWC is advised as needed.

d 21. The Act and the Rules do not currently provide any procedures for case management during hearings. While some CWCs successfully handle proceedings and financial flow, others seem to be struggling and using ineffective/inappropriate approaches. The necessary authorities must create a flawless attendance system, such as Aadhar enabled biometric attendance, to prevent prolonged absenteeism from CWC meetings because it interferes with the evaluation of children's rights.

e 22. Strong action against human traffickers should be taken, including criminal penalties and the freezing of their bank accounts. The unlawful assets amassed by traffickers and other parties as a result of exploiting trafficked victims should be seized and forfeited.

f Human trafficking, particularly of minors, is a kind of modern-day slavery that necessitates a holistic, multi-sectoral strategy to address the problem's complicated dimensions. Law cannot be the exclusive device for dealing with challenging social and economic issues. Given the infancy of services to trafficked people, monitoring and evaluation studies should be a part of any assistance programme, both governmental and private. Anti-trafficking legislation must be enforced properly, which necessitates educating individuals about the laws in place so that these rights are respected and upheld in practice. There are provisions for victim confidentiality, in camera trial (Section 327 CrPC), and compensation (Section 357 CrPC) in the existing laws. These provisions should be applied in relevant circumstances to protect victims' rights. In dealing with instances, the National Human Rights Commission has a larger role to play, and it must make recommendations and adopt remedial actions."

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C. Role of each of the accused persons

38. We shall now give a fair idea as regards the role of each of the accused persons and other details as to how they came to be released on bail by the High Court. The details of the accused persons are as follows:

Sl. No.	PARTICULARS
1.	Item 12
	<p><i>SLP (Crl.) D-No. 50420/2024: 230 days' delay in filing.</i></p> <p><i>Accused: Santosh Sao</i></p> <p><i>Role of accused: Santosh Sao is a resident of Jharkhand who was involved in the illegal purchase of a kidnapped minor boy-child named Sunny Nishad, who is a victim in connected case bearing FIR No. 76/2023 registered in PS Daraganj, Prayagraj, U.P. He bought the boy child from co-accused Jagveer Baranwal and Anuradha Devi for Rs 4 lakhs. During police investigation, the boy-child was found in his possession.</i></p> <p><i>FIR registered: FIR No. 193/2023, PS Bhelupur, Varanasi; FIR No. 201/2023, PS Cantt., Varanasi and FIR No. 76/2023, PS Daraganj, Prayagraj.</i></p> <p><i>Consideration by High Court while granting bail:</i></p> <ul style="list-style-type: none"> • He has not been named in the FIR. Name was disclosed by co-accused Anuradha Devi in police custody. • Victim recovered from co-accused Nandlal Ram. • Similarly situated co-accused in terms of role; Gudiya Devi has been granted bail. • He has been in custody for 6 months. <p><i>Conditions of bail granted by High Court:</i></p> <ul style="list-style-type: none"> • Appear on the date fixed by the trial court; • Not tamper with the prosecution evidence; and • Not pressurise the prosecution witnesses.
2.	Item 12.1
	<p><i>SLP (Crl.) No. 592 of 2025: No delay in filing.</i></p> <p><i>Accused: Sanjay Modanwal</i></p> <p><i>Role of accused: Sanjay Modanwal, along with his wife, Shikha Devi alias Shikha Modanwal (co-accused), played a key role in acquiring trafficked children. After kidnapping these children, they would circulate their photos among the other members of their trafficking racket. Once they identified a potential customer, they would sell the trafficked child to a middleman within the gang, facilitating the further sale of the victim.</i></p> <p><i>FIR registered: FIR No. 193/2023, PS Bhelupur, Varanasi and FIR No. 74/2023, PS Vindhyachal, Mirzapur.</i></p>

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Consideration by High Court while granting bail:

- He has not been named in the FIR. Name was disclosed by co-accused Manish Jain in police custody.
- Victim recovered was not recovered from his possession.
- Similarly situated co-accused in terms of role; Santosh Gupta alias Santosh Modanwal has been granted bail.
- No criminal antecedents.
- He has been in custody for 1 year 2 months.

b

Conditions of bail granted by High Court:

- Appear on each and every date fixed by the trial court;
- Not tamper with the prosecution evidence; and
- Not pressurise the prosecution witnesses.

3.

Items 12.2 and 12.17

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SLP (Crl.) No. 590 of 2025 and SLP (Crl.) D-No. 50517/2024: Nil and 12 days' delay in filing.

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Accused: Shivam Gupta alias Praveen Modanwal

Role of accused: Shivam Gupta is also a resident of Varanasi, who along with his accomplices, trafficked minor children. He, along with his father, Santosh Gupta and others, kidnapped multiple children from various locations, including Chowka Gate, Allahabad, and Mirzapur, between March and April 2023. After the kidnappings, he helped transport the children to Shikha Devi, who facilitated their sale. He participated in the kidnapping of the minor children, most of whom were sold to buyers in Jharkhand, often for sums between Rs 40,000 and Rs 1,50,000.

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FIR registered: FIR No. 193/2023, PS Bhelupur, Varanasi; FIR No. 201/2023, PS Cantt., Varanasi; FIR No. 50/2023, PS Chetganj, Varanasi; FIR No. 74/2023, PS Vindhyachal, Mirzapur and FIR No. 76/2023, PS Daraganj, Prayagraj.

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Consideration by High Court while granting bail:

In FIR No. 193/2023:

- He has not been named in the FIR. Name was disclosed by co-accused in police custody.
- Co-accused Manish Jain has been granted bail.
- He has been in custody for 1 year 2 months.

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In FIR No. 193/2023:

“Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties, nature of evidence and all attending facts and circumstances of the case, without expressing any opinion on merits of the case [...]”

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Conditions of bail granted by High Court

In FIR No. 193/2023:

- Not tamper with the prosecution evidence;
- Not pressurise the prosecution witnesses; and,
- Appear on each and every date fixed by the trial court.

	<p>In FIR No. 50/2023:</p> <ul style="list-style-type: none"> ▪ Not tamper with the prosecution evidence; ▪ Not influence any witness; ▪ Appear before the trial court on the date fixed unless personal presence is exempted; and ▪ Not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence. 	
4.	Items 12.3 and 12.10	
	<p><i>SLP (Crl.) D-No. 49397/2024 and SLP (Crl.) D-No. 50423/2024:</i> 160 days and 169 days' delay in filing.</p>	
	<p><i>Accused:</i> Jagveer Baranwal</p>	
	<p><i>Role of accused:</i> Jagveer Baranwal is a resident of Jharkhand. He was actively involved in purchasing kidnapped children from his accomplices at low prices and reselling them for significantly higher amounts. Jagveer, who worked as a nurse alongside Anuradha Devi, leveraged his position to facilitate these illegal transactions. The police even recovered a trafficked child directly from his possession as he and his accomplices were preparing to sell the child in another connected case of child trafficking.</p>	
	<p><i>FIR registered:</i> FIR No. 193/2023, PS Bhelupur, Varanasi; FIR No. 201/2023, PS Cantt., Varanasi; FIR No. 74/2023, PS Vindhyachal, Mirzapur and FIR No. 76/2023, PS Daraganj, Prayagraj.</p>	
	<p><i>Consideration by High Court while granting bail:</i></p>	
	<p>In FIR No. 193/2023:</p> <ul style="list-style-type: none"> ▪ He has not been named in the FIR. Name was disclosed by co-accused Anuradha Devi in police custody. ▪ Similarly situated co-accused in terms of role; co-accused Manish Jain has been granted bail. ▪ He has been in custody for 8 months. 	
	<p>In FIR No. 201/2023:</p> <ul style="list-style-type: none"> ▪ No material on record with regard to tampering of evidence or intimidation of witness. ▪ Pendency of several criminal cases against the accused itself no basis for refusal of bail. ▪ No evidence with regard to criminal antecedents. ▪ Bail is a rule, jail is an exception. 	
	<p><i>Conditions of bail granted by High Court:</i></p>	
	<p>In FIR No. 193/2023:</p> <ul style="list-style-type: none"> ▪ Not tamper with the prosecution evidence; ▪ Not pressurise the prosecution witnesses; and ▪ Appear on each and every date fixed by the trial court. 	
	<p>In FIR No. 201/2023:</p> <ul style="list-style-type: none"> ▪ Not tamper with the evidence during trial; 	

a	<ul style="list-style-type: none"> • Not pressurise/intimidate the prosecution witnesses; • Appear on each and every date fixed by the trial court, unless personal presence is exempted; • Shall make himself available for interrogation by a police officer as and when required; • Not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected; • Not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence; • Not leave India without the previous permission of the court; and • In the event, he changes residential address, he shall inform the court concerned about new residential address in writing.
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c	<p>5. Item 12.5</p> <p><i>SLP (Crl.) D-No. 49600/2024: 202 days' delay in filing.</i></p> <p><i>Accused: Yashoda Devi Pandit</i></p>
d	<p><i>Role of accused: Yashoda Devi Pandit, along with her husband Mukesh Pandit, purchased the petitioner, Sanjay's minor son, Rohit for Rs 2,60,000 from co-accused Jagveer Baranwal, Anuradha, and Shikha Devi. The police raided her home in Hazaribagh, Jharkhand, and recovered the child, whom she had named Anup Pandit.</i></p> <p><i>FIR registered: FIR No. 193/2023, PS Bhehpur, Varanasi and FIR No. 74/2023, PS Vindhyachal, Mirzapur.</i></p>
e	<p><i>Consideration by High Court while granting bail:</i></p> <p><i>"Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties and keeping in mind that co-accused has already been released on bail by this Court and without expressing any opinion on the merit of the case [...]"</i></p>
f	<p><i>Conditions of bail granted by High Court:</i></p> <ul style="list-style-type: none"> • File an undertaking to the effect that applicant shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law; • Remain present before the trial court on each date fixed, either personally or through his/her counsel. In case of his absence, without sufficient cause, the trial court may proceed against applicant under Section 229-A IPC; • In case, the applicant misuses the liberty of bail during trial and in order to secure presence of the applicant, proclamation under Section 82 CrPC is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against the applicant, in accordance with law, under Section 174-A IPC;
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h	<p>and</p>

• Remain present, in person, before the trial court on the dates fixed for: (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 CrPC. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against the applicant in accordance with law.

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6.

Item 12.5

SLP (Crl.) D-No. 496639/2024: 161 days' delay in filing.

Accused: Mukesh Pandit

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Role of the Accused: Mukesh Pandit, along with his wife Yashoda Devi, purchased the petitioner Sanjay's minor son, Rohit for Rs 2,60,000 from co-accused Jagveer Baranwal, Anuradha, and Shikha Devi. He was involved in negotiating and finalising the deal for the trafficked child. The police later recovered the child from their home in Hazaribagh, Jharkhand.

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FIR registered: FIR No. 193/2023, PS Bhelupur, Varanasi and FIR No. 74/2023, PS Vindhyaachal, Mirzapur.

Consideration by High Court while granting bail:

"Considering the facts and circumstances of the case, perusing the record and also considering the nature of allegations, arguments advanced by the learned counsel for the parties and keeping in mind that co-accused has already been released on bail by this Court and without expressing any opinion on the merit of the case [...]"

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Conditions of bail granted by High Court:

• File an undertaking to the effect that applicant shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law;

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• Remain present before the trial court on each date fixed, either personally or through his/her counsel. In case of his absence, without sufficient cause, the trial court may proceed against applicant under Section 229-A IPC;

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• In case, the applicant misuses the liberty of bail during trial and in order to secure presence of the applicant, proclamation under Section 82 CrPC is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against the applicant, in accordance with law, under Section 174-A IPC; and

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• Remain present, in person, before the trial court on the dates fixed for: (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 CrPC. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against the applicant in accordance with law.

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7.	Items 12.7, 12.14 and 12.16
a	<p><i>SLP (Crl.) D-No. 49643/2024, SLP (Crl.) D-No. 50455/2024 and SLP (Crl.) D-No. 50516/2024: 67 days, 85 days and 38 days' delay in filing, respectively.</i></p>
	<p><i>Accused: Santosh Gupta alias Santosh Modanwal</i></p>
b	<p><i>Role of the Accused: Santosh Gupta is a resident of Varanasi, Uttar Pradesh. Along with his co-accused, Vinay Mishra and Shivam Gupta (his son), Santosh Gupta was responsible for trafficking vulnerable children from different regions, particularly from Allahabad. After trafficking the children, they were kept in the custody of Shikha Devi and Sanjay Modanwal, before being sold to customers. He played a key role in acquiring the kidnapped children at low prices and selling them at higher prices with the help of accomplices like Manish Jain and Shikha.</i></p>
c	<p><i>FIR registered: FIR No. 193/2023, PS Bhelapur, Varanasi; FIR No. 201/2023, PS Cantt., Varanasi; FIR No. 50/2023, PS Chetganj, Varanasi; FIR No. 74/2023, PS Vindhyachal, Mirzapur and FIR No. 76/2023, PS Daraganj, Prayagraj.</i></p>
d	<p><i>Consideration by High Court while granting bail:</i> <i>In FIR No. 193/2023:</i> <i>"Considering the facts and circumstances of the case, submissions made by learned counsel for the parties, the evidence on record, pending trial and considering the complicity of accused, severity of punishment, at this stage, without expressing any opinion on the merits of the case [...]"</i></p>
e	<p><i>In FIR No. 201/2023:</i></p> <ul style="list-style-type: none"> • He has not been named in the FIR. Name was disclosed by co-accused Jagveer Baranwal in police custody. • Victim was not recovered from his possession. • Out of four cases of criminal history, one bail order has been appended. • Similarly situated co-accused in terms of role; Nandlal Ram has been granted bail.
f	<p><i>In FIR No. 50/2023:</i> <i>"Considering the facts and circumstances of the case and submissions made by learned counsel for the applicant and learned AGA, without expressing any opinion on the merits of the case [...]"</i></p>
g	<p><i>Conditions of bail granted by High Court:</i></p> <ul style="list-style-type: none"> • Not tamper with the prosecution evidence; and • Remain present, in person, before the trial court on the dates fixed for: (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 CrPC. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against the applicant in accordance with law.
h	<p><i>In FIR No. 201/2023:</i></p> <ul style="list-style-type: none"> • Attend and cooperate the trial proceedings pending before the court concerned on the dates fixed after release.

- Not tamper with the witnesses.
- Not indulge in any illegal activities during the bail period.

In FIR No. 50/2023:

- Not tamper with the evidence during the trial.
- Not influence any witness;
- Appear before the trial court on the date fixed, unless personal presence is exempted; and
- Not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court to any police officer or tamper with the evidence.

8.

Item 12.8

SLP (Crl.) D-No. 50418/2024: 236 days' delay in filing.

Accused: Gudiya Devi

Role of the Accused: Gudiya Devi is a resident of Jharkhand who played a significant role in trafficking minor children. Her primary responsibility is identifying potential customers for the trafficked children and receiving a commission for aiding the trafficking process. She was frequently involved in multiple transactions, including selling children brought by accused persons, namely, Shikha Devi, Vinay Mishra, Jagveer Baranwal, Anuradha Devi, Santosh Gupta and Shivam Gupta. Gudiya helped in selling the trafficked children for amounts ranging from Rs 40,000 to Rs 3,50,000 and more.

FIR registered: FIR No. 193/2023, PS Bhelupur, Varanasi and FIR No. 201/2023, PS Cantt., Varanasi.

Consideration by High Court while granting bail:

- No material evidence regarding tampering of evidence or intimidating of witness in previous criminal cases;
- Pendency of several criminal cases against an accused may itself cannot be a basis for refusal of bail;
- No evidence with regard to criminal antecedents;
- Bail is a rule, jail is an exception.

Conditions of bail granted by High Court:

- Not tamper with the evidence during the trial;
- Not pressurise/intimidate the prosecution witness;
- Appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make herself available for interrogation by a police officer as and when required;
- Not commit an offence similar to the offence of which she is accused, or suspected, of the commission of which she is suspected;
- Not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court or to any police officer or tamper with the evidence;
- Not leave India without the previous permission of the court; and,

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	<p>• In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.</p>
a	<p>9. Item 12.9</p>
	<p><i>SLP (Crl.) D-No. 50422/2024</i>: 182 days' delay in filing.</p>
	<p><i>Accused</i>: Anuradha Devi</p>
b	<p><i>Role of the Accused</i>: Anuradha Devi, a nurse at a primary health centre in Hazaribagh, Jharkhand, is the kingpin of the organised inter-State child-trafficking racket. Using her unrestricted access to vulnerable children, she orchestrated the kidnapping and trafficking of minor children. With the help of her associates, namely, Jagveer Baranwal, Manish Jain, Gudiya Devi, Shikha Devi, Vinay Mishra, Shivam Gupta and others, she bought trafficked children at prices as low as Rs 20,000 and sold them at significantly higher rates, amounting to Rs 3,50,000. Her operation is extensive, involving numerous transactions where children were trafficked from various regions. Anuradha's heinous role in exploiting and selling minor children is supported by the statements of several co-accused.</p>
c	
d	<p><i>FIR registered</i>: FIR No. 193/2023, PS Bhelupur, Varanasi; FIR No. 201/2023, PS Cantt., Varanasi; FIR No. 74/2023, PS Vindhyachal, Mirzapur and FIR No. 76/2023, PS Daraganj, Prayagraj.</p>
	<p><i>Consideration by High Court while granting bail</i>: "Considering the facts and circumstances of the case and submissions made by learned counsel for the applicant and learned AGA, without expressing any opinion on the merits of the case [...]"</p>
e	<p><i>Conditions of bail granted by High Court</i>:</p> <ul style="list-style-type: none"> • File an undertaking to the effect that applicant shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law;
f	<ul style="list-style-type: none"> • Remain present before the trial court on each date fixed, either personally or through his/her counsel. In case of his absence, without sufficient cause, the trial court may proceed against applicant under Section 229-A IPC;
	<ul style="list-style-type: none"> • In case, the applicant misuses the liberty of bail during trial and in order to secure presence of the applicant, proclamation under Section 82 CrPC is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against the applicant, in accordance with law, under Section 174-A IPC; and,
g	<ul style="list-style-type: none"> • Remain present, in person, before the trial court on the dates fixed for: (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 CrPC. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against the applicant in accordance with law.
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10.	Items 12.11 and 12.15
	<p><i>S.I.P. (Crl.) D-No. 50430/2024 and S.I.P. (Crl.) D-No. 50515/2024:</i> 154-days and 64 days' delay in filing, respectively.</p>
	<p><i>Role of the Accused:</i> Manish Jain, a resident of Rajasthan, is a key player in the organised inter-State child-trafficking racket. He actively managed the illegal operations, coordinating the sale and purchase of trafficked children across regions. He frequently worked with co-accused like Vinay Mishra and Shikha Devi, trafficking minors and selling them at higher prices. In March and April 2023, he sold multiple trafficked children for amounts ranging from Rs 40,000 to Rs 2,60,000. He was arrested by the police in Varanasi while attempting to sell a 4 year-old boy child named Rohit, a trafficked victim child in FIR No. 193/2023 (PS Bhelupur).</p>
	<p><i>FIR registered:</i> FIR No. 193/2023, PS Bhelupur, Varanasi; FIR No. 201/2023, PS Cantt., Varanasi and FIR No. 50/2023, PS Chetganj, Varanasi.</p>
	<p><i>Consideration by High Court while granting bail:</i> In FIR No. 193/2023: "Considering the facts and circumstances of the case and submissions made by learned counsel for the applicant and learned AGA, without expressing any opinion on the merits of the case [...]"</p>
	<p>In FIR No. 50/2023:</p> <ul style="list-style-type: none"> • No material on record with regard to tampering of evidence or intimidation of witness. • Pendency of several criminal cases against the accused itself no basis for refusal of bail. • No evidence with regard to criminal antecedents. • Bail is a rule, jail is an exception.
	<p><i>Conditions of bail granted by High Court</i> In FIR No. 193/2023:</p> <ul style="list-style-type: none"> • File an undertaking to the effect that applicant shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law; • Remain present before the trial court on each date fixed, either personally or through his/her counsel. In case of his absence, without sufficient cause, the trial court may proceed against applicant under Section 229-A IPC; • In case, the applicant misuses the liberty of bail during trial and in order to secure presence of the applicant, proclamation under Section 82 CrPC is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against the applicant, in accordance with law, under Section 174-A IPC; and, • Remain present, in person, before the trial court on the dates fixed for: (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 CrPC. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for

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the trial court to treat such default as abuse of liberty of bail and proceed against the applicant in accordance with law.

In FIR No. 50/2023:

- Not tamper with the prosecution evidence; and
- Remain present, in person, before the trial court on the dates fixed for: (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 CrPC. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against the applicant in accordance with law.

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11.

Item 12.12

SLP (Crl.) D-No. 50435/2024: 138 days' delay in filing.

c

Role of the Accused: Nandlal Ram is a resident of Kolkata, West Bengal who purchased the trafficked one-year-old son of the petitioner, Ms Pinki in FIR No. 201/2023. He purchased the victim boy child from his co-accused, Anuradha Devi for Rs 3,50,000 lakhs. During the course of the police investigation, the authorities tracked the boy to Nandlal's possession in Kolkata, where the child was eventually recovered.

FIR registered: FIR No. 201/2023, PS Cantt., Varanasi.

d

Consideration by High Court while granting bail:

- No evidence regarding the accused absconding, or probability of repeating the same offences, or intimidating the witnesses.
- No evidence regarding criminal antecedents.

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Conditions of bail granted by High Court:

- Not tamper with the evidence during the trial;
- Not pressurise/intimidate the prosecution witness;
- Appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make herself available for interrogation by a police officer as and when required;
- Not commit an offence similar to the offence of which she is accused, or suspected, of the commission of which she is suspected;
- Not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court or to any police officer or tamper with the evidence;
- Not leave India without the previous permission of the court; and
- In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

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12.

Item 12.13

SLP (Crl.) D-No. 50453/2024: 96 days' delay in filing.

g

Accused: Kuldeep Paswan alias Kuldeep Ram

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Role of the Accused: Kuldeep Paswan is a resident of Jharkhand who played a significant role in the trafficking of minor children, working closely with accomplices, namely, Gudiya Devi, Jagveer Baranwal, and Anuradha Devi. He was involved in the buying and selling of trafficked

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children, often purchasing them at low prices and reselling them at significantly higher amounts. Kuldeep, along with his co-accused, sold a trafficked child for Rs 3,50,000, who was brought to them by accused Shikha Devi and Vinay Mishra. His involvement in these transactions highlights his active participation in the organised trafficking of minors, further facilitated by Gudiya Devi, who identified potential customers.

FIR registered: FIR No. 201/2023, PS Cantt., Varanasi.

Consideration by High Court while granting bail:

- Name was disclosed by co-accused Anuradha Devi in police custody.
- Victim recovered from co-accused Nandlal Ram who has been enlarged on bail.
- Similarly situated co-accused in terms of role; Gudiya Devi has also been granted bail.
- He has been in custody for 8 months.

39. We have been provided with information as regards the current status of the accused persons:

CURRENT STATUS OF ACCUSED PERSONS

Sl. No.	Name of the accused	FIR No. 201/2023 PS Cantt., Varanasi	FIR No. 193/2023 PS Bhelupur, Varanasi	FIR No. 50/2023 PS Chetganj, Varanasi
1.	Santosh Sao	On bail Vide order dt. 13-12-2023 in <i>Santosh Sao v. State of U.P.</i> ²	On bail Vide order dt. 9-11-2023 in <i>Santosh Sao v. State of U.P.</i> ²⁶	NA
2.	Jagveer Baranwal	On bail Vide order dt. 15-2-2024 in <i>Jagveer Baranwal v. State of U.P.</i> ⁵	On bail Vide order dated 12-2-2024 in <i>Jagveer Baranwal v. State of U.P.</i> ¹²	NA
3.	Santosh Gupta alias Santosh Modanwal	On bail Vide order dt. 6-5-2024 in <i>Santosh Gupta v. State of U.P.</i> ¹⁶	On bail Vide order dt. 20-5-2024 in <i>Santosh Gupta v. State of U.P.</i> ⁹	On bail Vide order dt. 19-6-2024 in <i>Santosh Gupta v. State of U.P.</i> ¹⁸

26 2023 SCC OnLine All 5395

2 2023 SCC OnLine All 5397

5 2024 SCC OnLine All 8448

12 2024 SCC OnLine All 8153

16 2024 SCC OnLine All 8155

9 2024 SCC OnLine All 8441

18 2024 SCC OnLine All 8110

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a	4.	Gudiya Devi	<i>On bail</i> Vide order dt. 7-12-2023 in <i>Gudiya Devi v. State of U.P.</i> ¹⁰	<i>Re-arrested</i> on 20-2-2025 NBW issued vide order dt. 17-2-2025 by CJM in CrI. Case No. 93745/2023. Bail order set aside by this Court in SLP (CrI.) No. 1042/2024 vide order dated 24-9-2024 ¹ .	NA
b					
c	5.	Anuradha Devi	<i>On bail</i> Vide order dt. 30-1-2024 in <i>Anuradha Devi v. State of U.P.</i> ¹¹	<i>Re-arrested</i> on 20-2-2025 NBW issued vide order dt. 17-2-2025 by CJM in CrI. Case No. 93745/2023. Bail order set aside by this Court in SLP (CrI.) No. 1046/2024 vide order dated 24-9-2024 ¹ .	NA
d					
e	6.	Manish Jain	<i>On bail</i> Vide order dt. 27-2-2024 in <i>Manish Jain v. State of U.P.</i> ¹³	<i>On bail</i> Vide order dt. 21-11-2023 in <i>Manish Jain v. State of U.P.</i> ²²	<i>On bail</i> Vide order dt. 27-5-2024 in <i>Manish Jain v. State of U.P.</i> ¹⁷
f					
g	7.	Nandlal Ram	<i>On bail</i> Vide order dt. 14-3-2024 in <i>Nandlal Ram v. State of U.P.</i> ¹⁴	NA	NA
h					
	8.	Kuldeep Paswan alias Kuldeep Ram	<i>On bail</i> Vide order dt. 25-4-2024 in <i>Kuldeep Ram v. State of U.P.</i> ¹⁵	NA	NA
	9.	Sanjay Modanwal	NA	<i>On bail</i> Vide order dt. 12-8-2024 in <i>Sanjay Modanwal v. State of U.P.</i> ³	NA

10 2023 SCC OnLine All 5396

1 Sanjay v. State of U.P., 2024 SCC OnLine SC 5022

11 2024 SCC OnLine All 8447

13 2024 SCC OnLine All 8445

17 2024 SCC OnLine All 8438

22 2023 SCC OnLine All 5398

14 2024 SCC OnLine All 8446

15 2024 SCC OnLine All 8450

3 2021 SCC OnLine All 8439

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10.	Shiyam Gupta alias Praveen Modanwal	<i>On bail</i> Vide order dt. 26-7-2024 in <i>Praveen Modanwal v. State of U.P.</i> ⁴	Order granting bail has not been challenged.	<i>On bail</i> Vide order dt. 18-7-2024 in <i>Shiyam Gupta v. State of U.P.</i> ¹⁹	a
11.	Mahesh Rana	NA	<i>On bail</i> Vide order dt. 7-2-2024 in <i>Mahesh Rana v. State of U.P.</i> ⁶	NA	b
12.	Yashoda Devi Pandit	NA	<i>On bail</i> Vide order dt. 4-1-2024 in <i>Yashoda Devi Pandit v. State of U.P.</i> ⁷	NA	c
13.	Mukesh Pandit	NA	<i>On bail</i> Vide order dt. 16-2-2024 in <i>Mukesh Pandit v. State of U.P.</i> ⁸	NA	d
14.	Sunita Devi	NA	Order granting bail set aside by this Court in SLP (Crl.) No. 1041/2024 vide order dt. 24-9-2024 ¹ .	NA	e
15.	Mahesh Rana	NA	Order granting bail set aside by this Court in SLP (Crl.) No. 1044/2024 vide order dt. 24-9-2024 ¹ .	NA	f
16.	Sangeeta Devi	Order granting bail has not been challenged.	<i>Re-arrested on 3-3-2025</i> NBW issued vide order dt. 17-2-2025 by CIM in Crl. Case No. 93745/2023. Bail order set aside by this Court in SLP (Crl.) No. 1045/2024 vide order dated 24-9-2024 ¹ .	NA	g

4 2024 SCC OnLine All 8442

19 2024 SCC OnLine All 8443

6 2024 SCC OnLine All 8449

7 2024 SCC OnLine All 8451

8 2024 SCC OnLine All 8452

1 *Sanjay v. State of U.P.*, 2024 SCC OnLine SC 5022

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D. Order passed¹ by coordinate Bench in Criminal Appeal No. 3997 of 2024 and allied appeals cancelling the bail granted to some of the accused persons

a 40. The order reads thus: (*Sanjay case*¹, SCC OnLine SC paras 1-10)

“ORDER

1. Leave granted.

2. Heard Ms Aparna Bhat, learned Senior Counsel appearing for the appellant (informant). Also heard Mr Garvesh Kabra, learned counsel appearing for the respondent State of Uttar Pradesh.

b 3. The office report dated 23-9-2024 indicates that service is complete on the accused (Respondent 2) in all the cases but none has entered their appearance.

c 4. These matters arise out of the common FIR No. 193 of 2023 registered under Section 363 IPC relating to the appellant's 4 year old son, who went missing at night. The Police after some investigation noticed that it was a child trafficking case and accordingly added Section 370(5) IPC. Subsequently, charge-sheet against 14 accused was filed under Sections 363, 311 and 370(5) IPC. The unofficial respondents herein are named as accused in the charge-sheet.

d 5. While challenging the bail orders passed on 4-10-2023²¹, 8-11-2023²³, 9-11-2023²⁶, 12-12-2023²⁰ and 15-12-2023^{24, 25}, Ms Aparna Bhat, learned Senior Counsel submits that these are organised child trafficking cases and the bail for the accused was unmerited.

e 6. In the counter affidavit filed by the State, it is pointed out that these cases pertain to child-trafficking racket involving kidnapping and selling of minor children. The activities of the accused spread across the States of Uttar Pradesh, Jharkhand and Rajasthan. The affidavit also indicates the nature of evidence that has been collected by the Police and it is averred that those will show the complicity of accused.

f 7. The punishment envisaged in the event of conviction for the charged sections is minimum 14 years which can extend up to life imprisonment. Notwithstanding the serious nature of the crime as also the likely involvement of the accused in the child-trafficking racket, we notice from the impugned order(s) that the High Court without considering the relevant parameters in cases of this nature, granted bail to the accused.

8. The concerned accused despite service have failed to appear in Court to defend the bail order.

g 9. We are therefore of the considered opinion that the bail order(s) requires our interference. Accordingly, the impugned orders of the High

1 *Sanjay v. State of U.P.*, 2024 SCC OnLine SC 5022

21 *Gudiya Devi v. State of U.P.*, 2023 SCC OnLine All 5393

23 *Mahesh Rana v. State of U.P.*, 2023 SCC OnLine All 5394

26 *Samosh Saw v. State of U.P.*, 2023 SCC OnLine All 5395

20 *Sumita Devi v. State of U.P.*, 2023 SCC OnLine All 5400

24 *Sangeeta Devi v. State of U.P.*, 2023 SCC OnLine All 5432

25 *Anuradha Devi v. State of U.P.*, 2023 SCC OnLine All 5399

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Court dated 4-10-2023²¹, 8-11-2023²³, 9-11-2023²⁶, 12-12-2023²⁰ and 15-12-2023^{24, 25} granting bail to the accused Gudiya Devi, Mahesh Rana, Santosh Saw, Sangeeta Devi, Anuradha Devi & Sunita Devi are set aside and quashed. The appeals are allowed. As the bail is being cancelled, all the accused must immediately surrender. If they do not do so, the Police must take steps to arrest the accused. It is ordered accordingly.

10. Pending application(s), if any, shall stand disposed of.”

(emphasis supplied)

F. Grant of bail by the High Court

41. We take notice of the fact that practically in all the cases the High Court while releasing the accused persons on bail took into consideration the following aspects:

- (i) The accused has not been named in the FIR;
- (ii) The name of the accused has been disclosed by a co-accused;
- (iii) Victim has not been recovered from the custody of the accused;
- (iv) Similarly situated co-accused has been granted bail;
- (v) No material evidence regarding tampering of evidence or intimidating of witness in previous criminal cases;
- (vi) Bail is a rule, jail is an exception.

F. Submissions of the parties

(i) Submissions on behalf of the appellants

42. Ms Aparna Bhat, the learned counsel appearing for the victims/appellants vehemently submitted that the High Court committed a serious error in releasing the accused persons on bail by completely undermining the serious nature of the crime alleged. She would submit that the High Court failed to consider an important aspect of the matter that the FIRs were registered as cases of missing children. How does the High Court expect precise details in the FIRs? She would submit that the recovery memos indicate the manner in which the investigation was conducted and how each accused not only led the investigation agency to apprehend the other accused but also led to retrieval of the children. She brought to our notice that each child was found from the home/custody of one or the other accused persons.

43. Ms Aparna Bhat brought something very shocking to our notice. As an illustration Ms Bhat pointed out that Respondent 2 in SLP (Crl.) No. 4667 of 2025, namely, Anuradha Devi is a nurse serving in a primary health centre at Hazari Bagh Chhattisgarh. Similarly, Respondent 2 in SLP (Crl.) No. 4668 of 2025 and SLP (Crl.) No. 4660 of 2025, respectively, namely, Jagveer Baranwal is also directly involved in child trafficking. At least four of the trafficked

21 *Gudiya Devi v. State of U.P.*, 2023 SCC OnLine All 5393

23 *Mahesh Rana v. State of U.P.*, 2023 SCC OnLine All 5394

26 *Santosh Saw v. State of U.P.*, 2023 SCC OnLine All 5395

20 *Sunita Devi v. State of U.P.*, 2023 SCC OnLine All 5400

24 *Sangeeta Devi v. State of U.P.*, 2023 SCC OnLine All 5432

25 *Anuradha Devi v. State of U.P.*, 2023 SCC OnLine All 5399

children were retrieved at their instances from the persons to whom they had sold the children.

a **44.** Ms Bhat would submit that if such individuals are granted bail they would return to the place of their work and continue indulging in such nefarious activities which constitute a very serious crime.

b **45.** In such circumstances referred to above, Ms Bhat prayed that there being merit in all her appeals those may be allowed and the orders passed by the High Court granting bail to the accused persons be set aside and they should be ordered to be taken back in custody.

(ii) *Submissions on behalf of the accused persons, Santosh Sao and Jagveer Baranwal*

c **46.** Ms Tanya Agarwal, the learned counsel appearing for one of the accused persons, namely, Santosh Sao submitted that her client cannot be said to be one of the members of the gang operating for the purpose of human trafficking. She would submit that her client is a poor man residing in a small village in the State of Jharkhand. He is a father of four daughters (aged between 16 years-3 years). The counsel would submit that her client is the sole bread earner of the family. It was argued that the accused Santosh Sao has no role to play either in kidnapping or selling. She further argued that the trafficked child was not found from the custody of her client but was found from the custody of one Nand Lal Ram. According to the learned counsel the name of her client

d came to be disclosed at the instance of one co-accused, namely, Anuradha Devi. **47.** Ms Agarwal further submitted that her client is very much available for trial. His whereabouts are very much known to the police and he is regularly attending the trial court.

e **48.** In such circumstances referred to above, Ms Agarwal prayed that the bail of her client may not be cancelled.

(iii) *Submissions on behalf of accused, Manish Jain*

f **49.** Ms Sangeeta Singh, the learned counsel appearing for one of the accused persons, namely, Manish Jain submitted that the High Court committed no error much less any error of law in ordering release of her client on bail. She would submit that no child was retrieved from her client and the entire case against her client is based on the statements of the other co-accused. In this regard she pointed out the following:

“Bail granted on 27-2-2024 in *Manish Jain v. State of U.P.*¹³ in FIR No. 201/2023.

g Bail granted in *Manish Jain v. State of U.P.*²² in FIR No. 193/2023 on 21-11-2023.

Bail granted in *Manish Jain v. State of U.P.*¹⁷ in FIR No. 50/2023 on 27-5-2024.”

h ¹³ 2024 SCC OnLine All 8445
²² 2023 SCC OnLine All 5398
¹⁷ 2024 SCC OnLine All 8438

50. She further submitted that cancellation of bail is prayed for at the instance of the first informant and not by the State. According to her, the first informant has personal vengeance to wreak against her client. a

51. In such circumstances, the learned counsel prayed that no case is made out by the first informant for the purpose of cancellation of bail of the accused, namely, Manish Jain and therefore, the orders passed by the High Court releasing Manish Jain on bail may not be disturbed.

(iv) Submissions on behalf of the State

52. Mr Garvesh Kabra, the learned counsel appearing for the State of U.P. adopted all the submissions canvassed by Ms Aparna Bhat appearing for the appellants. He submitted after obtaining instructions from the courts concerned below as well as the investigation officers that the whereabouts of most of the accused persons are not known as on date. He pointed out that after being released on bail many of the accused persons have absconded and are not appearing before the courts below for the purpose of committal proceedings. b
c

G. Analysis

53. Having heard the learned counsel appearing for the parties and having gone through materials on record the only question that falls for our consideration is whether the High Court committed any error in passing various orders releasing the accused persons on bail? d

54. In *Bachpan Bachao v. Union of India*³⁴, A.K. Sikri, J. (as his Lordship then was) speaking for the Bench observed that: (SCC OnLine Del paras 17-18)

“17. Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. The Indian Constitution specifically bans the trafficking of persons. Article 23, in the Fundamental Rights, Part III of the Constitution, prohibits “traffic in human beings and other similar forms of forced labour”. Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement/ transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialisation. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users, etc. exploit the vulnerability of the trafficked person. *Trafficking shows phenomenal increase with globalisation*. Increasing profit with little or no risk, organised activities, low priority in law enforcement, etc. aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs. Trafficking in human beings take place for the purpose of exploitation which in general could be categorised as (a) sex-based and (b) non-sex-based. The former category includes trafficking for prostitution, commercial sexual abuse, paedophilia, pornography, cyber sex, and different types e
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³⁴ 2010 SCC OnLine Del 4613

a of disguised sexual exploitation that take place in some of the massage parlours, beauty parlours, bars, and other manifestations like call girl racket, friendship clubs, etc. Non-sex based trafficking could be for different types of servitude, like domestic labour, industrial labour, adoption, organ transplant, camel racing, marriage related rackets, etc. But the growing trafficking in women is principally for the purpose of prostitution. Prostitution is an international problem. However, we are aware of the fact that it is legalised in many countries around the globe.

b Unfortunately, society remains tolerant of this abominable crime against women. There are assorted ways of getting women into prostitution that are common to many countries; then there are particular unique methods varies to a country. Probably, the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions. In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all the countries concerned. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatisation to the lifestyle. The two principal Indian laws that addresses the trafficking and prostitution in particular are the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) and the Immoral Traffic (Prevention) Act, 1956 (ITPA), colloquially called PITA, an amendment to SITA. Neither law prohibits prostitution per se, but both forbids commercialised vice and soliciting.

e 18. India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organised and a commercialised vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of All Forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). A trafficked victim is, therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The Constitution of India, under Article 23 specifically prohibits trafficking in human beings. At present, the legal regime to trafficking of women and children for commercial sexual exploitation includes the following:

- h (A) Penal Code, 1860;
(B) ITPA, 1956;
(C) JJ Act, 2000;

(D) Special laws of various States; and

(E) Rulings of Supreme Court and High Court.”

(emphasis in original)

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55. His Lordship went on to further observe: (*Bachpan Bachao case*³⁴, SCC OnLine Del paras 19-20)

“19. There may be various problems while dealing with the issue of “trafficking”. These petitioners seek to highlight limited facets of children being compelled to perform in circus and illegal trafficking in children and failure on the part of the law enforcement agencies as well as the society to protect the fundamental rights of the children. The Government had itself admitted the seriousness of the problem. The report prepared by Mr Gopal Subramaniam, learned Solicitor General of India and submitted in *Bachpan Bachao* petition, it is stated that the trafficking in human beings is not a new phenomenon. Women, children and men have been captured, bought and sold in market places for decades. Human trafficking is one of the most lucrative criminal activities. Estimates of the United Nations state that 1 to 4 million people are trafficked worldwide each year. Trafficking in women and children is an operation which is worth more than \$10 billion annually. The NHRC Committee on Missing Children has the following statistics to offer:

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(a) 12.6 million (Governmental sources) a 100 million (unofficial sources) stated to be child labour;

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(b) 44,000 children are reported missing annually, of which 11,000 get traced; and

(c) About 200 girls and women enter prostitution daily, of which 20% are below 15 years of age.

e

International conventions exist to punish and suppress trafficking especially against women and children [*Ref.: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons also referred as the Palermo Protocol on Trafficking.*] Trafficking is now defined as an organised crime against humanity. The convention being an international convention is limited to cross-border trafficking but does not address trafficking within the country. The definition of trafficking is significant:

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‘... The recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation...’

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It is further submitted by the learned Solicitor General that children under 18 years of age cannot give a valid consent. It is further submitted that any recruitment, transportation, transfer, harbouring or receipt of children for

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34 *Bachpan Bachao v. Union of India*, 2010 SCC OnLine Del 4613

the purpose of exploitation is a form of trafficking regardless of the means used. Three significant elements constitute trafficking:

- a*
 - (a) The action involving recruitment and transportation;
 - (b) The means employed such as force, coercion, fraud or deception including abuse of power and bribes; and
 - (c) The preliminary purpose being of exploitation including prostitution, etc.

b Internationally, there is a working definition of child trafficking. The working definition is clear because it incorporates the above three elements. In June 2001, India has adopted the *Palermo Protocol* to evolve its working definition of child trafficking. The forms and purposes of child trafficking may be:

- c*
 - (a) Bonded labour;
 - (b) Domestic work;
 - (c) Agricultural labour;
 - (d) Employment in construction activity;
 - (e) Carpet industry;
 - (f) Garment industry;
- d*
 - (g) Fish/Shrimp export; and
 - (h) Other sites of work in the formal and informal economy.

Trafficking can also be for illegal activities such as:

- e*
 - (a) Begging;
 - (b) Organ trade; and
 - (c) Drug peddling and smuggling.

Trafficking can be for sexual exploitation i.e.

- f*
 - (a) Forced prostitution;
 - (b) Socially and religiously sanctified forms of prostitution;
 - (c) Sex tourism; and
 - (d) Pornography.

Child trafficking can be to aid entertainment in sports:

- (a) Circus/Dance troupes; and
- (b) Camel jockeying.

g Some problem of “trafficking” is highlighted only to show the plight of children and women, who are taken as domestic help by dubious placement agencies and forced them into flesh trade.

h 20. Coming back to the medium of placement agencies, poverty and lack of opportunity are major foundation of trafficking. Child trafficking typically begins with a private arrangement between a trafficker and a family member, driven by the family economic plight and the trafficker’s desire for profit and cheap labour. Someone comes along and says he or she has professions or jobs for the children and the parents believe it. Parents

think that in letting children go they are doing something good for them; but someone takes them as and makes them domestic workers, and someone else takes all the money instead of giving them a salary. Some crimes that are commonly concurrent with child trafficking, or which child trafficking may initially appear to be are:

- (A) Domestic violence;
- (B) Child abuse or neglect;
- (C) Child sexual abuse;
- (D) Child pornography; and
- (E) Child labour violations.” (emphasis in original)

(i) Broad principles for grant of bail

56. In *Gudikanti Narasimhulu v. High Court of A.P.*³⁵, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

“7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.³⁶

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record — particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.” (emphasis supplied)

57. In *Prahlad Singh Bhati v. State (NCT of Delhi)*³⁷, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

“8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case

35 (1978) 1 SCC 240 : 1978 SCC (Cri) 115

36 Patrick Devlin, “*The Criminal Prosecution in England*” (Oxford University Press, London 1960) p. 75 Modern Law Review, Vol. 81, Jan. 1968, p. 54.

37 (2001) 4 SCC 280 : 2001 SCC (Cri) 674

a *and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that*

b *for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge."* (emphasis supplied)

c **58.** This Court in *Ram Govind Upadhyay v. Sudarshan Singh*³⁸, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail, has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

d *"3. Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot*

e *be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."* (emphasis supplied)

f **59.** In *Kalyan Chandra Sarkar v. Rajesh Ranjan*³⁹, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

g **60.** In *Prasanta Kumar Sarkar v. Ashis Chatterjee*⁴⁰, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the

h ³⁸ (2002) 3 SCC 598 : 2002 SCC (Cri) 688

³⁹ (2004) 7 SCC 528 : 2004 SCC (Cri) 1977

⁴⁰ (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765

Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

"9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail." (emphasis supplied)

61. In *Bhoopendra Singh v. State of Rajasthan*⁴¹, this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail i.e. this Court distinguished between setting aside a perverse order granting bail vis-à-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting *Mahipal v. Rajesh Kumar*⁴², this Court observed as under: (*Mahipal case*⁴², SCC p. 125, para 16)

"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted." (emphasis supplied)

62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order

41 (2021) 17 SCC 220

42 (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558

a granting bail to the accused is *Brijmani Devi v. Pappu Kumar*⁴³, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (*Pappu Kumar v. State of Bihar*⁴⁴ and *Pappu Singh v. State of Bihar*⁴⁵) of the High Court granting bail to the accused, observed as follows: (*Pappu Kumar case*⁴³, SCC p. 511, para 35)

b “35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.” (emphasis supplied)

d 63. In *Manoj Kumar Khokhar v. State of Rajasthan*⁴⁶, her Ladyship B.V. Nagarathna, J., speaking for the Bench observed as under: (SCC p. 519, paras 37-38)

e “37. Ultimately, the court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.

f 38. Thus, while elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum. As noted in *Gurcharan Singh v. State (UT of Delhi)*⁴⁷, when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under Section 439(2) CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima facie case against the accused.” (emphasis supplied)

43 (2022) 4 SCC 497 ; (2022) 2 SCC (Cr) 170

44 2021 SCC OnLine Pat 2856

45 2021 SCC OnLine Pat 2857

46 (2022) 3 SCC 501 ; (2022) 2 SCC (Cr) 1

47 (1978) 1 SCC 118 ; 1978 SCC (Cr) 11

64. We have referred to the above authorities solely for the purpose of reiterating two conceptual principles, namely, factors that are to be taken into consideration while exercising *power of admitting an accused to bail* when offences are of serious nature, and the distinction between cancellation of bail because of supervening circumstances and exercise of jurisdiction in nullifying an order granting bail in an appeal when the bail order is assailed on the ground that the same is perverse or based on irrelevant considerations or founded on non-consideration of the factors which are relevant.

65. We are absolutely conscious that liberty of a person should not be lightly dealt with. for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. This is because, fundamentally, laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "*it is regulated freedom*".

66. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated: "*Personal liberty is the right to act without interference within the limits of the law.*"

67. Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of

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others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act. (See: *Ash Mohammad v. Shiv Raj Singh*⁴⁸.)

- a 68. The newspaper “*Times of India*”, in its Delhi Edition dated 14-4-2025 has reported something extremely shocking and painful. The news item reads thus:

“Stolen at birth, sold for lakhs: Trafficking racket busted in city Police arrest three suspects on the spot—Yasmin (30) from Mohan Garden, Anjali (36) from Malviya Nagar, and Jitender (47) from Madangiri. A woman Constable quickly took

b **TIMES NEWS NETWORK**

c *New Delhi: A gang of alleged child traffickers involved in the abduction and sale of new-borns in different states has been busted by the police. Three individuals, including two women, were arrested in connection with the case, and two infants—one just four to five days old — were rescued.*

A SENIOR COP SAYS

Cops reached the location and found a silver car parked on the roadside. Inside, a newborn was found crying uncontrollably in the sweltering heat, suffering from hunger and dehydration the baby in her arms, comforting the infant, before rushing him to a hospital, where doctors said the child was only a few days old.

d *According to police, the gang operated across State lines, targeting remote villages and hospitals in Rajasthan and Gujarat. Newborns, some barely days old, were stolen and then kept in slum areas around Delhi before being sold to childless couples for sums ranging from Rs 5 to Rs 10 lakhs.*

e *So far, police believe the gang trafficked at last 35 infants into Delhi. Efforts are underway to trace the origins of the rescued children and locate their biological parents.*

f *The breakthrough came on April 8, when the special staff team of Dwarka District received a tip off about an infant being allegedly sold in Uttam Nagar. “Acting swiftly, police reached the location near Uttam Nagar East Metro Station and found a silver car parked on the roadside. Inside, a newborn was found crying uncontrollably in the sweltering heat, suffering*

g *Based on information provided by Yasmin during interrogation, a second baby was located and rescued. Cops are now working to identify the infants’ parents and uncover the full extent of the gang’s operations.*

h *Preliminary investigation suggests that the gang had a widespread network not only in slums but also*

from hunger and dehydration,” a in some upscale neighbourhoods of senior police officer said, adding, Delhi. Sources indicate that some “Ignoring the child’s desperate medical professionals may also be cries, the occupants of the vehicle complicit in the racket, helping were allegedly busy negotiating the connect the gang to potential sale.” buyers.

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Police have taken the accused into custody and are conducting searches in Rajasthan and Gujarat to gather more evidence.”

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69. Thus, it appears that a huge gang is dangerously operating within and outside Delhi and is selling trafficked infants and children in different States for sums ranging from Rs 5,00,000 to 10,00,000. It also appears from the reporting that some of the accused persons who have been arrested are habitual offenders. The report says that one Anjali who had been earlier arrested by CBI in a similar case of human trafficking is said to be involved in the present incident.

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H. Conclusion

70. Considering the serious nature of the crime and the *modus operandi* adopted by the accused persons we are of the view that the High Court should not have exercised its discretion in favour of the accused persons. We are sorry to say but the High Court dealt with all the bail applications in a very callous manner. The outcome of this callous approach on the part of the High Court has ultimately paved way for many accused persons to abscond and thereby put the trial in jeopardy. These accused persons are a big threat to the society wherever they are in the country. They have exhibited a tendency of committing a particular nature of crime, namely, child trafficking. The least that was expected of the High Court while granting bail to all the accused persons was to impose a condition on each of them to mark their presence once in a week at the police station concerned so that the police can keep a check over the movements of all the accused persons. All that the High Court did was to direct the accused persons to remain present before the trial court. In none of the impugned orders there is a condition of marking presence at the police station concerned as a result, the police lost track of all these accused persons.

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71. We are thoroughly disappointed with the manner in which the State handled the situation. Why did the State not do anything for all this period of time? Why did the State not deem fit to challenge the orders of bail passed by the High Court? The State unfortunately has exhibited no seriousness worth the name.

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72. The accused, namely, Santosh Sao claims to be a poor man and a father of four minor daughters. Unfortunately, the role ascribed to Santosh Sao is also very dubious. It appears prima facie that Santosh Sao was longing for a son and he went to the extent of purchasing a trafficked minor male child, named, Sunny Nishad. The case against him is that he bought the male child from two

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a co-accused, namely, Jagveer Baranwal and Anuradha Devi for Rs 4,00,000. We are of the view that Santosh Sao is equally responsible. He may not be directly involved in actual kidnapping of the minor male child but at the same time prima facie knowledge could definitely be imputed to him that the minor child he was purchasing for Rs 4,00,000 was a trafficked child. The desire of Santosh Sao is one of the unfortunate illustrations of the evil that men do. The extent to which people go to have a male child. They do not hesitate to purchase a trafficked child at the cost of causing pain, agony and immense trauma to the biological parents of the trafficked child.

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73. So far as the accused, namely, Manish Jain is concerned, he appears to be one of the kingpins in the entire racket. The case against him is that he is one of the key players in the organised inter-State child-trafficking racket. There is prima facie evidence on record to indicate that he actively managed the illegal operations, coordinating the sale and purchase of trafficked children across regions. He along with two co-accused, namely, Vinay Mishra and Shikha Devi is alleged to have been frequently working for the purpose of trafficking minors and selling them for huge amount. It is alleged that between March and April, 2023 he sold multiple trafficked children for the amount ranging between Rs 40,000 and Rs 2,60,000.

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74. Although the learned counsel appearing for Jagveer Baranwal vehemently submitted that her client has nothing to do with any hospital nor he is serving as a male nurse in the hospital, yet the evidence on record indicates more than prima facie his involvement in collusion with the nurse, namely, Anuradha Devi. There is evidence on record to prima facie indicate that the police was able to retrieve one of the trafficked child directly from the custody of the Jagveer Baranwal. The child was found from the custody of Jagveer Baranwal at a point of time when Jagveer and his accomplices were negotiating for the sale of the said child.

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75. Modern political scientist and philosopher, also favours certain limitation on liberty, for safeguarding the societal interest and professes the proportionality between the liberty and restriction, thus laying down exception for the personal liberty, in following words:

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*“Men are qualified for civil liberty in exact proportion to their disposition to put moral chains upon their own appetites, in proportion as their love to justice is above their rapacity, in proportion as their soundness and sobriety of understanding is above their vanity and presumption, in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist, unless a controlling power upon will and appetite be placed somewhere; and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters.”*⁴⁹ (emphasis supplied)

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49 John C. Nimmo, *The Works of the Right Honourable Edmund Burke: A Letter to a Member of the National Assembly*, Vol. 4 (London).

76. Thus, certain restrictions or limitations, on the exercise of personal liberty, by the State or other such human agency, are necessary elements, in the interest of liberty of a well-ordered society or societal interest.⁵⁰

77. This Court has also held that unlimited and unqualified liberty cannot be said to be in favour of societal interest. In *Kartar Singh v. State of Punjab*⁵¹, this Court observed: (SCC p. 716, para 373)

“373. ... Liberty cannot stand alone but must be paired with companion virtue i.e. virtue and morality, liberty and law, liberty and justice, liberty and common good, liberty and responsibility which are concomitants for orderly progress and social stability. Man being a rational individual has to live in harmony with equal rights of others and more differently for the attainment of antithetic desires. This intertwined network is difficult to delineate within defined spheres of conduct within which freedom of action may be confined. Therefore, liberty would not always be an absolute licence but must arm itself within the confines of law. In other words, there can be no liberty without social restraint. Liberty, therefore, as a social conception is a right to be assured to all members of a society. Unless restraint is enforced on and accepted by all members of the society, the liberty of some must involve the oppression of others. If liberty be regarded a social order, the problem of establishing liberty must be a problem of organising restraint which society controls over the individual. Therefore, liberty of each citizen is borne of and must be subordinated to the liberty of the greatest number, in other words common happiness as an end of the society, lest lawlessness and anarchy will tamper social weal and harmony and powerful courses or forces would be at work to undermine social welfare and order. Thus the essence of civil liberty is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution.” (emphasis supplied)

78. In *Gudikanti Narasimhulu*³⁵ this Court observed thus: (SCC p. 242, paras 1-2)

“1. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.

2. The doctrine of police power constitutionally validates punitive processes for the maintenance of public order, security of the State, national integrity and the interest of the public generally. Even so, having regard to the solemn issue involved, deprivation of personal freedom, ephemeral or enduring, must be founded on the most serious

50 Quentin Skinner. *The Paradoxes of Liberty*. The Tanner Lectures on Human Values (Harvard University, 24-10-1984 to 25-10-1984).

51 (1994) 3 SCC 569 : 1994 SCC (Cri) 899

35 *Gudikanti Narasimhulu v. High Court of A.P.*, (1978) 1 SCC 240 : 1978 SCC (Cri) 115

considerations relevant to the welfare objectives of society, specified in the Constitution.” (emphasis supplied)

a **79.** In no circumstances, the High Court could have released Santosh Sao, Jagveer Baranwal and Manish Jain, respectively, on bail.

80. In such circumstances referred to above, we are of the view that we should set aside all the orders passed by the High Court granting bail to the accused persons and they should be asked to surrender before the trial court.

b **81.** The final word: The true test to ascertain whether discretion has been judiciously exercised or not is to see whether the court has been able to strike a balance between the personal liberty of the accused and the interest of the State, in other words, the societal interests. Each bail application should be decided in the facts and circumstances of the case having regard to the various factors germane to the well-settled principles of grant or refusal of bail. In the words of Philip Stanhope, “*Judgment is not upon all occasions required, but discretion always is.*”

c **82.** In the result all these appeals succeed and are allowed. The impugned orders of bail passed by the High Court are hereby set aside.

83. All the accused persons are directed to surrender before the committal court and the committal court in turn shall remand them to judicial custody.

d **84.** We issue the following further directions:

84.1. We direct the Chief Judicial Magistrate, District Varanasi and the Additional Chief Judicial Magistrate, Court No. 5, District Varanasi to commit all the three criminal cases referred to in para 12 of this judgment to the Sessions Court, within a period of two weeks from today without fail.

e **84.2.** Upon all the three criminal cases being committed to the Court of Session, the trial court concerned shall proceed to frame charge against individual accused persons within a period of one week thereafter.

f **84.3.** If it is brought to the notice of the trial court that some of the accused persons have absconded or their whereabouts are not known, the trial court shall take steps immediately to secure their presence by issuing non-bailable warrant, etc. The trial of the absconding accused shall be separated in accordance with law so that the trial of the other co-accused persons do not get delayed.

84.4. Once the charge is framed by the trial court in individual cases, the trial court concerned shall proceed with the recording of the evidence preferably on day-to-day basis and complete the proceedings of the trial within a period of six months.

g **84.5.** We direct the State Government to appoint three Special Public Prosecutors for the purpose of conducting of the trials well-versed in criminal trials at the earliest.

84.6. We also direct the State Government to provide police protection to the victims and their families pending the trial at the earliest so as to prevent tampering of the evidence.

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84.7. We grant two months' time to the State Police to trace out all those accused persons who have absconded and are on the run. They shall be apprehended and produced before the court concerned at the earliest. a

84.8. We direct the State Government to ensure that the trafficked children are admitted in schools in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and continue to provide support for their education.

84.9. At the end of the trial, the trial court concerned shall pass appropriate orders as regards compensation to the victims under the provisions of the BNSS, 2023 including under the Uttar Pradesh Rani Laxmi Bai Mahila Evam Bal Samman Kosh managed by the Land Welfare Committee. b

84.10. All the State Governments across the country are directed to look into the Report of BIRD dated 12-4-2023 more particularly the recommendations, as reproduced by us in para 37 of this judgment. c

84.11. All the State Governments are directed to study the entire Report and start implementing each of the recommendations by working out appropriate modalities in that regard. c

84.12. We direct all the High Courts across the country to call for the necessary information as regards the status of the pending trials relating to child trafficking. Once each of the High Courts is able to collect the necessary data as regards the status of the trials, a circular thereafter shall be issued on its administrative side to all the trial courts concerned to complete the trials within a period of six months from the date of the circular and if need be, by conducting the trials on day-to-day basis. Each of the High Courts shall thereafter forward a report to this Court as regards the compliance of the directions contained in the circular. d

84.13. Non-compliance of our directions or any laxity of any nature in that regard on the part of any of the authorities shall be viewed very strictly and if need be, they shall be proceeded for contempt. e

85. With the aforesaid, all the appeals stand disposed of.

86. In the course of the hearing of this batch of appeals, we also came across Writ Petition (Crl.) No. 43 of 2024 in which a coordinate Bench of this Court has passed the following order¹: (*Sanjay case*¹, SCC OnLine SC paras 1-6) f

“1. Heard Ms Aparna Bhat, learned Senior Counsel appearing for the petitioner. The Union of India is represented by Ms Aishwarya Bhati, learned ASG. Mr Garvesh Kabra, learned counsel appears for Respondent 2 — State of Uttar Pradesh. Mr Sarad Kumar Singhania, learned counsel appears for Respondent 4 — State of Madhya Pradesh. Mr Milind Kumar, learned counsel appears for Respondent 5 — State of Rajasthan. g

2. This writ petition is concerned with the plight of children who are victims of organised child-trafficking racket spread across multiple States in the country. Young children from vulnerable families are kidnapped and sold to traffickers who work on a network basis. h

1. *Sanjay v. State of U.P.*, 2024 SCC OnLine SC 5022

a 3. Ms Aparna Bhat, learned Senior Counsel submits that multiple FIRs have been filed in different States which would indicate a well entrenched inter-State network of child trafficking. There are people who are tasked to identify vulnerable children and to arrange for their trafficking and eventual exploitation. The picture given in the writ petition raises serious issues.

b 4. The Ministry of Home Affairs, Government of India had filed an affidavit on 23-9-2024. The same is taken on record. The affidavit indicates the advisories issued by the Ministry of Home Affairs to all the States and the Union Territories on 25-6-2013 to address the 3 specific aspects of trafficking i.e. prevention, protection and prosecution. Special financial assistance is also provided by the Union Government to the States/ Union Territories, for upgrading/setting up of the Anti-Human Trafficking Units covering all the districts in the country. Coordination with all the stakeholders on regular basis is also mentioned in the counter affidavit.
c In fact, a national level communication platform called the Crime Multi Agency Centre (Cri-MAC) was launched in the year 2020 which facilitates dissemination of information, inter alia, about child trafficking crimes, on real time basis.

d 5. At this point, the results of the coordinated efforts made by the Union Home Ministry with the States and the Union Territories are not before us. The Union of India should therefore coordinate with all the stakeholders, collect and collate data on the issues noted hereunder and also file the report before this Court:

(i) How many children missing cases have been registered in each District/State since 2020 i.e. when the Cri-MAC was launched?

e (ii) From the registered cases, how many children have been recovered within the stipulated period of 4 months and how many are yet to be recovered?

(iii) Whether a functional Anti-Human Trafficking Units in each district is established and if so (number of cases entrusted to the respective Anti-Human Trafficking Units).

f (iv) The powers conferred on the Anti-Human Trafficking Units under applicable laws.

(v) The number of pending prosecutions relating to child trafficking cases in each District/State.

g (vi) Year-wise data be provided including the steps the respective States intend to take in delayed cases of investigation or non-recovery of the missing child.

6. The learned ASG will file a report as above in six weeks. List after six weeks."

h **87.** It goes without saying that it is an important writ petition filed under Article 32 of the Constitution. It raises important issues as is evident from the order¹ passed by this Court referred to above.

¹ *Sanjay v. State of U.P.*, 2024 SCC OnLine SC 5022

88. The Registry shall notify Writ Petition (Crl.) No. 43 of 2024 before the appropriate Court after obtaining orders from the Hon'ble the Chief Justice of India.

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89. It is needless to clarify that the observations made by this Court are prima facie in nature and not expressions of any final opinion. The guilt or innocence of the accused shall be determined by the trial court strictly on the basis of the evidence, direct or indirect, that may come on record during the course of the trial. The trial court shall not be influenced in any manner by any of the observations made by this Court.

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90. The Registry is directed to forward one copy each of this judgment to all the High Courts and one copy each to all the State Governments. So far as the State Governments are concerned, one copy each of this judgment shall be forwarded to the Principal Secretary, Ministry of Home Affairs and Principal Secretary, Ministry of Women and Child Development, respectively.

91. The Registry shall notify this matter once again in the month of October, 2025 to report compliance of our directions.

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92. We request the police officer in-charge of the investigation of the above incident of child trafficking as reported by *TOI* to personally remain present before this Court on Monday 21-4-2025 so that we can gather some further information as regards the action plan the police proposes to take against such gangs operating within and outside Delhi. The Registry to inform the officer concerned accordingly at the earliest.

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93. We want to convey a message to one and all more particularly the parents across the country that they should remain extremely vigilant and careful with their children. A slight carelessness or negligence or laxity on their part may prove to be extremely costly. The pain and agony which any parents may have to face when the child dies is different from the pain and agony that the parents may have to face when they lose their children to such gangs engaged in trafficking. When the child dies, the parents may with passage of time resign to the will of the Almighty but when the child is lost and not found they have to suffer the pain and agony for the rest of their life. It is worst than death. Therefore, we humbly urge to one and all to remain very cautious and vigilant.

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94. If any newborn infant is trafficked from any hospital, the immediate action against the hospital should be suspension of licence to run the hospital over and above other actions in accordance with law. When any lady comes to deliver her baby in any hospital, it is the responsibility of the administration of the hospital to protect the newborn infant in all respects.

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95. Pending applications if any stand disposed of.

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2025 SCC OnLine SC 1490

In the Supreme Court of India
(BEFORE VIKRAM NATH AND SANDEEP MEHTA, JJ.)

Victim 'X' ... Appellant(s);

Versus

State of Bihar and Another ... Respondent(s).

Criminal Appeal No(s). of 2025 (Arising out of SLP (Crl.) No (s).
4335 of 2024)

Decided on July 21, 2025

Advocates who appeared in this case :

Dr. Vinod Kumar Tewari, AOR, Mr. Raunak Parekh, Adv., Mr. Pramod Tiwari, Adv., Mr. Vivek Tiwari, Adv., Ms. Priyanka Dubey, Adv., Mr. Jitesh Sharma, Adv., Mr. Jagadish Kumar Jha, Adv., For Petitioner(s)

Mr. Samir Ali Khan, AOR, Mr. Pranjali Sharma, Adv., Mr. Kashif Irshad Khan, Adv., Mr. Neeraj Kumar Gupta, AOR, For Respondent(s)

The Judgment of the Court was delivered by

SANDEEP MEHTA, J.:— Heard.

2. Leave granted.

3. This appeal by special leave emanates from the order dated 18th January, 2024, passed by the learned Single Judge of the High Court of Judicature at Patna¹ whereby, the appeal preferred by respondent No. 2 -accused² under Section 14(A)(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989³ was allowed and she was granted bail in connection with Mahila P.S. Case No. 17 of 2022 registered for the offences punishable under Sections 341, 323, 328, 376, 120-B read with Section 34 of the Penal Code, 1860⁴ and Sections 3/4 of the Immoral Traffic (Prevention) Act, 1956⁵ and Sections 3(1)(w)/3(2)(va) of the SC/ST Act. The appellant-victim herein is the informant in the said FIR.

4. The prosecution case as against respondent No. 2 is that she while being posted as the Superintendent of the Uttar Raksha Grih, Gaighat, Patna indulged in administering intoxicating medicines and injections to the appellant-victim and other female inmates of the protection home, who were later on subjected to sexual exploitation and mental torture. Grave allegations are attributed to the respondent-accused that she used to send the ladies housed in the protection home, outside for the purpose of providing sexual favours to influential people. The FIR in the instant case came to be based on the

intervention of the High Court which took cognizance of a newspaper report narrating the ordeals faced by the females kept in the protection home. The investigation was also monitored by the High Court.

5. It may be noted that during the course of investigation, few more ladies in addition to the appellant herein made allegations of torture and sexual exploitation against respondent No. 2.

6. The application for bail filed by respondent No. 2 came to be rejected by the learned Exclusive Special Court (SC/ST Act), Patna⁶ *vide* order dated 10th July, 2023. Respondent No. 2 preferred an appeal under Section 14(A)(2) of the SC/ST Act before the High Court, assailing the order passed by the Special Court.

7. In the meanwhile, chargesheet came to be filed against respondent No. 2 in the Special Court which took cognizance of the offences punishable under Sections 341, 342, 323, 328, 376, 120B, 504, 506 of the IPC, Sections 3/4 of the IT Act and Section 3(1)(w)/3 (2)(va) of the SC/ST Act *vide* order dated 29th August, 2023.

8. It may be noted that in the appeal before the High Court, the appellant-victim was not impleaded as a party, and bail was granted to the accused (respondent No. 2) in clear violation of the mandate under Section 15A(3) of the SC/ST Act which makes hearing of the victim in any prayer for bail essential. The High Court, *vide* order dated 18th January, 2024, allowed the appeal filed by respondent No. 2 and granted her bail with the following reasoning:—

“7. Having heard learned counsel for the parties and taking into consideration that there is no specific allegation against the appellant, the Court is inclined to allow this appeal. Accordingly, the appeal is allowed and the impugned order dated 10.07.2023 is hereby set aside.”

9. The appellant-victim is before us through this appeal by special leave to assail the order passed by the High Court.

10. We have heard and considered the submissions advanced by learned counsel for the appellant-victim, learned counsel representing respondent No. 2-accused and the learned standing counsel representing the State of Bihar.

11. Learned counsel for the appellant-victim vehemently and fervently contended that the High Court granted bail to respondent No. 2 by a cryptic order without assigning any reasons whatsoever and totally ignoring the critical fact that respondent No. 2 being the Superintendent of the women protection home was a person in authority, who misused her position to exploit the helpless female inmates of the institution and deliberately orchestrated their sexual exploitation by various influential persons. Numerous women inmates

have made grave allegations in their statements recorded under Section 164 of the Criminal Procedure Code, 1973, stating that they were sent out of the institution for providing sexual gratification to outsiders and those who resisted, were injected with intoxicants and under the influence thereof, they were subjected to sexual exploitation by different men.

12. It was further contended that unidentified men were allowed access into the protection home where they would take advantage of the helpless condition of the victims so as to gain sexual favours.

13. He further pointed out that pursuant to the release of respondent No. 2 on bail, she has been reinstated in service, and she is heading another protection home within the State of Bihar. As per the learned counsel, this approach of the State authorities in allowing respondent No. 2 to continue functioning as a person in-charge of the protection home, despite there being allegations of misuse of power to facilitate sexual exploitation of female inmates would imminently expose the inmates to a grave risk of being subjected to sexual exploitation. He submitted that it is apparent that the concerned authorities of the State Government are hands in glove with the accused and have no intention of punishing respondent No. 2 for her recalcitrant conduct. Rather she has been rewarded with a fresh tenure in an identical protection home where she had earlier committed the atrocities on the female inmates.

14. Learned counsel further submitted that in case, respondent No. 2 is allowed to remain on bail, there is an imminent danger of her influencing the witnesses and frustrating the trial. He pointed out that as a matter of fact, numerous threats have already been given to the witnesses of this case and hence, the continuance of respondent No. 2 on bail would be detrimental to a fair trial.

15. On these grounds and looking to the gravity and nature of allegations, learned counsel for the appellant implored the Court to exercise its extraordinary jurisdiction under Article 136 of the Constitution of India so as to cancel the bail granted to respondent No. 2.

16. Learned standing counsel representing respondent No. 1-State of Bihar supported the submissions advanced by learned counsel for the appellant-victim. He contended that after thorough investigation, grave allegations of misuse of official position to exploit the helpless and destitute female inmates housed in the protection home have been substantiated. Respondent No. 2 being a person in authority shall definitely influence the fair trial of the case and there is imminent threat to the life and limb of the victim ladies, if respondent No. 2 is allowed to continue on bail during the pendency of the trial. However, on a pertinent query being posed, learned standing counsel was not in

a position to explain the conduct of the State authorities in reinstating respondent No. 2-accused and putting her in charge of another women's home in spite of the fact that she is facing a prosecution for abuse of powers and sexual exploitation while working in a similar institution.

17. Learned counsel representing respondent No. 2-accused strenuously tried to justify the impugned order. He urged that the High Court, while considering the bail application has taken note of the material available on record and rightly found that there are no specific allegations against respondent No. 2 in the prosecution evidence and thereafter, a reasoned order has been passed directing release of respondent No. 2 on bail. He urged that respondent No. 2 being a woman had languished in custody for almost 500 days, since 27th August, 2022 and this was the most vital factor which weighed with the High Court in favour of grant of bail. He urged that detailed discussion of evidence at the stage of deciding the bail application may prejudice the trial and hence, it would not be fair to say that the High Court has not adverted to the merits of the case.

18. He urged that respondent No. 2 being a woman is entitled to a special consideration for grant of bail and as such, this Court should be slow in interfering with the order passed by the High Court directing release of respondent No. 2 on bail.

19. We have given our thoughtful consideration to the submissions advanced at the bar and have gone through the impugned order and the material placed on record.

20. At the outset, we may like to note that the allegations attributed to respondent No. 2 shake the conscience of the Court. Respondent No. 2 being posted as the Officer in-charge of the women's protection home was required to work as a protector of the inmates, but she turned rogue and indulged in sexual exploitation of the helpless and destitute women who had been placed in the said protection home which is an institution created to provide them safety and security.

21. Thus, it is clearly a case, wherein the person put in the role of a saviour has turned into a devil.

22. Not only are the allegations attributed to respondent No. 2-accused are grave and reprehensible in nature, in addition thereto, the fact remains that releasing respondent No. 2 on bail is bound to have an adverse effect on trial because there would be an imminent possibility of the witnesses being threatened.

23. Recently, this Court in the case of *Shabeen Ahmad v. The State of Uttar Pradesh*⁷ while placing reliance upon the case of *Ajwar v. Waseem*⁸ cancelled the bail granted to the accused in a dowry death case observing as follows:

"18.... A superficial application of bail parameters not only undermines the gravity of the offence itself but also risks weakening public faith in the judiciary's resolve to combat the menace of dowry deaths. It is this very perception of justice, both within and outside the courtroom, that courts must safeguard, lest we risk normalizing a crime that continues to claim numerous innocent lives. These observations regarding grant of bail in grievous crimes were thoroughly dealt with by this Court in *Ajwar v. Waseem* in the following paras:

"26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [*Refer: Chaman Lal v. State of U.P.* [*Chaman Lal v. State of U.P.*, [(2004) 7 SCC 525]; *Kalyan Chandra Sarkar v. Rajesh Ranjan*, [(2004) 7 SCC 528]; *Masroor v. State of U.P.*, [(2009) 14 SCC 286]; *Prasanta Kumar Sarkar v. Ashis Chatterjee*, [(2010) 14 SCC 496]; *Neeru Yadav v. State of U.P.*, [(2014) 16 SCC 508]; *Anil Kumar Yadav v. State (NCT of Delhi)*, [(2018) 12 SCC 129]; *Mahipal v. Rajesh Kumar*, [(2020) 2 SCC 118].

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In *P.v. State of M.P.*, [(2022) 15 SCC 211] decided by a three-Judge Bench of this Court [authored by one of us (Hima Kohli, J.)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) CrPC in the following words: (SCC p. 224, para 24)

“24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [*Dolat Ram v. State of Haryana*, (1995) 1 SCC 349]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court.”

Considerations for setting aside bail orders

28. The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.”

(Emphasis Supplied)

24. It is trite that bail once granted should not be cancelled ordinarily, but where the facts are so grave that they shake the conscience of the Court; and where the release of the accused on bail would have an adverse impact on the society, the Courts are not powerless and are expected to exercise jurisdiction conferred by law to cancel such bail orders so as to subserve the ends of justice. The present one is precisely a case of such nature.

25. We may note that the impugned order could have been quashed on the solitary ground of non-compliance of Section 15A(3) of the SC/ST Act which mandates that notice to a victim is essential before a prayer for bail is being considered, in a case where the offence/s under the SC/ST Act have been applied.

26. On going through the memo of appeal filed by the respondent-

accused in the High Court, we find that the appellant-victim was not impleaded as a party respondent therein and hence, did not have the benefit of right of hearing as warranted by Section 15A(3) of the SC/ST Act.

27. Furthermore, keeping in view the principles laid down by this Court in *Shabeen Ahmad* (supra), we are of the firm opinion that the present case is an exceptional one, wherein the grant of bail by the High Court to respondent No. 2-accused by a cryptic order dated 18th January, 2024 has resulted into travesty of justice. Grant of bail to the person accused of such grave offences without assigning reasons shakes the conscience of the Court and would have an adverse impact on the society. Furthermore, the release of the accused on bail would adversely impact the trial as there would be high chances of the material witnesses being threatened and influenced. Our conclusions are fortified by the fact that respondent No. 2-accused has been reinstated to the position of Superintendent of another protection home which speaks volumes about her clout and influence with the administration.

28. Consequently, it is a fit case, warranting exercise of this Court's extraordinary jurisdiction under Article 136 of the Constitution of India so as to interfere in the impugned order dated 18th January, 2024 which is hereby quashed and set aside.

29. The bail granted to respondent No. 2-accused is hereby cancelled. She shall surrender before the trial Court within a period of four weeks from today, failing which, the trial Court shall cancel her bail bonds and ensure that she is taken into custody for the remainder of trial. The trial Court and the District administration shall ensure that proper protection and support is provided to the victims of the case. In case there is any change of circumstances, respondent No. 2-accused shall be at liberty to renew her prayer of bail before the appropriate forum.

30. The appeal is allowed in the above terms.

31. Pending application(s), if any, shall stand disposed of.

1 Hereinafter referred to as the "High Court".

2 Hereinafter referred to as the "respondent No. 2".

3 Hereinafter referred to as the "SC/ST Act".

4 Hereinafter referred to as the "IPC".

5 Hereinafter referred to as the "IT Act".

⁶ Hereinafter referred to as the "Special Court".

⁷ (2025) 4 SCC 172.

⁸ (2024) 10 SCC 768.

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2025 SCC OnLine SC 1066

In the Supreme Court of India
(BEFORE P.S. NARASIMHA AND JOYMALYA BAGCHI, JJ.)

Umashankar Yadav and Another ... Appellant(s);

Versus

State of Uttar Pradesh, Through Chief Secretary and
Another ... Respondent(s).

Criminal Appeal No. 439 of 2018

Decided on May 8, 2025

Advocates who appeared in this case :

Ms. Aparna Bhat, Sr. Adv., Ms. Rajkumari Banju, AOR, Ms. Karishma Maria, Adv., Mr. Gopal Krishna, Adv., For Appellant(s)

Mr. Garvesh Kabra, AOR, Mrs. Pooja Kabra, Adv., Mr. Akshay Sharma, Adv., Ms. Pallavi Kumari, Adv., For Respondent(s)

The Judgment of the Court was delivered by

JOYMALYA BAGCHI, J.:— Appellants have assailed a cryptic order dated 02.07.2015 whereby the High Court refused to quash Crime No. 93 of 2014 under Sections 186 and 353 of Penal Code, 1860¹.

2. *Guria* is a well known and reputed organization fighting against human trafficking and commercial sexual exploitation of girls/children in the State of Uttar Pradesh. Due to its relentless efforts a number of minor girls have been rescued from the clutches of traffickers. While the pioneering efforts of the organization received accolades at national and international levels, its foot soldiers i.e. the appellants have suffered the ignominy of being branded as “criminals” for alleged overzealousness in course of a raid to rescue bonded labour/minor children from a brick kiln at Varanasi, Uttar Pradesh.

3. The unfortunate saga commenced when the first appellant, a Project Coordinator at *Guria* submitted an application before the District Magistrate, Varanasi alleging bonded/child labourers were engaged in a brick kiln at Varanasi and prayed that the exploited labourers including children be rescued. In response to the application, Deputy District Magistrate, Varanasi ordered Assistant Labour Commissioner to take necessary action.

4. Pursuant to the directions of the Assistant Labour Commissioner, on 06.06.2014 at 10 am, one Raja Ram Dubey², Ram Avatar Sharma and Ram Lakhan Swarnkar (Labour Employment Officers), Inspector Ajit Kumar Singh of Anti Human Trafficking Force (AHTF) and two constables of Lohta Thana Varanasi proceeded to inspect the spot.

Appellants also accompanied the team.

5. Appellants contend they found children and labourers at the brick kiln who were brought to the Police Station. At that time the owner of the brick kiln intervened and took away the labourers. First appellant submitted a faxed message disclosing these facts to the District Magistrate.

6. On the other hand, informant lodged a complaint at Lohta Police Station though no child was found working at the spot, alleging when his team had reached Shakti Mark Brick Kiln, appellants along with others forcibly put the labourers and the children in dumpers and took them away. Appellants did not obey the instructions of the joint team and did not let them record their statements before taking away the labourers. Thereby they obstructed and hampered their discharge of official duty.

7. On his complaint, FIR came to be registered under Sections 186, 353 and 363 IPC.

8. On further statement of one of the labourers, namely, Om Prakash, Section 363 IPC was dropped. Statements of other witnesses were recorded and charge sheet under Sections 186 and 353 IPC came to be filed. Magistrate took cognizance of the chargesheet which was assailed before the High Court. The High Court by the impugned order refused to quash the chargesheet holding as follows:—

“From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submission made at the bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482, Cr.P.C. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur v. State of Punjab, AIR 1960 SC 866, State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426, State of Bihar v. P.P. Sharma, 1992 SCC (Cri) 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq (Para-10) 2005 SCC (Cri) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge under section 239, 245(2) or 227/228, Cr. P.C. as the case may be through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the trial Court.”

9. Above quoted paragraph shows the High Court did not advert either to the facts of the case or the contentions raised on behalf of the appellants. In a perfunctory manner it observed the issues involved disputed questions of fact which could not be adjudicated before the court under Section 482 Cr.P.C. It also observed the appellants have right to seek discharge before the trial court.

10. However, prior to arriving at such finding it is the duty of the High Court to ascertain whether the uncontroverted allegations in the FIR/Chargesheet constitute an offence, or continuation of the proceeding suffers from a legal bar or is wholly vexatious and an abuse of process of law.

11. Summoning of an accused is a serious matter which affects liberty and dignity of the individual concerned. Judicial intervention under Section 482 Cr. P.C. to weed out vexatious proceedings is of pivotal importance in order to protect individuals from untelling harassment and misery and to ensure unmerited prosecutions do not crowd overflowing dockets of criminal courts and yield space for deserving cases. Faced with the agony of a lame prosecution, it is of little solace to a litigant to be told that inherent powers are shut out as he is entitled to approach the trial court and pray for discharge. The inherent power of the High Court to prevent abuse of process of court is much wider in amplitude than the discharge powers and cannot be whittled down on the plea of existence of such remedy³.

12. As the High Court had not adverted to the facts of the case at all and mechanically recorded a finding that the case did not merit intervention at the preliminary stage, we have ourselves undertaken such exercise.

13. What emerges from scanning the allegations in the chargesheet and statements of witnesses is that the appellants had accompanied a team of Labour Enforcement Officers to verify the allegation that bonded/child labour were employed at the brick kiln. During inspection, a difference of opinion cropped up between the labour officers and the appellants as to the manner in which the inspection was to be conducted. While the appellants wanted the workmen and children to be brought to the Police Station for interrogation, the members of the labour officers intended to record their statements at the site before taking further action.

14. In this backdrop, the appellants had put the labourers and the children in a Dumper and carried them away from the site before their statements could be recorded. Thereby, it is alleged they had obstructed discharge of official duties.

15. Appellants have a counter version. Even prior to lodging of FIR, first appellant through a faxed message had informed the District Magistrate that at the intervention of the brick kiln owner the labourers and children who had been taken to the Police Station were illegally released.

16. We need not detain ourselves with regard to truthfulness of the rival versions.

17. The moot issue is do the uncontroverted allegations as narrated

in the chargesheet disclose the ingredients of offences under Sections 186 and 353 IPC ?

18. Essential ingredients of offence under Section 186 are as follows:—

- (i) Obstruction of a public servant in discharge of public functions
- (ii) Such obstruction is done voluntarily and with the intention to prevent discharge of official duties.

19. Section 353 is attracted when the following ingredients are satisfied:—

- (i) Use of assault or criminal force on a public servant during execution of his duty.
- (ii) With the intention:—
 - (a) to prevent or deter discharge of such duty; or
 - (b) as a consequence of anything done or attempted to be done in the lawful discharge of his duty.

20. The words *force* and *criminal force* are defined in Sections 349 and 356 IPC and 'assault' is defined in Section 351 of the said Code.

21. A person is said to use *force* when:

- (i) He causes motion, change in motion or cessation of motion of another person by:
 - (a) use of bodily power; or
 - (b) using a substance which comes in contact of the body, wearing apparel etc or with anything which affects the other person's senses; or
 - (c) inducing any animal to move or change its motion or cease to move.

22. *Criminal force* is defined as use of force by a person in order to commit an offence or done with the intention that such force is to cause or likely to cause injury, fear and annoyance to other person.

23. *Assault* involves any gesture or preparation which is done with the intention that such gesture or preparation will cause an apprehension about use of criminal force. Use of *criminal force* or *assault* on a public servant is essential to attract Section 353 IPC.

24. Coming to the facts of the case, uncontroverted allegations in the chargesheet do not disclose use of force or holding out threatening gestures giving rise to an apprehension of use of force towards public servant. Physical movement of the labourers would not amount to use of force far less criminal force on a public servant.

25. Given this situation, we can safely conclude uncontroverted allegations in the chargesheet do not disclose the ingredients of offence under Section 353 IPC.

26. This brings us to Section 186 IPC. It would be argued the

appellants obstructed discharge of official duties by not permitting the statements of bonded labourers/children to be recorded before removing them from the site. Obstruction to a public servant must be done with the requisite *mens rea* i.e. to prevent the latter from discharging his official duty.

27. Statements of labourers unequivocally show that no force was used to take them away and they were promptly released. These statements do not give an impression that such action was with the intention to impede discharge of official duty. It appears there was a genuine difference of opinion between the appellants and the officials concerned. Members of the social organization were of the impression that bonded labourers/children ought to be interrogated at a neutral place i.e. Police Station whereas the officers wanted to interrogate them at the site.

28. It goes without saying the manner and mode of interrogation was to be decided by the labour officers but appellants' endeavours were not to impede interrogation but to ensure it was conducted in a more effective manner. Such factual position denudes their action of the requisite *mens rea*, i.e. intention to obstruct official duty. When profile of the allegations emerging from the factual matrix of the case renders existence of *mens rea* patently absurd or inherently improbable, such prosecution is liable to be quashed as an abuse of process of law.

29. Malicious animus of the labour officials towards the appellants is evident from the reports annexed to the counter affidavit. Annexure CA/2 is a report of the Additional Labour Commissioner, U.P to National Commission for Protection of Child Rights regarding the incident. In the report, the Additional Commissioner had gone to the extent of alleging the appellants had offered bribes to the labourers to make false statements. Such insinuations are wholly unfounded and not borne out from the statements recorded during investigation. This hostile stance of the department fortifies our conclusion that registration of the criminal case was a product of malice and personal vendetta against the appellants.

30. Even assuming the ingredients under Section 186 are disclosed, prosecution under the said section simplicitor suffers from various insurmountable legal hurdles.

31. Firstly, Section 186 is a non-cognizable offence and in absence of ingredients of Section 353 (cognizable offence) disclosed in the FIR, prior permission of Magistrate under Section 155(2) Cr. P.C. was necessary to register FIR.⁴ No such permission was obtained rendering the registration of FIR and ensuing investigation bad in law.

32. Secondly, cognizance of offence under Section 186 IPC was

taken on a police report in breach of Section 195 Cr. P.C. Section 195, *inter alia*, provides no court shall take cognizance of offence under Section 186 save and except on a complaint in writing by the aggrieved public servant or his superior. In view of the aforesaid legal bar, cognizance taken of the offence under section 186 on a police report/chargesheet is impermissible in law.

33. It would be argued as FIR was registered for both cognizable (section 353 IPC) and non-cognizable offences (section 186), even if Section 353 IPC is quashed, police report under Section 186 may be treated as 'complaint' in view of the Explanation to Section 2(d) Cr. P.C.

34. Section 2(d) Cr. P.C. reads as follows:—

"2(d). complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

Explanation. - A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

As per the explanation appended to the definition clause, a police report disclosing a non-cognizable offence (section 186 in the present case) shall be deemed to be a complaint and the police officer shall be deemed to be the complainant. Even then, the legal embargo under section 195 Cr. P.C. is not dispelled as the legal fiction deems the police officer and not the aggrieved public servant as the complainant.

35. Similar view has been taken in *B.N. John v. State of U.P.*⁵.

36. For the aforesaid reasons, impugned prosecution is quashed and the appeal is allowed. Pending applications, if any, shall stand disposed of.

¹ For short, 'IPC'

² Informant

³ *Ashok Chaturvedi v. Shitul H. Chanchani*, (1998) 7 SCC 698.

⁴ *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 [see Para 102(4)]

⁵ 2025 SCC OnLine SC 7

2025 SCC OnLine SC 2569

In the Supreme Court of India

(BEFORE B.R. GAVAI, C.J. AND K. VINOD CHANDRAN, J.)

Indian Society of Organ Transplantation ...
Petitioner;

Versus

Union of India and Others ... Respondents.

Writ Petition (Civil) No. 39 of 2025^s

Decided on November 19, 2025

Advocates who appeared in this case:

Mr. K Parameshwar, Sr. Adv., Mr. M V Mukunda, Adv., Ms. Kanti, Adv., Ms. Raji Gururaj, Adv., Mr. Shreenivas Patil, Adv., Ms. Veda Singh, Adv., Mr. Prasad Hegde, Adv., Ms. Sai Kaushal, Adv., Mr. Anand Dilip Landge, AOR, For Petitioner(s)

Mr. Tushar Mehta, SG, Ms. Archana Pathak Dave, A.S.G., Ms. Mili Baxi, Adv., Mr. Khushal Kolwar, Adv., Mr. Misha Kumar, Adv., Mr. Jagdish Chandra, Adv., Ms. Harshita Choubey, Adv., Mr. Manish, Adv., Mr. Sudarshan Lamba, AOR, Mr. Parmod Kumar Vishnoi, Adv., Ms. Shirin Khajuria, Sr. Adv., Mr. Ankit Yadav, AOR, Ms. Swati Tiwari, Adv., Ms. Gunjan Rathore, Adv., Mr. Gopal, Adv., Mr. Naveen Sharma, AOR, Mrs. Swati Bhushan Sharma, Adv., Mr. S.K. Sharma, Adv., Ms. Payal Gola, Adv., Mr. Varad Kilor, Adv., Mr. Siddharth Dharmadhikari, Adv., Mr. Aaditya Aniruddha Pande, AOR, Mr. Shrirang B. Varma, Adv., Mr. Pukhrambam Ramesh Kumar, AOR, Mr. Karun Sharma, Adv., Ms. Anupama Ngangom, Adv., Ms. Rajkumari Divyasana, Adv., Ms. Misha Rohatgi, AOR, Mr. Nakul Mohta, Adv., Mr. Amulya Upadhyay, Adv., Mr. Ayush Kashyap, Adv., Ms. Sneha Menon, Adv., Mr. Kunal Mimani, AOR, Mr. Prashant Alai, Adv., For Respondent(s)

The Judgment of the Court was delivered by

B.R. GAVAI, C.J.:— The present Writ Petition has been filed at the instance of the *Indian Society of Organ Transplantation* in order to highlight the issues with regard to uniformity, equality and access in the realm of organ donation for both the donors and the recipients.

2. The *Transplantation of Human Organs Act, 1994* (for short, "the 1994 Act") was enacted pursuant to the resolutions passed by various States under Article 252(1) of the Constitution of India. The said legislation falls under Entry 6 of List II of the 7th Schedule pertaining to "*Public health and sanitation; hospitals and dispensaries*". The 1994 Act was adopted by all the States.

3. Certain important amendments were made to the 1994 Act in the year 2011, again pursuant to the resolutions passed by the States under Article 252(1) of the Constitution of India. The main purpose of the 2011 amendment was to include '*tissue*' transplants within the scope of 1994 Act. The said amendment also introduced Section 9(3A) enabling swap transplantation for the first time. It also broadened the definition of '*near relatives*', set up the National Human Organs and Tissues Removal and Storage Network, and established the National Registry for Transplants. *The Transplantation of Human Organs and Tissue Rules, 2014* (for short, "the 2014 Rules") were also brought into force in line with the changes made in the 1994 Act.

4. It appears that one of the States, *i.e.*, the State of Andhra Pradesh has not yet adopted the 2011 amendment. It further appears that the States of Karnataka, Telangana, Andhra Pradesh and Manipur have not yet adopted the 2014 Rules. It further appears that after the last affidavit was filed by the Union of India, as per the directions issued by this Court, now the State of Karnataka has passed a resolution dated 21.08.2025 adopting the 2011 amendment. Such a non- adoption till now, severely impedes the possibility of adoption of a uniform national policy and national grid and reduces the chances of transplantation in the concerned States as well as the rest of the country.

5. We, therefore, request all the States/Union Territories, who have not yet adopted the 2011 amendment and/or the 2014 Rules, to take into consideration the importance of the issue and adopt the same.

6. It further appears that two north-eastern States *i.e.*, Meghalaya and Nagaland and three Union Territories, *i.e.*, Andaman and Nicobar Islands, Lakshadweep and Ladakh are presently functioning without a State Organ and Tissue Transplant Organization (for short, "SOTTO"). Mr. K. Parameshwar learned senior counsel appearing on behalf of the petitioner submits that unless the SOTTO is established in the said States/Union Territories, the work of organ/tissue transplant cannot be performed.

7. Learned senior counsel for the petitioner further states that there is an acute shortage in the number of organ donations in the country. He submits that in order to tackle the shortage, two policy measures need to be taken. *First* is linking of brain-stem death certification with the death certification, and the consequent option to donate organs. The *second* suggestion of the learned senior counsel is development of a national policy as well as national portal to operationalize swap transplantation under Section 9(3A) of the 1994 Act.

8. Insofar as brain-stem death certification is concerned, learned senior counsel submits that Form 4 and Form 4A of *Registration of Births and Deaths Rules, 1999* be amended across the country to

include a column on brain dead certification and an option to donate organs. It is the contention of the petitioner, which is working on the national level in the field of organ transplantation, that such a measure would exponentially increase awareness of possibility of the organ donation in brain dead persons and will increase the number of organ donations pursuant thereto.

9. The learned senior counsel for the petitioner has highlighted that as per the National Organ and Tissue Transplant Organization (for short, "NOTTO"), the importance of donation by persons who are certified to be brain-stem dead is much more, as they can donate up to eight vital organs, whereas the person who has suffered natural cardiac death can only donate tissues.

10. Another issue highlighted by the learned senior counsel for the petitioner is with regard to the swap transplantation, which is permitted under Section 9(3A) of the 1994 Act. According to the petitioner, on account of low deceased organ donation rates and donor-recipient incompatibility, a national policy for swap transplantation would go a long way in the matter of organ donation/transplantation. It is submitted that in the absence of a national policy coupled with the fact that different States have either no policy, or an independent policy, the swap transplantation is not being done though a large number of donors are available. It is further submitted that a national grid for swap transplantations and organ donations would enable different donors and different recipients in various States across the country to connect thereby increasing the number of transplants. It is, therefore, submitted that the Union of India through the NOTTO must formulate a national policy to ensure equitable access to swap transplantation for addressing the existing inequalities in the healthcare system.

11. Learned senior counsel for the petitioner further submitted that the capacity for organ transplantation must also take into account the fact that the number of registered hospitals under the 1994 Act and the 2014 Rules is abysmally low and almost non-existent in some States. It is submitted that in some of the States like the States of Jharkhand, Meghalaya, Mizoram, Nagaland, Sikkim and Union Territories of Andaman and Nicobar Islands, Ladakh and Lakshadweep, no government hospital is available for carrying out organ transplantation. It is accordingly suggested that the Union of India through the NOTTO and in consultation with the States must evolve a five-year plan to address these concerns and ensure that hospitals are equipped with facilities and doctors, meeting the standards as required under the 1994 Act and 2014 Rules in every State. It is further stated that the said plan must also account for the *per capita* transplantation requirements in larger States and suggest measures for increasing the capacity as well as awareness across the country regarding organ

transplantation.

12. We are also informed that the allocation criteria, which is made by the States under Rule 31(4)(f) of the 2014 Rules differs from State to State. It is submitted by the learned senior counsel for the petitioner that while the criteria may be reasonable in each State, the lack of a national policy allows for “gaming of the system” by a select few who have the resources and capability to register in different States. It is submitted that the allocation criteria does not address concerns of gender, class and region thereby resulting in discrimination, which is impermissible. The learned senior counsel submitted that the High Court of Gujarat has struck down the requirement of domicile for registration for transplantation in the case of *Vidya Ramesh Chand Shah v. State of Gujarat*¹. It is further submitted that a uniform national policy is imperative to secure the substantial right to health. He submits that the Union of India as well as the States/Union Territories should play a cooperative role in facilitating organ donation/transplantation.

13. In response to the concern expressed by this Court when the matter was heard yesterday that many a times the live donors are left in the lurch after they donate their organs, learned senior counsel for the petitioner while referring to the Guiding Principles for Organ Donation laid down by the World Health Organization, submitted that the guiding principles mandate that the donor's concern is voluntary and informed. He further submitted that the WHO's guiding principle (specifically No. 3) provides that live donations are acceptable, when professional care of donors is ensured and follow-ups are well organized. In this regard, he refers to the judgment passed by the High Court of Kerala in the case of *Moideen v. State of Kerala*² authored by one of us (K. Vinod Chandran, J., as he then was), wherein the High Court observed thus:

“16...The renal parameters of a donor are assessed at the time of transplant and it does not take into account the medical complications that may arise in future due to the stress on the remaining organ. There is also an element of risk to the donor who is subjected to a surgical procedure and recovery therefrom. Quests in life are many and varied, for the haves, but for most; the have-nots, it is ‘a better tomorrow’. To loose hope in life and to sell ones own organ to achieve better living conditions is not a happy situation. Live organ transplantation for consideration, other than love, affection for a willing sacrifice, is abhorrent to the concept of a healthy, civilized society.”

14. It is relevant to note that the Kerala High Court notices the WHO's Guiding Principles for Organ Donation and holds that “*Truly*

altruistic motives will also not be directed against an individual and life of one is as precious of yet another”.

15. We concur with the view taken by the High Court of Kerala and hold that though the life of a recipient is required to be taken care of, equally the life of a live donor who parts with a valuable part of his body should not be neglected and should be adequately taken care of after the operation is carried out.

16. In that view of the matter, we find it appropriate that the NOTTO must come forward with a national policy which also addresses concerns with regard to the maintenance of the health of a live donor after the operation is carried out.

17. We have also heard Mr. Tushar Mehta, learned Solicitor General of India and Ms. Archana Pathak Dave, learned Additional Solicitor General of India.

18. We must place on record our appreciation for the learned Solicitor General of India as well as learned Additional Solicitor General, who have assisted this Court by not treating the present petition as an adversarial litigation. We must also place on record our appreciation for the Union of India as it has acted in a collaborative manner with the petitioner to arrive at practical solutions for the issues raised in the petition.

19. In light of the above, we issue the following directions:

- i. We request the Union of India to persuade the State of Andhra Pradesh through its Chief Secretary or the Principal Secretary of Health to adopt the *Transplantation of Human Organs (Amendment) Act, 2011* by explaining to them the importance of such adoption.
- ii. We also request the Union of India to, in a similar manner, persuade the States of Karnataka, Telangana, Andhra Pradesh and Manipur to adopt the 2014 Rules.
- iii. We direct the Secretary, Health and Family Welfare, Union of India to personally monitor the aforesaid points contained in subparagraphs (i) and (ii) of this paragraph.
- iv. The Union of India is directed to constitute a SOTTO for the States of Meghalaya and Nagaland under the aegis of National Organ Transplant Program after due consultation with the concerned States.
- v. The Union of India through NOTTO is requested to evolve model allocation criteria in consultation with all the States so as to ensure a uniform national policy for transplantation. The uniform national policy guidelines must include provisions to alleviate the concerns with respect to gender, class and regional discrimination and provide appropriate remedial provisions for the same. The

policy must endeavor to have uniform criteria for the registration of patients, donors and formats throughout the country.

- vi. We also request the Union of India through Ministry of Home Affairs in consultation with NOTTO, Ministry of Health and Family Welfare and the petitioner-organization to consider amending Form 4 and Form 4A of the *Registration of Births and Deaths Rules, 1999* so as to include a column on whether the deceased was a case of brain-stem death and if that be the case to indicate whether the option to donate organs was given to the relatives of the deceased.
- vii. We further request the Union of India through NOTTO to evolve national swap transplantation guidelines in consultation with all States to implement Section 9(3) of the 1994 Act. The swap transplantation guidelines should be on a national level providing equal opportunities to all the persons for swap and must be done digitally through an accessible web portal.
- viii. The Union of India through NOTTO in consultation with all the States/Union Territories is requested to develop transplantation facilities where there are inadequate public health facilities. Further, the Union of India through the NOTTO is requested to develop a five-year plan mapping the course for development of transplantation facilities in India.
- ix. We further request the Union of India to take on board all the States/Union Territories through the NOTTO and evolve guidelines for welfare of live donors, including measures to ensure an informed and voluntary consent, maintenance of a portal, mandatory follow-up with the doctors and to ensure they are cared for. This is to ensure that commercialization and exploitation of donors is prevented.
- x. We request all the States/Union Territories to ensure that data related to organ donation and transplantation along with the details of donors and recipients of organs and tissues is reported by the concerned hospitals to the national registry maintained by the NOTTO as mandated under Section 13D of the 1994 Act.
- xi. We further direct all the State Governments/Union Territory Administrations to ensure that strict action is taken against the defaulting hospitals, who fail to furnish the data as has been directed by us in sub-paragraph no. (x) of this paragraph.

20. We reiterate our appreciation for the Union of India, the Solicitor General of India and the Additional Solicitor General of India for not treating the present matter as an adversarial litigation and assisting the Court in a collaborative manner. We also place on record our appreciation for Mr. K. Parameshwar, learned senior counsel, and his assisting counsel, who, despite not possessing any expertise in medical

field, have assisted us in passing the aforesaid judgment on the basis of their deep research and dedication.

21. The matter be placed after six months, preferably before a Bench of which K. Vinod Chandran, J., is a member.

1 2022 SCC OnLine Guj 2021

2 2017 SCC OnLine Ker 21219

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Child Trafficking in India: An Overview

CHILD TRAFFICKING IN INDIA: AN OVERVIEW

by

Avanish Bhai Patel¹

Introduction

Trafficking of human beings, particularly children, has emerged as a matter of grave concern around the world, including in India, in recent years. It is the most serious form of organized crime in the world, and it cuts across cultures, geographies, and time periods (INTERPOL, 2005). "Human Trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit" (United Nations, 2002). Human trafficking is also an unauthorised trade in human beings for the purpose of reproductive enslavement, commercial sexual exploitation, forced labour, and other forms of exploitation, among other things. (United Nations, 2008). The practice of human trafficking is referred to be a modern-day variant of slavery since it takes place in the contemporary world (INTERPOL, 2005; Stop the Traffick, 2006). Although the precise number of persons enticed or coerced over international boundaries each year is unclear, even conservative estimates show that at least 2.5 million children, women, and men are trafficked and forced to work in dismal and risky conditions against their will (Johannes Koettl, 2009). Many more are trafficked and forced to work within their own countries, often under dubious and dangerous conditions and held captive by physical, psychological or financial threats (Johannes Koettl, 2009). It is the truth that human trafficking is an abhorrent assault to the dignity and rights of those who are trafficked. It has been estimated that out of the total number of persons affected by human trafficking in which 80% women and 50% children are affected by human trafficking in India (P.P.I., 2010). Moreover, annually, 20 billion rupees are turned over through human trafficking (P.P.I., 2010). For thousands of men, women, and children, India is a source of resources, a transit point, and a destination (Sen, 2003; Srivastava, 2007; P.P.I., 2010). India's frontier states have a common border with neighboring nations such as Nepal, Bangladesh, China, Pakistan, and others (Shrivastava, 2007 and Sharma, 2007). The

children from these nations are readily accepted for commercial sex in these countries (Sharma, 2007; P.P.I., 2010).

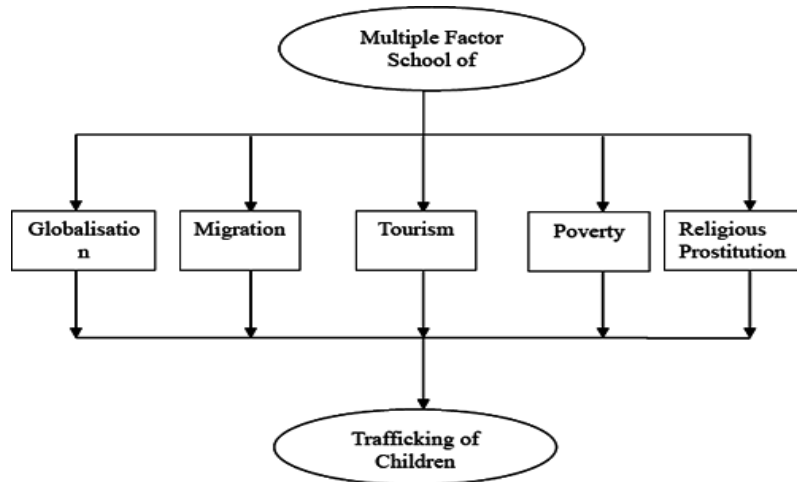
Trafficking of children is the most alarming issue around the globe today. Many girl children in India are involved in commercial sex as a result of religious prostitution, sex tourism, and pornographic material (Sen, 2003; Manzo, 2005; Sharma, 2007). In a nutshell, religious prostitution is referred to as devadasi pratha in India, and it is socially acceptable in some sections of the country (Sen, 2003; Shrivastava, 2007). Religious prostitution can be found in Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, and Maharashtra, among other places of worship (Sen, 2003, Nair, 2007, Ray, 2007). Sex tourism may be defined as visits planned inside the tourism industry or outside the business but exploiting its structures and networks, with the main objective of promoting a commercial sexual connection between the tourist and the people of a specific place (World Tourism Organisation, 1995). Pornography is also the most dangerous kind of human trafficking, coming in second only to sex tourism. Sex traffickers (sex tourists) are in the forefront of the production of pornographic content, which includes images, films, and videos of nude children, as well as sex with the children themselves. Traffickers are frequently found to be involved in the production, collection, and distribution of pornographic material (Sen, 2003; Nair, 2007; Roy, 2013).

Esquibel (2005) has pointed out in her research that trafficked individuals are either underpaid or get inadequate compensation. As a commodity, they may be resold again and over again for a profit, and they can be utilised to accumulate wealth. Traffickers deceive migrants into believing that they would be able to make many times more money overseas than they are able to earn in their native country. Furthermore, he asserts that the rise in global poverty has resulted in the establishment of worldwide human trafficking. Similarly, Manzo (2005) has indicated in his research that poverty is the primary cause of human trafficking. Trafficking thrives in areas where poverty reflects a more widespread systemic issue. Whereas children are more likely to emigrate to find work away from their parents. He has also emphasised that there is a close connection between poverty and human trafficking. Furthermore, Sharma (2007) has done her research on human trafficking in the state of Maharashtra. In her research, she has found that human trafficking is a blatant violation of basic rights, and she concluded that it is. It also infringes the right to health and health care, the right to liberty and



security of person, as well as the right to be free from torture, assault, cruelty, or humiliating treatment or punishment. The trade and exploitation of human beings is the most heinous violation of human rights committed by traffickers and organised crime groups. To add to this, in order to explain human trafficking, Lutya (2009) proposed an epi-criminological theory based on two distinct fields, public health and criminal justice to examine human trafficking. He has tackled South African human trafficking of young women and girls for the purpose of compelled prostitution via a scholarly synthesis of epistemological and criminal justice solutions. From the preceding lines it is apparent that human trafficking is prevailing among the children in India and therefore, there is a dire need of scientific enquiry to analyse this issue from multiple perspectives and explore the factors which are responsible for trafficking among the women and children.

Multiple Factor School of Criminology and Child Trafficking: Criminologists have made use of multiple factor school to define the factors of crime. The followers of this school believe that crime is the outcome of a combination of many variables which cannot be stated in terms of general premise. According to this school there are so many variables of committing crime and it illustrates this fact in the context of causality of crime that no scientific theory of criminal behavior is possible (Chaturvedi, 2007). Ferrie asserts that crime is the outcome of a variety of circumstances in his discussion of crime (Sutherland and Cressey, 2011; Chaturvedi, 2007). These circumstances are closely related to one another, and by doing a thorough investigation, these factors can be discovered in the society. There are three types of factors: social, natural, and anthropological. Furthermore, according to American criminologist William Healy, it is not one or two circumstances that cause a man to become a delinquent, but rather a mixture of several elements that together drive him to engage in criminal behavior (Sutherland and Cressey, 2011). Migration, culture conflicts, familial background, political ideology, religion and crime, economic situations, and the ecology of crime are some of the aspects to consider (Paranjape, 2011). Furthermore, he contends that not all of the circumstances linked with a given crime are of equal importance as a contributing factor to the commission of that crime. It is impossible to understand criminal behavior without first gathering all of the relevant information.



So for now, we've talked about the multiple factor school of criminology and how numerous factors influence the decision to commit a crime. With the assistance of the multiple factor school, we will now investigate the factors that contribute to human trafficking. It is no longer possible to assess any social phenomenon on the basis of just one or two components in the modern day. The occurrence of each social phenomenon is influenced by a variety of circumstances. A similar result is obtained when we examine child trafficking using the multiple factor school of crime, which reveals that a variety of causes are at the root of the problem. Poverty, tourism, migration, religious prostitution, globalization, corruption, illiteracy, and lax law enforcement are just a few of the variables that influence people's lives.

Objective: the objective of paper is to understand the nature and extent of child trafficking in India. The paper also examines the causes of child trafficking under the multiple factor school of criminology.

Data Sources: This study is based on secondary data. Secondary data have been collected from Crime in Report, 2015 which is published by National Crime Record Bureau. A starting point for the analysis of available data is National Crime Record Bureau that collects data on trafficking through State Crime record Bureaus and Union

Territories. These data provide an indication of the level or reporting of

trafficking within India.

Result and Discussion:

Registered Cases of Child Trafficking in Penal Code, 1860 and Special Laws: A total of 3490 incidents of child trafficking under various provisions of laws relating to human trafficking have been reported in the country during 2015. The cases related to human trafficking grew from 0.4 percent in 2014 to 0.5 percent throughout the course of the year 2015. During the years 2011-2015, there has been an increase in the number of reported cases of human trafficking. During 2011, a total of 3,517 cases were reported, with the number increasing to 3,554 cases in 2012, 3,940 cases in 2013, 5,466 cases in 2014, and 6,877 (in which 3490 cases of child trafficking) cases in 2015.

Immoral Traffic (Prevention) Act, 1956: A total of 58 cases under the Immoral Traffic (P) Act were registered in the country. Majority of these cases were reported in Maharashtra (18 cases) and Karnataka (10 cases) and West Bengal (9 cases) during 2015. These States together accounted for 63.8%(37 out of 58 cases) of total child trafficking under this Act during 2015.

Human Trafficking under Section 370 and 370-A IPC: During the year 2015, a total of 221 incidents of child trafficking under the provisions of sections 370 and 370-A of the Penal Code, 1860 were reported across the nation. There have been 57 reports of similar occurrences in Delhi, followed by Bihar (27 reports), Madhya Pradesh (22 reports), Odisha (20 reports), West Bengal (15 reports), Chhattisgarh (12 reports), and Telangana (one complaint) (11 cases). During the year 2015, these states together accounted for 72.4 percent of all violent crimes.

Other Various Cases of Child Trafficking under IPC Sections:
Importation of Girls (Section 366-(B) I.P.C.): A total of 2 cases of importation of girls from foreign country were registered during 2015. Uttarakhand and West Bengal has reported 1 case each during 2015.
Procuration of Minor Girls (Section 366-(A) I.P.C.): A total of 3087 cases have been reported in 2015.
Selling of Girls for Prostitution (Section 372 I.P.C.): There have been 111 cases reported in the country during 2015.
Buying of Girls for Prostitution (Section 373 I.P.C.): There have been 11 cases reported in country during 2015.

Nature and Problem of Human Trafficking: Various forms of child trafficking include child labour, early marriage, sexual assault, begging and organ trade etc. The girl children are trafficked from rural regions and utilised as street sellers or domestic employees by persons in metropolitan areas (Manzo, 2005). There are a variety of employment opportunities for exploited children in India due to human trafficking (UNHR, 2014; Sahariahi, 2015). They are exploited in industries and farms, in brothels and houses, and are compelled to work as smugglers and beggars to survive (Sen, 2003; Ray, 2007, Roy, 2013). Commercial matchmakers need the girls to keep their agencies going and children are forced to labour to pay off their parents' debts, and they often spend years of their lives in slavery (Sen, 2003; Roy, 2013; Sahariahi, 2015). In addition to sex trade activities such as sex tourism and pornography (Sen, 2003; UNHR, 2014), a large number of children are trafficked for other forms of non-sex-based exploitation, which include servitude of various kinds, such as domestic or factory work or farming, begging, organ trade, and false marriages (Ray, 2007; Roy, 2013). The number of minors being trafficked is increasing, and over 60% of those who are victims of trafficking are under the age of 18. (N.C.R.B., 2005). In India, it is believed that there are more than 9,000,000 sex workers and approximately, 30% are believed to be children. According to recent statistics, the number of minors engaging in prostitution is growing at a rate of 8% to 10% every year, on average (Shrivastava, 2007).

A large number of children are victims of forced labour, begging and sexual exploitation. Innocent children, boys and girls are exposed to vulnerable situations, violence and sexual abuse. This is a violation of human rights and children are deprived (Ray, 2007; UNHR, 2014). It disturbs the mental and physical capacity of the child which is primary for the development of every child (Sen, 2003, Shrivastava, 2007; UNHR, 2014). Children lose their childhood due to the malpractices of child trafficking (Sahariahi, 2015). Children are robbed of their basic rights, irrespective of economic status, caste, and gender (Ray, 2007; UNHR, 2014). Traffickers know children have less developed mental capacity to understand right and wrong and are less able to handle their trauma as compared to adults (UNHR, 2014).

Conclusion: A framework for analysing the many circumstances and types of slavery that contribute to the trafficking of children in India is provided by the study. Several reasons have been identified as contributing to child trafficking, but poverty, tourism, migration have received the most attention in this research, which concludes that there

are several. These are the kinds of conditions that make individuals more vulnerable to being victims of human trafficking. According to the study, the number of incidents of child trafficking in the nation is rapidly growing. Significantly, child trafficking is done for organ trafficking, sexual abuse and child labor. There are no very effective laws in the direction of prevention of child trafficking in India. Although some laws have been made in this area but they are insufficient as they are not strict. Illegal trade in human beings or persons is prohibited under Article 23 of the Constitution of India. Immoral Trafficking Prevention Act and POCSO Act are effective in child trafficking law in India. Human trafficking was made completely illegal in India in the year 1956. Various provisions are made by the Ministry of Women and Child Development from time to time to prevent child trafficking.

Last but not least, I would like to say that it is up to all of us intelligent citizens to fulfil our duty and responsibility in order to bring this serious and sensitive problem under control, so that the young children of today can breathe freely in this democratic country and live their childhoods with dignity, allowing them to experience the joys of childhood.

¹ PhD Scholar, IIT Roorkee, Uttarakhand

“Human Trafficking in India- Putting a Price Tag on Human Dignity”

*Shivam Gomber
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ABSTRACT

“People were created to be loved. Things were created to be used. The reason why the world is in chaos is because things are being loved and people are being used.”

Human trafficking can be described as forcing of a person into any kind of exploitation sexual or labour or both, which is human rights violation and the fastest growing criminal industry in the world. Human Trafficking in India is the most deplorable wrongdoing carried out not just by offenders enjoying barbaric exercises to fulfil their ruffian wants and for financial benefits additionally by uneducated natives of a debased society saturated with neediness and ignorance. Thus they get to be helpless against bogus guarantees of steady employments, conventional relational unions made by corrupt criminals and traffickers without inner voice. This paper deals with Human trafficking in India, its causes, legal instruments in India, landmark cases in India about trafficking and the stages to curb the problem. This paper analyses the problem of Human Trafficking in India and analyse the problem behind it and how our justice system should function in order to tackle the problem. India has now somewhat taken steps to curb this problem but it should do more to curb the problem from the root level only. Human Trafficking out to be curbed as it is a social blot and India needs to look after it to make it a developed nation and a better place to live in. We should raise the voice against human trafficking and make our country a better and safe place to live in.

INTRODUCTION

Human trafficking as per Oxford Dictionary implies the unlawful development of individuals, commonly for the reasons for constrained work or business sexual misuse. As per UNODC (United Nations Office on Drugs and Crimes) Article 3, section (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons characterizes Trafficking in Persons as the enlistment, transportation, exchange, harbouring or receipt of persons, by method for the danger or utilization of power or different types of intimidation, of snatching, of misrepresentation, of double dealing, of the misuse of force or of a position of weakness or of the giving or getting of instalments or advantages to accomplish the assent of a man having control over someone else, with the end goal of abuse. Abuse should incorporate, at the very least, the misuse of the prostitution of others or different types of sexual misuse, constrained work or administrations, subjection or practices like bondage, subjugation or the expulsion of organs.

Human trafficking¹ is one of the major problems in India. Till date no solid study has been directed so far to know the accurate number of trafficked children in India. The New York Times has given an account of the across the board issue of human trafficking in India particularly in the condition of Jharkhand. Additionally in the report it is expressed that young ladies are trafficked from neighbouring Nepal to India. In another article distributed in The Times of India – Karnataka is the third state in India for human trafficking. Other South Indian states are additionally the most looked for after destinations for human trafficking. Consistently more than 300 such cases are accounted for in each of the four south Indian states. While West Bengal and Bihar, on a normal have 100 such cases every year. According to the information, more than half of the human trafficking cases are from these states. As per the most recent report on human trafficking by the United Nations Office on Drugs and Crime uncovers that Tamil Nadu has 528 such instances of human trafficking in 2012. The number is truly high and more than some other state with the exception of West Bengal (549). According to the information from Home Ministry, 1379 instances of human trafficking were accounted for from Karnataka in the time of four years, in Tamil Nadu the number is 2,244 though Andhra Pradesh has 2,157 instances of human trafficking. As of late 300 fortified workers in Bangalore have been protected. As indicated by an article in First post, Delhi is the centre of human trafficking exchange India and half of the world's slaves live in India. Delhi is the hotspot for unlawful exchange of young ladies for residential work, constrained marriage and prostitution. Delhi is likewise the travel point for human trafficking. In India, 90% of trafficking happens locally (intra-state or between state), and 10% happens crosswise over national fringes. The nation serves as a destination for persons trafficked from neighbouring nations, for example, Nepal and Bangladesh, and as a 27 travel nation for people being trafficked to the Middle East and different parts of the world. What's more, India is a source nation for people trafficked to Europe, the Middle East and North America . Constrained Labour is pervasive in India it is finished by compulsion, power or in a beguiling way. Sex labourers are additionally common. The United States Department of State's 2013 Trafficking in Persons Report evaluates the quantity of persons trafficked for constrained work in India inside the scope of 20 to 65 million.

In 2011 India objected three U.N Protocols Yet in spite of its dissatisfaction with the Protocol, India kept on together a complete arrangement for human trafficking. Or maybe, its against trafficking strategies have to a great extent worked as non-helpful arrangement of laws tending to different segments of human trafficking, for example, bondage, tyke work, and tyke marriage. As of not long ago, Indian law did not contain a far reaching meaning of human trafficking. In March 2013, India passed the Criminal Law (Amendment) Act of 2013, which corrected Section 370 of the Indian Penal Code and incorporated India's first meaning of human trafficking taking into account the UN Trafficking Protocol.

¹ Ramandeep Kaur, Human Trafficking in India must end (2013), <http://www.mapsofindia.com/my-india/society/human-trafficking-in-india-must-end> (last visited Apr 29, 2016).

Human trafficking is a genuine danger in our general public. To make India a created country this danger ought to be checked. In India, the size of business sexual abuse and trafficking is consistently ascending in spite of the presence of the Immoral Traffic (Prevention) Act, 1956. Human trafficking is a terrible, numerous associations and NGOs are attempting to check this issue, Legislature and Judiciary ought to likewise update its arrangements and actualize their strategies to stop this and to improve India a country.

CAUSES OH HUMAN TRAFFICKING IN INDIA

The major reasons for human trafficking in India are destitution, craving, absence of education and the sheer artlessness of honest individuals who fall prey to the bogus guarantees of extortionists. Different reasons for human trafficking in India are the disregard and dismissal of young ladies particularly in country towns of India where social instruction has not come to. The smug state of mind of our defensive powers, the mentality of lack of care by society everywhere and unreasonable requests by individuals who misuse the casualties of human traffickers additionally contribute towards uncontrolled human trafficking in India. Human trafficking in India is energized by the imperfect legitimate system which permits lawbreakers of human trafficking to maintain a strategic distance from arraignment and conviction².

Some of more variables can be low young lady to-male sex proportion in Northern India which urges sex specialists to result in these present circumstances area. There is a pain free income in this calling so individuals do it to get income sans work as they are not instructed to get some other wellspring of pay. Absence of mindfulness and dismissing state of mind of our powers can likewise be an element in Human Trafficking. Defilement can likewise prompt trafficking; the powers are additionally a portion of it as they likewise get cash from it. Caste³ further aggravates the circumstance. Having a place with a "lower" station expands an individual's powerlessness to trafficking. Lower station ladies face double and synchronous segregation by virtue of both their standing and sex: sexual orientation and rank add to the foreswearing of access to training and maintainable job, making it is less demanding to endeavour and movement them because of their powerless financial position. It begins from rustic ranges by abusing the individuals who doesn't have assets and goes ahead till the individual is completely splashed of its human rights. India has as of late stood firm against the reasons for trafficking in the wake of finding that countless are its prey and numerous human rights are abused, before it didn't had much to check the trafficking.

PHASES OF HUMAN TRAFFICKING

² Human Trafficking in India: Complete Report (2012), Available at <http://www.chakreview.com/social-issues/Human-Trafficking-in-India> (last visited Apr 29, 2016).

³ India's Human Trafficking Laws and Policies and the UN Trafficking Protocol: Achieving Clarity report (2015) , Available on http://www.jgu.edu.in/chlet/pdf/Indias-Human-Trafficking-Laws-Report-Book_Feb-2015.pdf (Last visited on 29th April, 2016).

There are three phases of trafficking as defined under Article 3 paragraph (a) of Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, these are the recruitment, transportation and exploitation as defined in Palermo Protocol⁴.

1. **PHASE OF RECRUITMENT-** Recruitment is an arrangement of techniques, activities and means with whose single or consolidated utilization a man enters the net of trafficking in individuals. This stage is profoundly associated with the nation of starting point, which is the nation where from potential casualties are coming. The casualties are firstly taken into the certainty by the traffickers or taken by traffickers by compulsion or trickery. The enlistment is done on the individual who can without much of a stretch be affected or a man who can be mightily incorporated into the association of traffickers. In this stage there are three sorts of enrollment first is compelling enlistment, second is halfway tricky enlistment and the third is misleading enlistment.

Constrained enrolment is a procedure in which the casualty and the trafficker before did not have any get in touch with; it is enlistment that happens amid their first contact e.g. hijacking, kidnapping or offering of kids or ladies.

Halfway beguiling enlistment is which happens when the culprit gives a reality that is false, something that does not exist or shrouds the presence of a few actualities, and something that exists. All out tricky is when misguided judgment of the procedure is appeared to the casualty for e.g. love relationship or marriage for trafficking.

2. **PHASE OF TRANSPORT-** After the enlistment the casualties are transported to the spot they are made to work or gave over to the association of traffickers which offer them further to various other individuals or nations. This stage is exceptionally essential for the traffickers as the casualties can be spared by the powers.
3. **PHASE OF EXPLOITATION-** After getting transported to the ranges where the casualties are to work they are abused to act as whores, workers, slaves or as organ contributors. At this stage the casualties are completely abused and all their rights are splashed.

These are the 3 Phases which are additionally pervasive in India. The administration ought to make the enactment to spare the casualties till the second stage just and there ought to be no third stage. These stages are critical piece of trafficking and enactments ought to be made in like manner.

LAWS RELATING TO HUMAN TRAFFICKING IN INDIA

The Government of India has recently developed some laws⁵ that defend the victims of human trafficking, these laws are-

⁴Stanojoska Angelina, *The Process Of Trafficking In Human Beings: Phases Of Committing The Crime* (Oct,2004), https://www.researchgate.net/profile/Angelina_Stanojoska/publications

LEGAL FRAMEWORK

- Trafficking in Human Beings or Persons is prohibited under the Constitution of India. The specific provisions are in Article 23 (1) of the Constitution of India which is as follows:-

'Traffic in human beings, beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

- Criminal Law (Amendment) Act, 2013-
- Immoral Traffic (Prevention) Act, 1986 (being amended).
- Indian Penal Code (select provisions)- Sections 361, 362, 363(A)(B), 366(A), 370, 371, 372, 373, 374..
- Child Labor (Prohibition and Regulation) Act 1986.
- Juvenile Justice (Care & Protection of Children) Act, 2000.
- Prohibition of Child Marriage Act, 2006 and POCSO 2012.

LEGAL AGENCIES

- 1. Ministry of Home Affairs deals with Human Trafficking -**
 - Various dimensions, numerous criminal laws associated with trafficking
 - Ensuring the requirement of the different criminal enactments and
- 2. International and Regional Conventions Ministry of Women & Child Development ; Ministry of Labour & Employment; Ministry of Rural Development, MHRD,NGOs; Multi-lateral agencies deal with socio-economic dimensions**
 - Rehabilitation of casualties
 - Empowerment of defenceless areas of the general public
- 3. State Governments and NGOs**
 - The reformatory and ameliorative measures identified with the criminal movement of THB is the essential obligation of State Governments
 - Police and Open Order are State subjects.

⁵ Ministry of Home Affairs, presentation on Fostering cooperation between NREMs and State and non-State Fostering e actors in destination, transit and source countries (2014), www.ohchr.org/Documents/Issues/Trafficking/.../2014/18%20India.ppt (Last seen on 29th April, 2016).

NATIONAL POLICIES AND PLANS

- National Child Labor Policy.
- National Plan of Action to combat trafficking and commercial sexual exploitation of women and children.
- National Policy for the Empowerment of Women.
- National Plan of Action for Children.
- Integrated National Plan of Action to Prevent & Combat Trafficking of Human Beings.

COMMISSIONS

- National Commission for Human Rights.
- National Commission for Women.
- National Commission for Protection of Child Rights.

INTERNATIONAL CONVENTIONS AND LEGAL INSTRUMENTS

- Convention on the Rights of the Child (CRC) and its Optional Protocols (Sale of Children, Child Prostitution & Child Pornography) [Ratified]
- Convention on Elimination of all forms of Discrimination against Women (CEDAW) [Ratified]
- UN Convention Against Transnational Organized Crime (UNTOC) and its protocol on trafficking [Ratified].
- Protocol to Prevent, Suppress & Punish Trafficking in Persons, especially Women & Children supplementing above Convention [Ratified].
- SAARC Convention on preventing and combating trafficking in women and children for prostitution.

In 2014 Ministry of Home Affairs has made a Web portal on Anti Human Trafficking also.

LANDMARK JUDGEMENTS ON HUMAN TRAFFICKING IN INDIA

There are seven critical judgements that have changed the viewpoint of Human Trafficking in India. These are imperative judgements in Human trafficking in India. These are-

- **Bhandua Mukti Morcha v/s Union of India**⁶-

This public interest litigation case (PIL) was documented by means of Article 32 of the Indian Constitution specifically under the steady gaze of the Supreme Court of India and requested of the Court to coordinate the State of Uttar Pradesh (UP) to find a way to end tyke work. From there on a Court-named advisory group reported the hugeness of kid misuse in UP's floor covering industry, finding that numerous kids were captured from Bihar, that the

⁶ 1984 AIR 802, 1984 SCR (2) 67

business to a great extent utilized minor youngsters under 14 years, and that numerous accomplished physical misuse.

In its judgment, the Court examined the significance of securing kids' rights to instruction, wellbeing, and improvement in guaranteeing India's advancement as a majority rules system. While perceiving that kid work couldn't be abrogated quickly because of monetary need, the Court found that realistic steps could be taken to secure and advance the privileges of kids in the destitution stricken and defenceless populaces of Indian culture. In backing of its decision, the Court alluded to different major rights and order standards of the Indian Constitution including, Article 21 (the privilege to life and individual freedom), Article 24 (precludes work of kids more youthful than 14 in plants, mines, or different unsafe commercial enterprises), Article 39 (e) (restricts compelling subjects into jobs unsuited for their age or quality), Article 39(f) (depicts the State's obligations to shield youngsters from misuse and to guarantee kids the open doors and offices to create in a sound way), and Article 45 (orders the State to give free necessary training to all kids underneath 14 years). The Court likewise noticed India's commitments under the Universal Declaration of Human Rights (UDHR) and the Convention on the Rights of the Child to give free essential training to all kids in the nation, and to secure kids against monetary misuse. The requests included, guiding the States to find a way to edge approaches to logically wipe out the occupation of youngsters underneath the age of 14; give mandatory instruction to all kids utilized in production lines, mining, and different businesses; guarantee that the kids get supplement rich nourishments; and regulate occasional wellbeing registration.

- **Bachpan Bachao and Ors v/s Union of India**⁷

This appeal has been recorded in broad daylight enthusiasm under Article 32 of the Constitution in the wake of genuine infringement and misuse of kids who are strongly confined in bazaars, in numerous examples, with no entrance to their families under compelling cruel conditions. The Petitioner recorded this request taking after a progression of episodes where the Petitioner interacted with numerous kids who were trafficked into performing in bazaars. The exercises that are embraced in these bazaars deny the offspring of their essential crucial rights. The greater parts of them are trafficked from some neediness stricken territories of Nepal and in addition from in reverse areas of India. After point by point exploration and enquiry, the Petitioner found that sorted out wrongdoing of trafficking of kids for Indian carnivals, especially from Nepal is wild. For the most part, these kids are sold to the bazaar proprietors either by the specialists or their relatives or now and then poor people guardians are baited into the web by promising high pay rates, lavish life, and so on. Kids are much of the time physically, sincerely and sexually manhandled in these spots. There is infringement of the Juvenile Justice Act and all International bargains and Conventions identified with Human Rights and Child Rights where India is a signatory.

⁷ (2011) 5 SCC 1

The business of kids in carnival includes infringement of a few Fundamental and Statutory Rights, to be specific, right to instruction; right to flexibility of expression; competency to go into contract for working in bazaar; existing work laws and authenticity of agreements; and all statutory procurements managing youngster work.

Specialist General showing up for the Union of India widened the extent of this request and presented a nitty gritty report managing the issue of trafficking in youngsters.

The Supreme Court talked about the issue of trafficking, variables that bring about trafficking, accessible enactments, India's commitments under International and Regional Instruments, National Plans and Policies to battle human trafficking, and existing kid security systems.

The court issued the accompanying bearings to the Central Government with respect to kids working in the Indian bazaars:

- (1) Issue appropriate notices denying the work of youngsters in carnivals inside two months from the date of the request so as to execute the crucial right of the kids under Article 21A of the Constitution of India.
- (2) Conduct concurrent attacks in all the carnivals to free the youngsters and check the infringement of major privileges of the kids. The saved youngsters be kept in the Care and Protective Homes till they achieve the age of 18 years.
- (3) Talk to the guardians of the youngsters and on the off chance that they will take their kids back to their homes, they might be coordinated to do as such after appropriate check.
- (4) Frame legitimate plan of recovery of protected kids from carnivals⁸

• **Gaurav Jain v/s Union of India and Ors⁹**

The solicitor, an Advocate, documented a Public Interest Litigation (PIL) in the witness of the Supreme Court (SC) of India, taking into account an article "A Red Light Trap: Society allows to whores' posterity" distributed in the magazine 'India Today' dated July 11, 1988. The applicant petitioned God for building up discrete instructive foundations for the offspring of the fallen ladies (term utilized by the SC all through the judgment). The SC expressed in its request dated 15-11-1989 that "isolating offspring of whores by finding separate schools and giving separate inns would not be in light of a legitimate concern for the youngsters and

⁸ UNODC Regional Office for South Asia, Bachpan Bachao Andolan v/s U.O.I case summary(2013), https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/ind/2011/bachpan_bachao_andolan_v._union_of_india_uoi_and_ors_.html (Last visited on 29th April,2016).

⁹ AIR 1997 SC 3021

the general public on the loose". While the SC did not acknowledge the supplication for particular inns for offspring of whores, it felt that "settlement in lodgings and other reformatory homes ought to be sufficiently accessible to help isolation of these youngsters from their moms living in whore homes when they are distinguished".

The SC constituted a Committee guiding it to present a report giving recommendations for suitable activity. Endless supply of the report of the Committee, the SC defined the accompanying inquiries for choice: -

What are the privileges of the offspring of fallen ladies, the modules to isolate them from their moms and others in order to give them insurance, consideration and recovery in the standard of the national life?

What ought to be the plan to be advanced to destroy prostitution, i.e., the source itself; and what help and sustenance can be given to the fallen casualties of tissue exchange?

In its judgment, the SC cited the Fundamental Rights of ladies and kids from the Constitution of India (in particular, Articles 14, 15, 16, 21, 23, 24, 38, 39, 45, 46) and applicable universal instruments. The court pondered on the explanations behind prostitution and the continuation of the casualties in calling and perceived that the casualties are poor people, unskilled and oblivious areas of the general public who are the objective gathering in the substance exchange; rich groups misuse them and harvest at their hopelessness and disgracefulness in a sorted out hoodlums, specifically, with police nexus. The court held that ladies found in the tissue exchange, ought to be seen more as casualties of unfriendly financial circumstances instead of as guilty parties in our general public. Similarly, the privilege of the tyke is the worry of the general public so that fallen ladies surpass trafficking of her individual from misuse; add to raise her kids; carry on with an existence with pride; and not to proceed in the foul social environment. Similarly, the kids have the privilege to equity of chance, pride and care, security and restoration by the general public with both hands open to bring them into the standard of social existence without pre-disgrace attached on them for no deficiency of her/his.

The SC expressed that three Cs, viz., Counselling, Cajoling and Coercion were important to adequately authorize the procurements of different statutes. The part of NGOs in restoring and teaching the offspring of the fallen ladies was accentuated. Nitty gritty bearings were given for salvage, restoration of whores and offspring of whores. The SC considered that society was in charge of a lady turning into a casualty of circumstances along these lines, society ought to make reparation to avert trafficking in ladies, salvage them from red light territories and different ranges in which the ladies were driven or caught in prostitution. Their restoration by financial strengthening and equity, is the sacred obligation of the State. Their monetary strengthening and social equity with pride of individual, are the central rights and the Court and the Government ought to emphatically attempt to guarantee them.

- **Lakshmi Kant Pandey v/s Union of India**¹⁰

The candidate, Lakshmi Kant Pandey, a lawyer, kept in touch with the Supreme (Court) asserting disregard and misbehaviour with respect to social associations and private selection organizations encouraging the reception of Indian kids to outside guardians. He noticed the long and dangerous trips these youngsters made to remote nations, alongside examples of disregard they encountered from their new parents bringing about impoverishment or sexual misuse of the kids. The Court regarded his letter as a writ appeal (a documenting made with a higher court to secure brief survey of an issue) and this organized the premise of the general population interest prosecution.

In its judgment, the Court noticed that the nonattendance of lawful control of between nation receptions in India could bring about gigantic damage to Indian youngsters who may, for instance, be presented to the misuse of profiteering or trafficking. So as to ensure the welfare of kids, the Court, in meeting with a few social or youngster welfare foundations, laid out an extensive system of standardizing and procedural shields for directing between nation reception as insurance against misuse, abuse or abuse of kids and to secure them a sound, not too bad family life. While detailing gauges and systems the Court referenced different significant laws and approaches including Articles 15(3), 24, and 39 of the Indian Constitution with respect to tyke welfare, and the standards typified in the U.N. Revelation on the Rights of the Child (1959). The portrayed protections incorporate, amongst a few others, the prerequisite that outsiders wishing to embrace be supported by important authorized organizations in their own nation, that no appropriation application from a non-native ought to be entertained specifically by any selection office in India, that offices chipping away at between nation receptions and authorized by the Government of India must meet certain stipulated criteria and attempt particular obligations in guaranteeing the wellbeing and prosperity of received youngsters, and that all between nation reception procedures must be endorsed by the nearby courts.

- **Court on its own motion v/s Government N.C.T of Delhi**¹¹

Taking after a daily paper report with respect to a desperate lady who passed on a bustling road four days subsequent to bringing forth a child young lady, the Court brought this open interest suit (PIL) all alone movement. The Court likewise asked the Human Rights Law Network (HRLN), an ESCR-Net part association, to document an amicus brief on the status of maternal wellbeing for down and out pregnant and lactating ladies in Delhi, and to propose suitable cures. HRLN's amicus sketched out bunch state disappointments to execute government plans accommodating sustenance and wellbeing administrations to ladies and minimized gatherings. Additionally, the amicus incorporated a few case of government doctor's facilities declining to concede vagrants in labour.

¹⁰ 984 AIR 469, 1984 SCR (2) 795

¹¹ MANU/DE/8458/2007

After an underlying listening to, the Court issued a preparatory mandate to the administration of Delhi to set up:

- 1) Five sanctuary homes only for dejected, pregnant and lactating ladies;
- 2) A helpline to oversee accessibility;
- 3) Nourishment and therapeutic offices accessible 24 hours a day in the sanctuaries;
- 4) Projects to spread data about the safe houses disclosed on radio and TV to achieve the ignorant;
- 5) Mindfulness camps each fortnight;
- 6) Versatile medicinal units to convey individuals to the asylums; and
- 7) Approaches to include NGOs in the safe house program. The administration tested the mandate by belligerence that such projects and homes as of now existed.

The Court noticed that the projects the administration indicated were not financed by the state and did not have the ability to meet the Court's order. The Court additionally dismisses the administration's contention that the general population "in the most minimal strata of society" were transients who ought to be accommodated by their neighbouring, home states where more land was accessible.

The Court indicated Article 21 of the Indian Constitution which expresses that "no individual should be denied of his life or individual freedom aside from as per a technique built up by law." This procurement has been deciphered comprehensively in the past by Indian courts to incorporate and ensure numerous rights including the privilege to human nobility, the privilege to vocation, the privilege to wellbeing, including the privilege to regenerative wellbeing, and the privilege to sustenance. The Court held that under Article 21 "we can't turn into the noiseless observers sitting tight for the Government to move like a tortoise and permit the down and out pregnant ladies and lactating ladies to pass on in the city of Delhi bringing forth a tyke or alongside the tyke. Such a circumstance can't be countenanced and is impractical to envision in the scenery of Article 21 of the Constitution of India." The Court permitted the administration to document further contentions, however meanwhile instructed the Government to set up no less than two safe houses with medicinal guide and nourishment so that no down and out lady would need to conceive an offspring in the road. The Court likewise decided the State needed to broadly advertise the presence of the sanctuaries.

- **PUDR V/S Union Of India**¹²

¹² 1982 II LLJ 454 SC (1982) 3 SCC 235

It is alluded to as the Asiad Workers Case, the Supreme Court for this situation said that, "We are, thusly, of the perspective that when a man gives work of administration to another for compensation which is not exactly the lowest pay permitted by law, the work or administration gave by him plainly falls inside the degree and ambit of the words "constrained work" under Article 23 (of the Constitution of India)."

- **M.C. Mehta v/s State of Tamil Nadu**¹³

Background:

A dissident legal advisor recorded an appeal with the court guaranteeing that the basic privileges of kids were by and large horribly abused in negation of Article 24 of the Constitution of India, which gives that " no youngster underneath the age of fourteen years might be utilized to work in any processing plant or mine or occupied with some other unsafe livelihood." The Court noticed that tyke work is a "major issue" in India, and analyzed the historical backdrop of kid work laws in India, including a choice by the court in 1991 in which it gave certain headings in the matter of how the personal satisfaction of kids utilized in manufacturing plants in Sivakasi could be progressed.

Issue and Resolution:

A dissenter legitimate guide recorded an advance with the court ensuring that the fundamental benefits of children were overall awfully manhandled in refutation of Article 24 of the Constitution of India, which gives that "no adolescent underneath the age of fourteen years may be used to work in any preparing plant or mine or involved with some other hazardous job." The Court saw that tyke work is a "noteworthy issue" in India, and examined the authentic setting of child work laws in India, including a decision by the court in 1991 in which it gave certain headings in the matter of how the individual fulfilment of children used in assembling plants in Sivakasi could be advanced.

Reasoning of the Court

Under the national Constitution and universal instruments, including the Convention on the Rights of the Child, the Indian government is required to guarantee that youngsters don't participate in unsafe work. Looking to the reasons for kid work, destitution is the fundamental reason that propels guardians to utilize their youngsters, and unless option pay is guaranteed to families, these kids will keep on working. Since the fines forced on bosses would not be sufficient to keep a poor guardian from putting their tyke to work, the administration owes these guardians an obligation of help to expel their kids from perilous livelihood.

STRATEGY TO OVERCOME HUMAN TRAFFICKING

There are three stages to tackle Human trafficking in India. These three stages are -

- **PREVENTION-** In this there ought to be preventive procedures to overcome human trafficking. It ought to manage the underlying drivers of trafficking with

¹³ 991 AIR 417, 1990 SCR Supl. (2) 518

training, livelihood and destroy destitution. The Government can likewise annihilate human trafficking by bringing issues to light and by making sound strategies that are executed.

- **PROTECTION-** In this stage there ought to be implementation of approaches, offer help to casualties of trafficking, and engage the casualties by making them independence with the goal that they can make their life sound and stable. In this there ought to likewise be human rights based methodology
- **PROSECUTION-** In this there ought to be criminalisation of traffickers by stringent laws, the state ought to research the foundation of trafficking and control them, there ought to likewise be sharpening of partners. There ought to likewise be global participation to control the trafficking.¹⁴

CONCLUSION

Human Trafficking in India is the most deplorable wrongdoing carried out not just by offenders enjoying barbaric exercises to fulfil their ruffian wants and for financial benefits additionally by uneducated natives of a debased society saturated with neediness and ignorance. Thus they get to be helpless against bogus guarantees of steady employments, conventional relational unions made by corrupt criminals and traffickers without inner voice.

Following sixty four years of autonomy our administration might want us to trust that sacredness of life and security of characteristic and crucial privileges of each resident are ensured by law and the Indian Constitution, paying little respect to rank, belief and economic wellbeing. Be that as it may this figment is broken by slave merchants and sorted out posses who grab terrible kids from their families either by intimidation or false guarantees or vicious drive and sentence them to a horrifying outcome.

Human trafficking ought to be ceased by making assurance, aversion and indictment. The Laws ought to be actualized and authorized. India is a creating country and it ought to check this issue. Numerous people are experiencing this Government ought to accomplish something to ensure them as ample opportunity has already past to accomplish something. We should raise the voice against human trafficking and make our country a better and safe place to live in.

¹⁴ Ministry of Home Affairs, presentation on Fostering cooperation between NREMs and State and non-State Fostering e actors in destination, transit and source countries (2014), www.ohchr.org/Documents/Issues/Trafficking/.../2014/18%20India.ppt (Last seen on 29th April, 2016).

Human Trafficking: Laws and Flaws

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Abstract

This study provides a brief overview of the issues related to human trafficking and its prevention with special reference to India. It details the causes that have turned human trafficking into a most flourishing industry. Cheap labour and sexual exploitation is mainly trafficked in poverty-stricken regions and among the most vulnerable populations. In total violation of their human rights, tribal and scheduled caste people, women and children have been pressed into such activities in complete violation of their human rights. The victims face several societal, economic and health issues at the time of confinement and also adapting to their earlier life if and when rescued from the clutches of their exploiters. The paper also aims to create awareness about the existing international and national anti-trafficking laws and their effectiveness in this regard. NGOs working in this field suggest a huge gap in the estimates of the crime in Government of India reports and their own findings. This can be very harmful in the long-run as they disguise the actual cases of human trafficking and related crimes. Although the Government has taken initiatives especially through Anti Trafficking Units in the districts, it is yet to address strictly the involvement of officials, police officers and politicians in this racket. There is also evidence of the dilution of the legal prospects which is very harmful in rendering timely justice and adequate compensation. The sources used for this study are primarily secondary sources and the methodology used is qualitative research. In conclusion this study suggests certain combat strategies that can prevent this great denigration of humanity by humans.

Keywords: awareness, human trafficking, laws, racket, strategies.

Introduction

Human smuggling and trafficking have become a global industry, involving millions of people each year, and generating billions of dollars in revenue (Besler, 2005). In a survey by Thomson Reuters Foundation, 548 global experts on women's issues were asked, which 5 among 193 United Nation members did they consider most dangerous for women. According to the report submitted, India was named the most dangerous country for women in terms of human trafficking including sex slavery and domestic servitude. It was reported that the human traffickers of India, Libya and Myanmar exploited women in a global crime worth approximately 150 billion dollars a year. (Goldsmith, 26 June 2018). One of the greatest problems in India is trafficking in women for sexual exploitation. Young women are vulnerable to this crime in particular. Trafficking for bonded labour is more common in impoverished areas and among the vulnerable population like the tribals and the schedule castes. The National Crime Records Bureau of 2018 reported a total of 5264 cases of human trafficking of which 64 per cent were women and 48 per cent were below 18 years old. States with the highest cases were Bihar, Maharashtra, Telengana, Jharkhand, Rajasthan, Andhra Pradesh, Assam, Orissa and West Bengal. (Sharma, July 30, 2020). According to NGO reports the figures are much higher. Data suggests that the government machinery is somewhat inadequate in dealing with the challenges posed by human traffickers in the context of the existing corrupt political environment and socio-economic backwardness in some areas.

Methodology

This study on human trafficking in India is based on data from relevant secondary sources. This data has been systematically collated and analysed. Both qualitative and quantitative method has been used for research analysis.

International Human Rights against Trafficking

Human Rights as the term suggests is an essential component of human life that is naturally inherent to every born human. It refers to the right of life, liberty and equality; freedom from exploitation, discrimination, humiliation ensuring the dignity of life and expression. The concept of Human Rights can be traced back to civilised human existence and the acknowledgement by the ruling authority of the natural rights of its subjects which are inalienable. The famous French philosopher, Rousseau is credited with a very thought-provoking observation in the eighteenth century, 'Man is born free and everywhere he is in chains'. What we term as Human Rights today is a codified version of mankind's natural rights formulated by the United Nations after the Second World War that involved serious violations of human rights.

It is but natural that the significance of assuring rights to all mankind was not lost on an esteemed international body like the United Nations which defined a broad range of political, civil, economic, social and cultural rights. The Charter of the United Nations in 1945 and the Universal Declaration of Human Rights in 1948 has laid the highest standards for the protection of these principles. In course of time these rights have been extended to the marginalised sections and vulnerable groups women, children, minorities, people with other disabilities. The preamble of the Universal Declaration of Human Rights States, "It is essential if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that Human Rights should be protected by the rule of law." (United for Human Rights. What are Human Rights, p. 2)

It goes without saying that Human Rights are more essential for the vulnerable groups and in this regard one of the most cruel form of denial of Human Rights is Human Trafficking. Human Trafficking means trade of human for exploitative purposes including bonded and forced labour, commercial sexual exploitation and illegal organ-trade. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, also known as UN TIP Protocol, provides the first common international definition of 'trafficking in persons'. This Protocol (15 November, 2000) also discusses other problems that can arise from trafficking that leads to total degeneration of human life. The Protocol is expected to standardize the laws of its member countries to ensure protection and punishment to the offenders. Article 3, paragraph (a) of the Protocol (15 November, 2000) defines 'Trafficking in Persons' as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". Broadly speaking Human Trafficking means trade of humans for exploitative purposes including bonded and forced labour, commercial sexual exploitation and illegal adhere to these principles. In course of time these rights have been extended to the marginalised sections and vulnerable groups women, children, minorities, people with other disabilities (United Nations Office on Drugs and Crime, 2008).

National Laws and Legislations against Trafficking

The great nationalists, who framed the Constitution of India were inspired by the concept of Human Rights and in framing the Fundamental Rights they ensured that 'We the People of India' were not denied our basic rights. The visionary constitution-framers considered servitude, slavery, forced labour, the age-old Devdasi system to be a curse for India which had just emerged from the clutches of colonialism. Naturally, Human Trafficking was an anathema to a free democratic socialist India. Thus they provided the Right against Exploitation (Article 23) of our Constitution, prohibiting traffic in human beings and forced labour. According to the Article, (1) Traffic in human beings and *begar* and other similar forms of force labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) 'Nothing in this article shall prevent the state from imposing compulsory service for public purpose. And in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them'. Article 23(1) proscribes three exploitative practices, viz., (a) *Begar* (b) Traffic in human beings; and (c) Forced labour.

A significant feature of Article 23 is that it protects the individual not only against the State but also against private citizens. (a) *Begar* means 'labour or service exacted by Government or a person in power without giving remuneration for it.' The practice was widely prevalent in the erstwhile princely States and this evil was abolished. (b) Traffic in humans is an expression implies slavery, the buying and selling of human beings as if they are chattels. Traffic in women for immoral purposes is also covered by this expression (3) Forced Labour of the kind of contemplated by the Article is in the nature of human trafficking or *begar*.

Special protection from trafficking and other forms of exploitation has been provided to the children of our country. Article 24 of our Constitution provides: 'No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment'. This provision read with the Directive Principles of State Policy contained in Articles 39(e) and 39(f), provides for the protection of the health and strength of children below the age of fourteen years. Government of India has also enacted many laws to prevent violation of the rights of innocent children who cannot speak for themselves when violated physically or mentally. The Child Labour (Prohibition and Regulation) Act of 1986 prohibits the employment of children under the age of fourteen years in hazardous occupations listed by the law. In 2006, and again in 2008 the list was expanded. The Juvenile Justice (Care and Protection) of Children Act of 2000 made it a criminal offence, with imprisonment for anyone to purchase or employ a child in any hazardous employment or in bondage. The Immoral Traffic in Persons (ITPA) Act 1956 also prohibits the procuring, inducing or taking of a person for the purpose of prostitution. The Protection of Children from Sexual Offences (POCSO) Act 2012 prohibits a range of sexual offences against children under the age of eighteen. Human trafficking (sections 370 and 370A IPC), follows the passage of the Criminal Law (Amendment) Act 2013. Under the new section 370 of the Indian Penal Code, trafficking of persons for 'physical exploitation or any form of sexual exploitation, slavery or practises similar to slavery, servitude and the forced removal of organs' is prohibited. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the Bonded Labour System (Abolition) Act (BLSA) specifically criminalised bonded labour.

Are the Legal Measures Effective?

There is no doubt that due to such strong legislations many rescue operations have taken place. The Anti-Human Trafficking Units of the Government spread over all districts in India, and many non-Government humanitarian groups are involved in this process and especially in rescuing young and underage girls from the prostitution racket. Out of 15379 victims, 58% of them were below eighteen years of age according to National Crimes Record Bureau statistic crime report in 2016. A total of 23117 of victims of Human Trafficking were rescued in 2016. In the year 2016, more than 8000 cases of Human Trafficking had been lodged, out of which 182 foreigners were rescued during the year as per NCRB (Bureau, 2016).

However, in spite of legislations and rescue operations in 2016, about 23000 of human trafficking case were reported in India and the number is increasing passing year. Around 40% of trafficking is from West Bengal followed by Assam, Rajasthan, and Gujarat (Barua, 2018). The administrative capacity to combat human trafficking is woefully inadequate. One of the main reasons for the high traffic percentages in these states are the porous borders with few official check posts. Trafficking is then not limited within the country but also acquires international dimensions.

It has been claimed that in some cases the punishment for the traffickers is not stringent enough. For instance, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the Bonded Labour System (Abolition) Act (BLSA), prescribe penalties of only up to five years and three years imprisonment, respectively. This punishment is not commensurate with the crimes committed. The punishment fixed under BLSA hardly serves as a future deterrent for bonded cheap labour in factories and construction sites. There are also instances of recruitment of children younger than age eighteen, forcefully incorporated in insurgent armed and terrorist groups like the Naxalites in Chattisgarh or the Terrorist camps in Kashmir. However, protection to these children is not provided by the law.

Furthermore, a new methodology adopted by the National Crimes Research Bureau is rather suspect as its mechanism hides crimes. If we analyse the crime rate in India, as provided by NCRB, it was over 540 in 2013, increased to 581 in 2014 and was almost 582 in 2015. The crime rate then dropped abruptly by about 35 per cent to 379.3 in 2016, increasing to 388.6 in 2017 and dropping again in

383.5 in 2018. How did this happen? The answer lies in the Principal Offence Rule (POR), a new methodology for calculating crime data which registers a case on the basis of its highest punishment. For instance a case will be counted as a murder only though it might involve a series of offences like kidnapping, forceful confinement, rape, human trafficking and murder (Dutta, January 10, 2020). Anti-trafficking charities fear the number is much higher with many cases going unreported as survivors fear stigma and retribution from traffickers if they file complaints.

Government data shows that 93% of human trafficking cases sent to courts in 2016 were pending trial and the conviction rate in cases where trials had taken place was 54%. Taftesh researchers analysed police diaries, cases filed in court, and complaints registered with police by survivors in West Bengal and Andhra Pradesh after they had been rescued and returned home. According to Snigdha Sen of Taftesh, the study showed that 31 of the 429 people charged with slavery offences had previous trafficking and were accused convictions for trafficking and were convicted of being involved in more than one slavery case involving children and adolescents, Snigdha Sen of Taftesh said. The researchers pointed out that 64 people accused of slavery offences were granted bail and returned to neighbourhoods where trafficking victims lived and worked. Ram Mohan, secretary of Andhra Pradesh-based anti-trafficking charity HELP lamented that the investigations by the police was not as thorough as it should be in case of such organised crimes. He further pointed out that that this often resulted in criminals going scott free when in reality the need of the hour is “good investigation and strong testimonies from survivors after they are counselled” (Nagaraj, September 3, 2019).

The media, NGOs, and authorities continued to document a persistent lack of accountability and negligence in government-run, government-funded, and privately run shelters which sometimes resulted in abuse and trafficking of residents as in the Muzaffarpur shelter rape case in Bihar first exposed in 2018 by the ‘Koshish’ Project of Tata Institute of Social Sciences (Sharma A. , July 31, 2018). A controversial draft anti-trafficking bill was passed in the lower house of Parliament in 2018 and it is under ministerial review at present. Its inadequate provisions relating to immunity of trafficked victims and presuming guilt of owner of premises without the safeguards which exist in other criminal legislations are debateable. Moreover, the draft legislation has been criticised for its vague language allowing scope for misuse of power by officials (Sharma A. a., 2019).

How to Strike at the Root of the Problem: Suggestions

It is thus obvious that the root of the problem lies very deep and cannot be uprooted by mere laws. To understand the gravity of human trafficking we need to study its causes and realize how human trafficking can lead to the complete degeneration of a human being, denying a human being her/his inalienable natural rights:

Poverty: The victims are by majority from the lowest economic rung of the society. In the search for a better living ,they are usually trapped by the traffickers into prostitution, or lured into forced labour and or selling their internal organs like kidney, eyes etc. Once in the clutches of these traffickers it is difficult for the victims to resist or protest. They are abducted and locked up like cattle to be abused at will, at the mercy of their masters to whom they are literally enslaved. As the traffickers ensure their victims are transported far away from their villages, the poor men, women and children find themselves without any financial or moral support in a new place and have to depend on their exploiters for their meal, lodging, rather their very existence.

Low wages: In the rural areas successive Governments have tried to deal with the economic disparity in the wages of landless labourers, farm labourers etc. but the economic exploitation prevails and they are forced to subsist on very low wages not at all commensurate with the amount of labour put in by them. Most of the unskilled labourers are forced to give their labour on the farmlands of village headmen and other powerful men. In the urban areas also taking advantage of the unorganised labour force, men, women and children are compelled to work in construction industry for long hours without adequate wages.

Lack of Education and Awareness: Most of the victims of Human Trafficking are not educated enough to know about the legislations and judgments that can save them from the traffickers. It could be that they are vaguely aware of their rights but even then have no recourse to the courts of law. Many are not even in a position to lodge a complaint with the police.

Corruption: There have been claims that political leaders, officials and law enforcement in our country have been complicit with traffickers by accepting bribes from them and turning a deaf ear to the suffering voices instead of protecting them as their duty demands. Thus if laws are not implemented by the officers they lose their meaning and are reduced to mere scraps of papers.

Societal Exclusion: The poorest of the village folks generally belong to the lowest caste in societal hierarchy. We have not advanced to the point where we can view all humans as equal even in the twenty first century. The age-old caste divisions persist in India, especially in the rural areas where certain sections of the society are considered as outcastes and untouchables. Such unfortunate folks who are humiliated as low born find themselves alienated from their villages and look for a better life in another part of the country. These vulnerable people become easy prey in the hands of the traffickers.

Gender Discrimination: In our patriarchal society women have never been treated on par with men. The birth of a male child is preferred to that of a female child and she is considered a burden to the parents who have to collect a dowry to pay off to her groom and in-laws. In this situation traffickers in the guise of grooms refusing dowries have won over the poor parents, marrying their unsuspecting daughters, only to push them into prostitution. Some of them are so socio-economically weak that they are willing to sell off their daughters to these racketeers. It is also easy to lure these girls who are illiterate and immature. Many of these females are under-age and the way they are forced into sex trade is the worst experience a human can ever have; an absolute and violation of her human rights. Smuggled away from the comfort of their homes they are locked up and beaten and raped time and again by different men till at some point of time they have a total breakdown. If some of them are rescued from brothels they are not welcomed back in their home and neighbourhood. The social stigma attached to them scars many such women for life.

Urbanisation and Globalization: The increase in IT and BPO workers is a result of migration to urban areas and there is a growing demand for casual and professional sex in the cities. The communication revolution has also brought along with it sex tourism and the scope of the entertainment industry has greatly widened making sex trade very lucrative.. An increasingly international world has seen the rapid transfer of goods, services and social aspirations across borders and regional imbalance between developed and developing worlds has resulted in illegal migration and corresponding rise in opportunities for human trafficking (Danailova-Trainor and Laczko 2010). Increasing economic disparities between the developed and developing world, along with the feminisation of poverty and marginalisation of many rural communities, have produced conditions making people vulnerable to trafficking.

Flourishing Organ Trade: One of the main causes of human trafficking is the flourishing trade in human organs. The traffickers lure the victim with promises of huge monetary benefit but in reality the life of the victim is at risk as operations are carried out in illegal clinics in unhygienic conditions with no medical care at all. According to NCRB (2015), 15 cases were registered in India under the Transplantation of Human Organ Act, 1994.

Manipulation of Children: Children are innocent to the evil designs of traffickers and thus easy to manipulate. They can be forced to work under duress for long hours. Although employing under-age children is punishable by law there is a great demand for children in manufacturing tobacco, spinning, weaving, dying, tanning, carpets, rugs, hotels industry and as domestic servants. Children, both boys and girls, are also major victims of sex trade and the trauma they suffer nips their natural growth in the bud.

Preference for Foreigners: People who migrate from neighboring countries in search of better living conditions are often trapped by the traffickers, especially the women. A section of the clientele in the sex racket prefer foreign females like those from Nepal etc. Rich sheikhs come to India with specific demands for marrying and or enslaving young girls. Most of the women from Bangladesh are found working as cheap domestic helps in North India.

Low investment: Human trafficking ensures huge profits with very low investment and low maintenance. No wonder the criminal graph of human trafficking is sky high.

Conclusion

To alleviate the evil of human trafficking and ensure men, women and children the basic right to live a free life with dignity, it is imperative to strike at the root of the problem. It is difficult to accurately measure the impact of trafficking because of its clandestine nature and hidden economies in which trafficked people work. According to Aronowitz (2009), "Lack of legislation and inadequate national definitions; lack of political will; inexperience in dealing with the issue; corruption; victims' inability or unwillingness to cooperate all make it difficult to determine the scale and impact." It is obvious that just a declaration of human rights or fundamental rights will not cleanse the system. The message has to percolate to the most vulnerable section of the society for whom these protocols have been made. They need to be educated about their rights against the State or any individual. The right law and order atmosphere has to be created so that the victim can report such violation instantaneously without fear of being persecuted by the protector, namely the police. Rescue operations also need to be launched with great alacrity and proper training. Anti-human trafficking units (AHTUs) of the Government and human rights groups can work together in this field.

Although most of the anti-trafficking laws give judges the authority to provide trafficking victims with compensation, the latter do not receive the same. Even in cases brought into media glare like the Muzaffarpur case where the female inmates, mostly children were raped, activists reported authorities did not investigate all high-level officials who may have been involved in the case. Government should encourage state and territory compliance with the Supreme Court's recommendation to audit all government-run and -funded shelter homes. The draft anti-trafficking bill of the Lok Sabha should also be duly revised and placed in the Rajya Sabha soon since the pandemic situation and the resultant socio-economic suffering has made more people susceptible to the designs of human traffickers. It is of utmost significance to rehabilitate the victims of human trafficking and welcome them back into the societal hold instead of stigmatizing them. Various studies have shown that the loss of basic self-respect and self-esteem is most detrimental psychologically at a personal level and it is equally demotivating for the society at large (Hossain, 2010). At the economic level it is indicative of an unproductive economy and politically it mocks the seat of democracy and the lofty political ideals of liberty, equality and fraternity. Above all Human Trafficking is a crime against humanity like no other. It leaves us with the question of our claim to civilization and progress.

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Human Trafficking in India

NIKHIL SHARMA¹

ABSTRACT

Human trafficking remains a significant and multifaceted challenge in India, with deep-rooted historical, social, and economic factors contributing to its persistence. This abstract provides a comprehensive overview of the issue, examining its historical context, current trends, legal framework, government response, and challenges. India's history of human trafficking dates back centuries, including the transatlantic slave trade, internal slavery, and colonial-era exploitation. Marginalized communities, including lower castes, tribal groups, and women and children, have been particularly vulnerable to trafficking throughout history. In modern times, human trafficking in India has evolved to encompass various forms of exploitation, including sexual exploitation, forced labour, domestic servitude, organ trade, and child marriage. Trafficking networks have become increasingly sophisticated, taking advantage of economic disparities, lack of education, and social discrimination. Legal Framework: India has enacted several laws to address human trafficking, including the Immoral Traffic (Prevention) Act, 1956 (ITPA), the Bonded Labour System (Abolition) Act, 1976, and the Protection of Children from Sexual Offences (POCSO) Act, 2012. However, enforcement of these laws faces challenges, and gaps remain in protection and support for victims.

Keywords: Human Trafficking, India.

I. INTRODUCTION

Human trafficking is a grave violation of human rights and a pervasive crime that affects millions of individuals worldwide, including in India. With its vast population, diverse socio-economic landscape, and complex migration patterns, India grapples with the multifaceted challenges posed by human trafficking. This introduction provides an overview of the phenomenon of human trafficking in India, examining its prevalence, root causes, forms of exploitation, and the socio-economic factors that contribute to its persistence. India is both a source and destination country for human trafficking, with internal trafficking being particularly prevalent. Victims are trafficked for various forms of exploitation, including sexual exploitation, forced labour, domestic servitude, bonded labour, child labour, and organ trade. Women and children are disproportionately affected, though men also fall victim to trafficking,

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especially for labour exploitation. Human trafficking in India is fuelled by a complex interplay of socio-economic factors, including poverty, lack of education and employment opportunities, social exclusion, gender inequality, caste-based discrimination, armed conflict, natural disasters, and migration. Vulnerable communities, such as those living in poverty, remote areas, or conflict zones, are at heightened risk of exploitation.

Trafficking in India takes various forms, reflecting the diverse vulnerabilities of its population. Women and children are often trafficked for sexual exploitation, including prostitution, pornography, and forced marriage. Men, women, and children are also subjected to forced labour in industries such as agriculture, construction, domestic work, manufacturing, and textiles. Additionally, trafficking for organ trade, begging, and other forms of exploitation occur. India's socio-economic conditions, characterized by widespread poverty, unequal access to resources, rapid urbanization, and internal migration, create fertile ground for trafficking networks to thrive. Lack of social protection mechanisms, inadequate law enforcement, corruption, and weak implementation of laws further exacerbate the problem. The Indian government has taken steps to address human trafficking through legislation, policies, and programs aimed at prevention, protection, prosecution, and rehabilitation. Key legislative frameworks include the Immoral Traffic (Prevention) Act, 1956, the Bonded Labour System (Abolition) Act, 1976, and the Protection of Children from Sexual Offences (POCSO) Act, 2012. However, challenges remain in enforcement, coordination between agencies, victim identification, and support services. Human trafficking in India is a complex and multifaceted issue that requires a comprehensive and coordinated response from government, civil society, international organizations, and other stakeholders. Efforts to combat trafficking must address its root causes, strengthen legal frameworks, enhance law enforcement capacities, improve victim support services, and promote socio-economic empowerment and inclusion. Only through collective action can India effectively tackle the scourge of human trafficking and protect the rights and dignity of all individuals.

II. TYPES OF HUMAN TRAFFICKING

1. **Sex Trafficking:** Involves the recruitment, harbouring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, where the individual is forced, coerced, or deceived into engaging in sexual activities for monetary gain. This form of trafficking often affects women and children and can involve prostitution, pornography, and sexual slavery.
2. **Labour Trafficking:** Involves the recruitment, harbouring, transportation, provision, or

obtaining of a person for labour or services through the use of force, fraud, or coercion. Victims of labour trafficking may be exploited in various industries, including agriculture, construction, manufacturing, domestic work, and hospitality. They are often subjected to harsh working conditions, long hours, and minimal or no pay.

3. **Child Trafficking:** Involves the recruitment, transportation, transfer, harbouring, or receipt of children for the purpose of exploitation. Children are trafficked for various forms of exploitation, including sexual exploitation, forced labour, child marriage, and domestic servitude. They are particularly vulnerable due to their age, dependence, and limited ability to protect them.
4. **Forced Marriage:** Involves the coercion, deception, or abduction of individuals, usually women and girls, into marriage without their consent. Forced marriage can lead to various forms of exploitation, including domestic servitude, sexual exploitation, and forced labour.
5. **Organ Trafficking:** Involves the illegal harvesting, transportation, or sale of human organs or tissues, often without the consent of the donor. Victims of organ trafficking may be deceived or coerced into donating their organs, or they may be kidnapped and forcibly operated on to remove their organs. This form of trafficking is driven by the demand for organs for transplantation.
6. **Debt Bondage:** Involves the exploitation of individuals who are trapped in debt and forced to work to repay debts that they cannot realistically repay. Debt bondage can occur in various industries, where workers are lured into accepting loans with exorbitant interest rates or are coerced into working to pay off debts incurred by themselves or their families.

III. CAUSES OF HUMAN TRAFFICKING

Some of the primary causes include:

1. **Poverty:** Economic disparities and lack of opportunities can make individuals vulnerable to trafficking, as they may be lured by promises of better jobs or income.
2. **Lack of Education:** Limited access to education can leave individuals uninformed about the risks of trafficking and less able to recognize exploitative situations.
3. **Gender Inequality:** Women and girls are disproportionately affected by trafficking, often due to unequal power dynamics, discrimination, and gender-based violence.
4. **Conflict and Instability:** Conflict zones and regions with weak governance can create

environments ripe for trafficking, as law enforcement may be compromised and communities disrupted.

5. **Demand for Cheap Labour and Commercial Sex:** The demand for cheap labour in industries such as agriculture, construction, and manufacturing, as well as the demand for commercial sex, drives traffickers to exploit vulnerable individuals.
6. **Social Marginalization:** Marginalized groups such as migrants, refugees, LGBTQ+ individuals, and ethnic minorities may face increased risks of trafficking due to societal discrimination and exclusion.
7. **Globalization and Mobility:** Increased mobility and globalization can facilitate trafficking by providing traffickers with greater access to victims and opportunities to exploit gaps in legal and regulatory frameworks.
8. **Corruption:** Corruption within law enforcement, government, and other institutions can enable trafficking networks to operate with impunity, undermining efforts to combat the crime.

IV. LEGAL FRAMEWORK

1. **The Immoral Traffic (Prevention) Act, 1956 (ITPA):** This is one of the primary laws in India dealing with trafficking in persons for commercial sexual exploitation. It criminalizes trafficking for the purpose of sexual exploitation and related offenses. The Act was later amended and renamed as the "Immoral Traffic (Prevention) Act, 1986."
2. **The Bonded Labour System (Abolition) Act, 1976:** This Act aims to eradicate bonded labour, a form of trafficking where individuals are forced to work to repay debts, often under exploitative conditions.
3. **The Child Labour (Prohibition and Regulation) Act, 1986:** Although primarily focused on child labour, this act also addresses aspects of trafficking of children for labour exploitation.
4. **The Juvenile Justice (Care and Protection of Children) Act, 2015:** This Act is focused on the care, protection, treatment, and rehabilitation of children in need of care and protection, including victims of trafficking.
5. **The Protection of Children from Sexual Offences (POCSO) Act, 2012:** While not exclusively focused on trafficking, this Act provides for the protection of children from sexual abuse and exploitation, which can include instances of trafficking.

6. **The Criminal Law (Amendment) Act, 2013:** This amendment to the Indian Penal Code (IPC) introduced various new offenses related to sexual assault, including trafficking of persons for exploitation.
7. **The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018:** This proposed bill seeks to address trafficking comprehensively, including prevention, protection, and rehabilitation of victims. It aims to consolidate existing laws and provide for more stringent measures against traffickers.

V. JUDICIAL CASES

1. **Vishal Jeet v. Union of India (2016):** This case involved the Supreme Court's directive to state governments to strictly enforce laws against human trafficking, emphasizing the need for proactive measures to prevent trafficking and protect victims.
2. **Prafulla Kumar Sarkar v. State of West Bengal (2010):** In this case, the Calcutta High Court emphasized the importance of witness protection in human trafficking cases, highlighting the vulnerability of witnesses and the need for adequate safeguards to ensure their safety.
3. **Rajesh v. State of Haryana (2013):** The Punjab and Haryana High Court in this case emphasized the role of law enforcement agencies in effectively investigating and prosecuting cases of human trafficking, stressing the need for coordinated efforts to combat this crime.
4. **Ranjit Singh v. Union of India (2014):** The Delhi High Court, in this case, underscored the significance of rehabilitation and support services for victims of human trafficking, emphasizing the duty of the state to provide necessary assistance for their physical, psychological, and social recovery.
5. **Nilabati Behera v. State of Orissa (1993):** Although not solely focused on human trafficking, this landmark case by the Supreme Court of India established the principle of compensation for victims of human rights violations, including those subjected to trafficking, highlighting the state's responsibility to provide restitution to victims.
6. **Gaurav Jain v. Union of India (2016):** In this case, the Bombay High Court emphasized the importance of public awareness and education in preventing human trafficking, advocating for measures to inform and empower individuals, especially vulnerable groups, to protect themselves from exploitation.

VI. CONCLUSION

Human trafficking remains a significant and complex issue in India, despite the presence of laws and judicial interventions aimed at combating it. The country has enacted various legislative measures to address different forms of trafficking, including for sexual exploitation, forced labour, and child trafficking. However, challenges persist in effectively implementing these laws, prosecuting offenders, and providing comprehensive support to victims. Factors contributing to the prevalence of human trafficking in India include socioeconomic disparities, lack of awareness, porous borders, and corruption. Vulnerable populations, including women, children, migrants, and marginalized communities, are particularly at risk of falling prey to traffickers.

Efforts to combat human trafficking require a multi-faceted approach involving collaboration among government agencies, law enforcement, judiciary, civil society organizations, and international partners. This approach should encompass prevention through education and awareness-raising, effective enforcement of laws, prosecution of traffickers, protection and support for victims, and international cooperation to address transnational trafficking networks. While progress has been made in recent years, including through landmark judicial decisions and legislative reforms, continued commitment and concerted action are needed to address the root causes of trafficking, protect the rights of victims, and hold perpetrators accountable. Public awareness, community engagement, and the empowerment of vulnerable populations are crucial in building a society where human trafficking is not tolerated, and all individuals are treated with dignity and respect.

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Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation

IMMORAL TRAFFIC IN WOMEN AND GIRLS: NEED FOR TOUGHER LAWS AND SINCERE IMPLEMENTATION

by

Poonam Pradhan Saxena

I Introduction

IMMORAL TRAFFIC in women and girls is a classic example of how from time immemorial sexual gratification of men has seen the pushing of countless girls in an age of innocence to flesh trade. The inhuman and barbarous methods for their induction into the trade, their forcible and later a kind of *fait accompli* adaptation to its inherent features and then with the turn of the tables their active role in luring other girls into the same fate is a vicious circle, sitting on which the respectable pimps flourish and the actual victim is seen with disdain and contempt. She is a fallen woman even if her entry in the profession was against her wishes. Respectable members of the society discuss this issue from a distance but do not forgive the victims for being in a situation over which they have no control. While they look contemptuously on her, the pimps and her clients retain their respectability. To satisfy the lust of men, women and girls are lured, enticed, married fraudulently or even kidnapped by pimps or agents. In this vicious racket, all the three parties get something. The customer, but for him the whole institution of prostitution would not exist had his physical needs satisfied; the pimp gets his share of money for which he enters the racket but the girl gets the beatings, starvation, torture till the point of breaking as part of the initial training and finally around more than ten customers a day with deadly diseases. She becomes a threat to the morals of the respectable in the society and a potential health hazard. Conferences and workshops usually do not have sex workers as participants as they continue to be despised. It is said that once a girl is induced into prostitution no gentleman comes forward to marry her. She is described as a woman making a living out of sin yet the gentleman even after repeatedly having an intimate association with this woman continues to be clean.



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Trafficking is a systematic and organized economic activity, involving displacement and movement of persons for their exploitation.¹ The traffickers have a conjoint relationship with the customers, preying on the ill-fated victims. Their *modus operandi* is to take their prey through unfamiliar routes to unknown destinations making retracing practically impossible and to cut them off their roots completely, making them totally isolated and at the mercy of the traffickers. Trafficking is extremely profitable and has no risk of a lack of market as the demand for girls and children increases with time and those who help supply at the appropriate time & place and to appropriate people make huge profits with small investments made over a short time period.

Traffickers sometimes operate individually or as part of an organized racket. In the

former case they are more visible and make both monetary as well as personal sexual gains out of it. The inducement is the lure of money offered to the victim's family members in the guise of employment in a big city or even marriage to a wealthy man or to the traffickers themselves. Sometimes even the family members or so-called well wishers of the family are involved in this racket. They influence the family after negotiating with traffickers who flaunt their wealth, create an impression of being financially very comfortable, disguise themselves as grooms and actually marry the unsuspecting girls only to throw them in brothels later on. The parents are sometimes blinded by the false picture of luxury projected by the pimps and sometimes by the money advances already given to them. They readily agree to perform the marriage sometimes in undue haste so as not to lose the opportunity. Parents and other guardians, well wishers and relations, all are in fact culprits as despite enough ground for suspicion and the unreal situation, they deliberately enter into the transaction blinded by the lure of money, taking shelter later behind their poverty and inexperience. In the areas ridden with poverty and large number of children, selling girls by the families in exchange of money does not seem to be a bad proposition.

The second category of traffickers is the organised syndicate operating through the procurers and lay down rules which the latter strictly follow. They have strong connections with influential people at all levels besides having links with international criminals, narcotics smugglers and with placement and recruiting agencies offering jobs abroad. The complete chain with corruption at all levels from the local police to those posted at the border, from the passport officers to the police at the destination, makes trafficking a smooth flowing process for them. They are rarely caught or prosecuted, as active help is readily available from the law enforcers themselves. Drugged with money and muscle power they believe in spreading fear and do not hesitate to take revenge on those who dare to expose them. Isolated or occasional raids on their activities merely bring them back within a short time. Trafficking



thus continues unabated. The risks are minimal in comparison to the huge returns and this fact reinforces the risk-bearing capacity of the procurers.

The pimps also often trap children, who run away from their homes for a variety of reasons. Similarly a large number of girls and women are kidnapped for the purposes of trafficking. The high rate of kidnappings and reports of missing women and children bares the dangerous and vicious proportions of trafficking. Though it is believed that the organized mafia and the pimps are dominated by men, women play an active part in luring the girls from villages by displaying their lavish life styles, befriending unsuspecting runaway girls by promising them job opportunities and later inducting them in the sex trade.

II The law

The Constitution of India has incorporated various provisions for upholding the dignity of women which, if implemented, in the correct perspective should be immensely useful for tackling effectively the problems of trafficking. Article 21 gives a right to life and personal liberty. 'Right to life' does not merely mean animal existence but includes a right to live with human dignity. Article 23 provides for prohibition of traffic in human beings and forced labour. Similarly, article 24 prohibits employment of any child including a female below the age of fourteen years to work in any factory or mine or engage in any other hazardous employment. Forced labour in any form including begar and trafficking in human beings is completely prohibited and any contravention of these provisions has been declared an offence punishable in

accordance with law. Article 39 of the Constitution, enjoins as part of the directive principles of state policy that it is the duty of the state to ensure that the health and strength of the workers, men or women and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

The law of crimes of India namely The Penal Code, 1860 (IPC) has several provisions dealing with trafficking and forced prostitution. Imprisonment up to 10 years and fine is provided for kidnapping or abduction of a woman with intent to marry her by force or to force her into illicit intercourse or to compel her directly or indirectly to go from a place for this purpose² and where the girl happens to be a minor, even inducing her by any means to go from any place for this purpose is punishable. Importing into India a girl below 21 years with intent or knowledge for this purpose will incur the same penalty.³



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Kidnapping or abduction of any person in order to or knowing it likely that the said person will be subjected to or be put in danger of being subjected to grievous hurt or slavery or unnatural lust of any person may be punished with imprisonment upto 10 years and fine.⁴ Concealment or wrongful confinement of a kidnapped or abducted person is also punished in the same manner.⁵ Isolated or habitual importing, exporting, removing, sale purchase or disposal of any person as slave, and accepting, receiving and detaining against his/her will any person as slave is punishable with imprisonment for seven years and fine.⁶ There are other sections dealing with prevention of obscenity etc.⁷

The United Nations Convention on the Prevention of Immoral Traffic, of December 1949 states that prostitution is incompatible with the dignity and worth of the human person and endangers the welfare of the individual, the family and the community. The Convention provides that party states agree to punish any person who, to gratify the passion of another, procures, entices or leads away, for purposes of prostitution, another person, or exploits another person even with the consent of that person; or who keeps, manages or knowingly finances or takes part in the financing of a brothel; or who knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.⁸ The Convention also provides that parties would take measures for prevention of prostitution and rehabilitation and social adjustment of victims of prostitution through their public and private educational, health, social, economic and other related services,⁹ and also for supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.¹⁰

India being a signatory to the Convention ratified it and passed the Suppression of Immoral Traffic in Women and Girls' Act, 1956 (SITA) in 1956. It was amended in 1986 and renamed Immoral Traffic Prevention Act, 1956.

The object of the Act is not abolition of prostitutes and prostitution as such and to make it *per se* a criminal offence or punish a woman because she prostitutes herself but the purpose of the Act seems to inhibit or abolish commercialized vice namely the traffic in women and girls for the purposes of prostitution as an organized means of living.



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However, the Act makes seducing or soliciting from a public place,¹¹ or in the vicinity of public places punishable. 'Prostitution' means sexual exploitation or abuse of 'persons' and not merely 'females' for commercial purposes.¹² The old definition of prostitution as meaning "a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind" was deleted. Thus the shift from an individual activity to commercial exploitation is evident. The Act, which is protective and not punitive, makes, keeping a brothel¹³ or allowing premises to be kept as a brothel¹⁴ punishable. Similarly, procuring,¹⁵ inducing or taking persons for the purpose of prostitution; detaining persons¹⁶ in premises where prostitution is carried on or even living on



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the earnings of prostitution (except when they are her children) have also been made offences. The scheme of the Act shows that the intention behind the Act was to punish those who profit by exploiting others and make them victims of the flesh trade as except for two sections, sections 7 and 8, the Act seeks to punish the exploiter, be it the brothel keeper, the procurer, the landlord, the flesh trader, the pimp or the middle man. The Act also makes punishment for offences involving children more stringent and therefore license of hotels where children or minors are used for purposes of prostitution are to be cancelled. The Act provides for appointment of trafficking police officers to investigate offences and setting up of special courts with jurisdiction to try offences having inter-state ramifications. It also provides for compulsory medical examination of all persons removed from brothel after search has been made and that the interrogation of rescued women is conducted only in the presence of a woman social worker.

Apart from ITPA, The Juvenile Justice Act, 1986 contains provisions relating to juveniles in the sphere of law relating to prostitution. Apart from a child sex worker, the Act treats a child who lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life or who is being or is likely to be abused or exploited for immoral or illegal or unconscionable gain as a 'Neglected Juvenile'. It provides for taking charge of the juveniles by the statutory authorities or persons and his production before the Juvenile Welfare Board constituted under the Act within a period of twenty-four hours. It also provides for establishment of observation home by the state government for temporary reception of juvenile during the pendency of any inquiry regarding them under the Act and juvenile homes to receive neglected juvenile committed to it by



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the Juvenile Welfare Board on completion of inquiries under the Act. The juvenile home is to provide the juvenile with accommodation, maintenance and facilities for education, vocational training, and rehabilitation and also with facilities for development of his character and abilities and give him necessary training for protecting himself against exploitation and ensure the all round growth and development of his personality.¹⁷

The government has finalized a plan of action to combat trafficking and commercial

sexual exploitation of women and children. The state governments and UT administrations have been requested to implement the plan of action. The Central Advisory Committee on Child Prostitution proposed certain amendments in the Immoral Traffic (Prevention) Act to make it more stringent and effective, which was referred to the Department of Legal Affairs who have concurred with the same. A draft cabinet note on the same lines has been prepared and will be sent to the cabinet secretariat after circulating it to concerned ministries/departments.¹⁸

India has also drafted a Regional Convention on Prevention and Combating Trafficking of Women and Children for the Purposes of Prostitution. The Convention seeks to take measures and encourage cooperation among the SAARC member countries to prevent the incidence of trafficking. The Convention is expected to be signed in the next SAARC Summit.

A work plan under the collaboration of GOI and UNICEF has been finalized. Funds have been earmarked for various activities such as projects for rehabilitation of victims of prostitution, preparation of manual for sensitization of police officers, building of a data base on the subject matter of prostitution and trafficking, holding of regional level meet for interaction with state governments close to source areas and NGOs.

III The reality

Despite laws, government's plan of action, the international conventions and the claims made by the authorities, the state of trafficking and the data is enough to bewilder anyone. The utter failure to check trafficking is a harsh reality. Rather, it is increasing day by day. Prostitution in India is a Rs. 40,000 crore annual business. Thirty per cent of the sex workers are children whose exploiters earn a whopping Rs. 11,000 crore.¹⁹ The shocking state of brothels, the tender ages of the victims



and the inhuman torture that some of them are subjected to for their induction in the flesh trade is a shame that India has to live with. India serves as a sending, receiving and a transit nation. The largest red light district in India, perhaps in the world, is the Falkland Road in Kamathipura area of Mumbai.²⁰ In Kamathipura three men a day buy more than 70,000 women and girls.²¹ Women and children are deceitfully lured primarily from Nepal and Bangladesh and are then sent to brothels in India and also to the nations in the Middle East daily.²² According to one survey, there are approximately 10 million sex workers in India out of which 100,000 are in Mumbai alone, Asia's largest sex industry center.²³ 90% of them are indentured slaves.²⁴ Every day, about 200 girls and women in India enter sex trade, 80% of them against their will.²⁵ 2.5% of prostitutes in India are Nepalese, and 2.7% are Bangladeshi.²⁶ Hundreds, if not thousands, of Bangladeshi women and children are held in foreign prisons, jails, shelters and detention centers awaiting repatriation. Many have been held for years. 26 women, 27 girls, 71 boys and 13 children of unknown gender are held in Lila Shelter, Calcutta; Sheha Shelter, Calcutta; Anando Ashram, Calcutta; Alipur Children's Home, Delhi; Nirmal Chaya Children's Home, Delhi; Prayas Observation House for Boys, Delhi; Tihar Jail, Delhi; Udavam Kalanger, Bangalore; Umar Khadi, Bangalore; Kishalay, West Bengal; Kuehbihar, West Bengal and Bharampur, West Bengal.²⁷ 160,000 Nepalese women are held in the brothels in India. Out of these Mumbai alone has approximately 50,000 of them and Calcutta's share is 40,000.²⁸ In Mumbai some brothels have only Nepalese girls, whom



men buy because of their golden skin and docile personalities.²⁹ More than 40% of 484 prostituted girls rescued during major raids of brothels in Mumbai in 1996 were from Nepal.³⁰ One of the important transit points for the traffickers for Mumbai and Pakistan is Calcutta. 99% of women, trafficked out of Bangladesh are taken through land routes along the border areas of Bangladesh and India such as Jessore.³¹ At least 2,000 women are in sex trade along the Baina beach front in Goa.³² In India, Karnataka, Andhra Pradesh, Maharashtra, and Tamil Nadu are considered "high supply zones" for women in sex trade. Bijapur, Belgaum and Kolhapur are common districts from where women migrate to the big cities, as part of an organized trafficking network³³ or due to socioeconomic forces.³⁴ There are many *dhabhas*, or small-scale brothels, along the Solapur-Hyderabad highway, which provide women as an "additional service" to truck drivers and motorists. One woman who runs a *dhabha* had previously been in sex trade. Now, with a shed, two cots and a few girls from nearby villages, she owns a brothel.³⁵ Sagargram is another village off National Highway 59, connecting Delhi and Mumbai, which is primarily inhabited by the Banchharas community, who practices prostitution and mainly caters to the truck drivers passing through the area.³⁶ The members of Basai tribe, on the outskirts of Agra in Uttar Pradesh, also practice prostitution. Such was the notoriety of Basai tribe, that no one was ready to marry a girl from this area.³⁷ Other notorious highways are the NH 5, which winds down from West Bengal to Tamil Nadu³⁸ and NH 2, passing through Beda in Rotash district, Bihar. The flesh trade practiced mainly by the women of the Nutt caste has been thriving here for the last seventy years aided and abetted by the police, local musclemen and *dhaba* owners.³⁹



Increased trap for smaller children

The average age of the girls into the trade has been falling down gradually. Over the past decade it has fallen from 14-16 to 10-14 years old.⁴⁰ There are 300,000-500,000 children in sex trade in India.⁴¹ Girls of such tender ages as 9 years are thrown into sex trade as people believe that sex with a virgin may cure certain sexually transmitted diseases like gonorrhoea and syphilis. Even seven year old girls are neither uncommon nor the youngest. Approximately 20,000 or 20% of women in prostitution in Mumbai alone are under 18.⁴² Bangalore is one of the five major cities in India which together account for 80% of child prostitutes in the country.⁴³ A major trafficking network was discovered by the Karnataka State Commission for Women (KSCW), smuggling 12-18 year-old girls from various impoverished districts to contractors who run brothels in Goa.⁴⁴ Girls are sold by poor parents, tricked into fraudulent marriages or promised employment in towns and land in brothels in India. They are locked up, beaten, starved, burned with cigarettes until they learn how to service upto 25 clients a day. The training that some girls have to undergo through before being initiated into prostitution includes constant exposure to pornographic films, tutorials in how to please customers and repeated rapes.⁴⁵ Women and children from India are sent to nations of the Middle East daily. Girls in prostitution and domestic service in India, Pakistan and the Middle East are tortured, held in virtual imprisonment, sexually abused, and raped.⁴⁶ Of 1,000 red light districts all over India, cage prostitutes are mostly minors, often from Nepal and Bangladesh.⁴⁷ In Mumbai, in 1992, police intercepted the traffic of 25 Bangladeshi children, 5 to 8 years old.⁴⁸ As of

February 1998, there were 200 Bangladeshi children and women awaiting repatriation in different Indian shelters.⁴⁹ Children of prostituted women are victims of sexual abuse as well. Children are



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forced to perform dances and sing for male buyers, and some are forced to sexually service the males.⁵⁰ In Mumbai, 95% of the children of sex workers become sex workers themselves. One child, who had repeatedly been sodomized by the men who bought his mother, decided to become a eunuch and was ritually castrated.⁵¹ It is reported that about 60% of the commercial sex workers in Delhi's red-light area, are child prostitutes and that in recent years, the average age of the trafficked or abducted girls has dropped from 14 to 13 years despite the amended Immoral Trafficking Prevention Act, 1986.⁵² In a recent rescue operation conducted in July 2001 all the ten girls recovered from one brothel at GB Road in Delhi were minors.⁵³

Social customs contributing to sexual exploitation

Certain social customs in the past propelled many girls and women to this profession who were otherwise outside the hereditary and customary groups of sex workers. They were women dedicated to temples as *devadasis* or *mangalmukhis* or the courtesans patronized by royal and aristocratic families. Despite legal measures such as Madhya Devadasis Prevention and Dedication Act of 1947 and the Bombay Devadasis Prevention Act of 1954 it continues even today in parts of Tamil Nadu, Mysore, Andhra Pradesh and Orissa practiced by some castes. A study conducted in Mumbai in mid sixties reported that as many as 30% of the Mumbai prostitutes were of *devadasi* origin. Another study shows that Bijapur district girls are still dedicated to the temple amongst certain section of the lower castes and enter the profession with the consent of their parents. An agent also takes them out of the town or villages and a large part of their earning goes to the family members and agents and no social stigma is attached to it. The reason is mainly economical.⁵⁴

The *devadasi* tradition, still prevalent in many parts of India, continues to legitimize child prostitution. A *devadasi* is a woman married to a god and thus *sadasuhagan* or married, and hence at all times blessed. In the Vijapur district of Karnataka, girls are given to Hanuman, and known as Basvi. In Goa, a *devadasi* is called *Bhavin*, In the Shimoga District of Karnataka, the girls are handed over to the goddess Renuka Devi, and in Hospet, to the goddess Hulganga Devi. The tradition lives



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on in other states in South India. Girls end up as prostitutes in Mumbai and Pune. The Banchara and Bedia tribes of Madhya Pradesh also practice "traditional" prostitution.⁵⁵ The *devdasi* system, the *Basavi* system, the *Jogin* system, prostitution amongst the tribals (Bancharas, Rajnat, Dommara and Bedias tribes) - all these are traditional, ritualized and socially organized forms of the child prostitution.⁵⁶ Districts bordering Maharashtra and Karnataka, known as the "*devadasi* belt" have trafficking structures operating at various levels. The women here are in sex trade either because their husbands deserted them, or they trafficked through coercion and deception, many are *devadasis* dedicated into prostitution for the goddess Yellamma. In one Karnataka brothel, all 15 girls are *devadasi*.⁵⁷

Then there is case of community and area-specific prostitution going from

generation to generation, these types of child prostitution, which are practiced in specific areas by some communities under the specific family itself. Some of the known areas of operation are Mandsaur, Guna Raisen, Bhind, Morena, Shivpun, Gwalior in M.P., Regena area, Chakrata in U.P., Sansi in Central India and Ventkansani in Telengana in A.P. 86% of the sex workers hail from Karnataka, Tamil Nadu, West Bengal, Bihar, Maharashtra, U.P., Assam, Gujarat, Goa, Kerala, M.P., Meghalaya, Orissa, Punjab, Rajasthan, and Delhi.

Customary prostitution

Certain communities legitimize prostitution. In the dusty town of Eluru in Andhra Pradesh, it is a practice in two communities Dommara and Bhogaru communities that female meant to work as prostitutes are paraded before the bidders and given to the highest bidder on lease for one year contract. In nearby towns such as Tenali, Nidadavole, Velpur Tanuku and Tadepalliguden eight to ten women go on yearly contracts after every quarterly auction. A woman whom the highest bidder has bought will go with him on a contract of doing business at his place for a year. During this period she is in the custody of the bidder and it would be his responsibility to provide accommodation and security to her. After one year she returns back to her place.⁵⁸

Indignant members



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of Rajya Sabha coming across party lines strongly condemned this auction sale.⁵⁹ Women are sold and bought openly in some communities among the Tonks in Rajasthan, villages of Sawai Madhopur and part of Kota and Baran District. As per the Nata practice, the father sells his daughter and a married woman is sold by her husband to the male buyer at a price settled with Panchayat and with community's approval.⁶⁰

In April 1981, an Indian Express reporter, with a view to expose this sale of women, shocked the nation by proving that women could be bought in Chandra Babu's cyber city. He bought a mother of six for a small sum of 2300 rupees in Dabri Mandi.⁶¹ Among the Banchara community in Madhya Pradesh, women are split into two groups in a socially sanctioned and rigorously followed division of labour. Those who can marry are known as the Bhattawadis, while those reserved for prostitution are called the Khelawadis. There is also a custom among this community of dedicating the eldest female child to prostitution.⁶² Customary prostitution has been accepted in some communities to such a level that failure of the promises made under a contract of prostitution have been taken to the level of the court. In *Nihal Singh v. Ram Bai*,⁶³ a person contracted with the defendant to arrange for her son a Dangi woman who could be kept as a mistress for the son. She paid Rs. 4000, to the defendant who did send a girl to her house. The girl lived with the son for twenty days and went back to her village and never came back. Later it was discovered that the girl was not a Dangi by caste. The plaintiff claimed her money back. The first two trial courts declared the suit on the ground that the defendant had taken Rs. 4000 from the plaintiff fraudulently invoking section 65 of the Indian Contract Act. The High Court of Madhya Pradesh reversed the judgment on the ground that such a contract is violative of the constitutional injunctions and would be void *ab initio* by virtue of article 13(2) and also the constitutional prohibition of article 23. They did say that if a sale of woman is considered traffic in human beings how could the courts at all entertain an action based on a contract evidencing such a transaction. This case came to the notice of the judiciary as a dispute had arisen but innumerable cases go unreported and these cases of disguised prostitution carry on.



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Coupled with these customs are the evils of sale of minor helpless girls under the garb of child marriages performed by unscrupulous parents who later take the plea of poverty. Parents who are not conscious about their responsibilities produce large number of children and then later sell their girl children of tender ages to middle aged men coming from wealthy countries. Organised rackets of these kinds are operating in every part of India and have been reported from the states of Andhra Pradesh especially Hyderabad. The cases of Ameena and Kaneej⁶⁴ when exposed make headlines but fade very quickly from public memory.

Health and well-being

One of the most alarming aspects of sex trade is the spread of sexually transmitted diseases. The worst affected are the women and children but what is ironical is that they are the ones who are perceived as the carrier of these diseases and therefore looked with disdain. Jurists also believe that prostitutes are responsible to a great extent for the spread of different kinds of venereal diseases apart from other social evils that have far reaching consequences. At one time the British Indian Parliament was even contemplating segregation of prostitutes for the well being of their soldiers. Unfortunately AIDS is increasing at an alarmingly high speed despite the misconception that India has still a very small AIDS affected population. Foreign tourists frequent India because of its relaxed laws, abundant child prostitutes and the false idea that there is a lower incidence of AIDS.⁶⁵ According to UN Report there are between 3 to 5 million Indians afflicted with HIV, the AIDS virus. Unfortunately, it is for this very reason that younger and younger girls are being trapped into commercial sex. In these days of consumerism and infection the less infected that is lesser the age, the better it seems to be and hence the increased demand for younger girls. 60% of prostituted women in Mumbai's red-light district areas are infected with STDs and AIDS.⁶⁶ It is also reported that nearly 50% of the girls working in the sex industry in Mumbai have two or more STDs at one time. Syphilis, gonorrhoea, tuberculosis, chronic pelvic infections, anaemia and scabies seem to be high among sex workers in the brothels.



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Though the official figures are few, villages like Sagargram and Basar, which are off national highways and are known to practice prostitution, are believed to be the hotbed of STDs. According to a recent study done in Sagargram, more than 50% of Banchharas are affected by the STDs, while more than 14% reported symptoms of AIDS. In another study conducted in 1994 by the chief medical officer of the Mandasaur district hospital, 456 truckers were surveyed; of which 16 tested HIV positive while 95 had STD.⁶⁷

In July 1990, Savahdan, a charity group was instrumental in repatriating 700 South Indian prostitutes to Madras, most of whom were HIV positive. It was perceived as a cheap way of getting rid of HIV infected girls. In active collusion of the police, raids are conducted and sick women who are commercially not useful are apprehended. Many women, too sick to prostitute are thrown onto the street. Government hospitals

won't treat those who are HIV positive, or are developing symptoms of AIDS. In Mumbai's J.J. Hospital, an HIV infected woman was refused treatment, though she was bleeding and her condition was life threatening. She delivered a baby in the brothel.⁶⁸ In another case from Kusgaon in Shirala tehsil of Sangli, a mother tied her toddler son to her waist and jumped into the river. Both of them were HIV positive and had been thrown out of their house by their relatives.⁶⁹ In 1991, Mumbai's 100,000 prostituted women averaged 600,000 sexual contacts a day. At the time 30% were HIV positive, the chance of transmission was 0.1%. On the basis, 200 clients were being infected with HIV everyday, 6,000 each month.⁷⁰ But despite the fact that sex workers do contribute to the spread of the diseases, the infection does not spread merely from a sex worker, but does so with the client as well. He is the one who may give to his wife who might not have had any extra marital sexual contact and also to the children and also other sex workers with whom he comes in contact. Meena Sheshu, who heads the Sangram, a social organization working for the welfare of AIDS victims says:⁷¹

The problem is with the focus of the government agencies. Everyone is concentrating on commercial sex workers and truck drivers, but they forget the housewife or the woman who is made to marry an HIV infected person without her knowledge.



After his death, it is the wife who receives the flak for no fault of hers.

The condition of HIV infected children is no better. At a Bhagini Nivedita Care Centre at Kupwad, HIV positive kids are routinely left at the doorstep. The center has many infected children between the age of two months to twelve years.⁷²

Economic gains

It is a myth that sex workers earn for themselves. Usually the traffickers sell these girls to the brothel owners like chattels. The brothel owner then takes back the return by having a complete control over the money that the victims fetch. In the home where they live, there is no place where they can hide any money or keep any valuables. What they get is barely enough to feed themselves. By the time they are able to repay the investment made by the brothel owner on them they are on the verge of retirement often sick and physically and morally exhausted and no longer of any use to their exploiters. Girls are not allowed to escape or leave until they have repaid their debt. Mumtaz Khatun writes⁷³ about the discovery by activists of interstate trafficking in teenaged girls from poor families in 24 parganas north district. More than 300 teenagers from Deganga, Harwa and Bashirhat lured by false marriages were sold for Rs. 2500 to 10,000 depending on the number of middlemen involved. Those who escaped revealed that they were watched all the time and were not allowed to meet or speak to any one, any attempt to do that resulted in brutal torture. The so-called husbands or mistresses took all their earnings away.

IV Methods used by the traffickers

Trafficking in women and girls is easy along the 1,740 mile-long open borders between India and Nepal. The areas used by traffickers to procure women and girls are the isolated districts of Sindhupalchow, Makwanpur, Dhading and Khavre-Nepal where the population is largely illiterate. Trafficking in Nepalese women and girls is less risky than smuggling narcotics and electronic equipment into India. The average age of the Nepalese girl entering into an Indian brothel ranges from 10 to 14 years and this alone shows up the complicity of organised trafficking since at this age it is impossible for

the girls to make the journey alone. Traffickers ferry large groups of girls at a time without



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the hassle of paperwork or threats of police checks. The procurer-prmp-police network makes the process even smoother. Bought for as little as Rs. 1,000 (Nepalese) girls have been known to fetch up to Rs. 30,000 in later transactions. Police are paid by brothel owners to ignore the situation. Girls may not leave the brothels until they have repaid their debt, by that time they are sick with HIV and/or tuberculosis, and often have children of their own.⁷⁴ Of the brothels of India holding between 100,000 and 160,000 Nepalese women and girls 35% were taken on the false pretext of marriage or a good job.⁷⁵ The Karnataka State Commission for Women (KSCW) unearthed smuggling of 12-18 year old girls from various impoverished districts to contractors who run brothels in Goa. The contractors pay the parents for their girl children under false pretenses. Along with the Nepalese, Bangladeshi girls are also trafficked to Pakistan and at times from there to the Middle East countries. Bihar and U.P., such as Begusarai, Dhaulur and Gorakhpur are market centers for transporting girls from Nepal and Bangladesh. After being clandestinely slipped across borders they are actually auctioned off. Then they are taken by the next round of middlemen to New Delhi and Mumbai and sold to brothel owners. Some of the brothel owners take them to safe homes where they are inducted in the trade. The bodies of most of the rescued girls and women, when they are medically examined, are marked with cigarettes burns, cuts from being beaten up and even slash marks from a blade. Chayya Sharma, SHO, Police Station at G.B. Road says that some of the methods of torture are unspeakable.⁷⁶

In many cases women also act as traffickers-either consciously or inadvertently by using their connections with their rural homes and inciting the girls to the lure of city life. This is sometimes also with a view to support themselves as they are forced to retire after reaching a certain age. Daughters of sex workers are more likely to enter the trade at a young age. Sometimes women and children of migrant families are also exploited due to an inadequate support system.

Then there are the respectable custodians of the girls who attempt to sell them. The people of Tassa village in Muzaffarnagar district of Uttar Pradesh were shocked, when the principal of the school attempted to kidnap six minor girls studying in his school. He had planned to sell them each for Rs. 2 lakhs. On the pretext of taking them to an excursion trip he took them to Dhangadi village in Nepal, where arrangements had



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been made for the sale of the girls. Fortunately he was arrested before the sale could materialize.⁷⁷

V The international agreements

The first international instrument for the suppression of the white slave traffic was passed on 18th May 1904 and was amended later by the protocol approved by the General Assembly of the United Nations on the 3rd December 1948. It was followed by the International Convention of 4th May 1910 for the Suppression of White Slave Traffic, which was approved by the above-mentioned protocol. The International Convention of 30th September 1921 for the Suppression of the Traffic in Women &

Children as amended by the Protocol approved by the General Assembly of the United Nations on the 20th October 1947; and finally the International Convention of 11th October 1933 followed by the Suppression of Traffic in Women of Full Age. In 1937, the League of Nations prepared a Draft Convention extending the scope of the above-mentioned instruments. In 1950, a Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others was signed at New York by several nations including India.⁷⁸ The UN Declaration on the Rights of the Child, which was ratified by India in 1992 emphasizes that the child by reason of his/her physical and mental immaturity needs special safeguards and care, including appropriate legal protection before and after birth. Article 34 states that state parties should undertake to protect the child from all forms of sexual exploitation and sexual abuse”.

Several other instruments namely the 1948 Universal Declaration of Human Rights; the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation and the Prostitution of Others; the 1966 International Covenant on Human Rights; the 1990 World Declaration on the Survival, Protection and Development of Children and its Plan of Action; the 1992 Program of Action of the UN Commission on Human Rights on Free Sale of Children, Child Prostitution and Child Pornography; the 1995 Copenhagen Declaration and Platform for Action of the Fourth World Conference on Women; The (Draft) Program of Action of the UN Commission on Human Rights on the Traffic in Persons and the Exploitation of Prostitution of Others and the recommendations of the Committee of the Rights of the Child and the UN Special Rapporteur on the Sale of Children as well as media



attention that is now focusing renewed attention on the sexual exploitation and trafficking of children especially the girl-child should have contributed to the decrease in cases of exploitation of children. Still millions of children are forced into global multi-billion dollar sex trade each year. It is estimated that more than 1 million children in Asia alone continue to be the victims. In Sri Lanka, about 20,000 children are estimated to be in the sex industry. India also reports highest rate of sexual exploitation of children mostly girls.⁷⁹

VI History of the regulation of sex trade in India

In 1668, the East India Company issued regulations known as 'company commandments' for strict compliance by the Company's servants, which included a ban on the soldiers keeping women of ill repute with them, and the regulation of brothels. In 1869, The Contagious Diseases Act was passed which required registration of prostitutes and enabled the government to get them compulsorily medically examined. Police was empowered to pick up any woman on suspicion of her being a prostitute and she had to submit herself to a medical examination and prove otherwise. If she failed to submit to a medical check up, she could be imprisoned for life. On the other hand the brothel-keepers, pimps and procurers were, comparatively, left unhampered whilst the Act became a draconian law for the female sex workers. Though it was repealed in India in 1888, the British Government continued to express concern regarding the health and safety of its citizens, especially the soldiers. The first Act to abolish brothels was passed in 1907, titled the East Bengal and Assam Disorderly Houses Act, under which brothel keepers could be prosecuted. This Act was followed by pieces of similar legislation in other provinces and cities, such as Calcutta (1923), U.P. (1923), Punjab (1935), Mysore (1936), Bombay (1923), etc. Living on the earnings of prostitution, keeping brothels, allowing premises to be used as brothels, procuring of women, unlawful detention, etc., were made punishable.⁸⁰

Failure of ITPA to curb trafficking

The present Act "was not the outcome of an independent, sustained, consolidated mass movement in the country, but rather the result of India being a signatory to the United Nations International Convention for the "Suppression of Traffic in Persons and of the Exploitation of



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Others" passed in New York in 1950".⁸¹ The stereotyping of the ideas of good and bad and the gender bias deeply inculcated in Indian minds have taken care of the total ineffectiveness of this Act to achieve the desired objectives. Meant to protect the exploitation of the sex workers at the hands of organised exploitations, it operates against them. All women and even minor girls engaged in this profession whether voluntarily or even forced are bad, soiled, fallen and not worthy of being referred to by a normal name. She is '*patita*' literally meaning fallen, looked at with disdain and contempt. However, a man craving for sex outside wedlock displays a sign of manhood and even visiting these fallen women would not have any adverse effect on his respectability. Thus the customer, without whom the act of prostitution cannot be committed, also gets away scot-free. The attitude of the police and even the judiciary has not been any different. This is the reason why the limited impact and outreach of legislation is very evident. Though the Act seeks to prevent sexual exploitation of women and children and protect them, the police parties under this Act or under the various Police Acts, frequently round up the female sex workers, in raids. Thus the maximum arrests are of them, while the pimps, procurers and brothel owners are rarely apprehended and even if arrested are released after imposition of nominal fines or lighter punishments. One of the main reasons for it is the high visibility and large number of women and girls and virtual invisibility of pimps and brothel owners.

As the Act does not punish women operating on their own without being part of an organised set up, brothels are passed off as the homes of these women by the owners to escape punishment. Even otherwise, the enforcement of this social legislation appears to be one of the lowest priority of the state.

Thus, the law, which ostensibly is aimed at controlling the trafficking in women and thereby giving her relief and succor, acts inimically to her interests. In addition to the Immoral Traffic (Prevention) Act, 1956, there are local and special Acts, which are frequently used by the police for making a large number of arrests of women. The Krishna Iyer Committee Report mentions the Bombay Police Act in particular, referring to the *Lawyers' Collective* Report that 23,000 to 33,000 women had been arrested in 1980-85 in Bombay under the Police Act, whereas 10,000 women had been arrested under ITPA.⁸² The Committee has recommended that the enforcement machinery of ITPA must be made squarely responsible for deterrent action for which the Police Acts could be amended. Prostitutes must be taken charge of under ITPA rather than rounded up under Police Act and released the next day after being fined



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or imprisoned in default of fine, observes the report. However, some other provisions of the Act clothe the system with sweeping powers of apprehending the prostitutes. Search without warrant is one of them. Section 15 authorizes the special police officer to enter and search any premises where he has reasons to believe an offence had been

committed without obtaining any search warrant. He is then authorised to remove from the premises, all the persons found therein, produce them before the Magistrate, get them medically examined for determining age, injuries sustained through sexual abuse, or for the signs of sexually transmitted diseases. The Act indemnifies the police party from any criminal or civil proceedings and for any action taken by them in connection with the search that is lawfully done.⁸³ The vast sweep of the power and authority enjoyed by the state machinery *vis-a-vis* the prostitutes puts their life and liberty under constraint. Raids on brothels have become a routine and stereotyped activity often preceded by a tip off. Action against trafficking and brothel keeping is tardy. According to one source⁸⁴ Mumbai had over 50,000 brothels (with over 1 lakh of prostitutes) between 1981 and 1987 but only 535 brothels were raided. In fact, the number of brothels is on the increase. Out of 409 brothel-keepers arrested between 1981 and 1985 in Mumbai, only 2 were convicted. Since brothel keeping is a lucrative trade, the entrenched interests are cautious about letting anything affect the smooth flow of business. Thus a nexus of bribes and corruption is rampant in which corrupt politicians, police officials, brothel-keepers and their thugs, all participate. The usual mechanism of sending the decoy customer is to trap the victims and not the exploiter. The provisions of the Act aimed at punishing those running or aiding the running of brothels appear to be almost wholly ineffective against the wrong doers. Of the two convicted cases of brothel-keepers, one was fined Rs. 10. By contrast, the average fine for a prostitute (1980) was Rs. 60 and the average number of days of imprisonment was seven.⁸⁵ Bail is liberally given to brothel-keepers and procurers. The court, in effect, orders the girls back



to the brothel. Traffickers posing falsely as the parents of the women apprehended by the police in the course of raids are a common sight in the magistrates' courts.

Though the law requires the magistrate to ensure that once a woman is brought to the court by way of arrest she should not go back to the clutches of her exploiters, in practice it is the brothel owners and the pimps who arrange for her bail and take her back. The options for the women who are apprehended by the police and who are not handed back to their exploiters are also very few. Considering the women as deviants, the law has ordained that a correctional regimen should be followed so that they can get reintegrated into society. The mechanism provided for rehabilitation of the sex workers is discipline oriented rather than skill learning oriented. The effort should be for their learning of some income generating activity, which may help them to sustain themselves without again resorting to their familiar lifestyles and social condemnation.

The number of institutions of reform, correction, rehabilitation and improvement run directly by government is totally inadequate in comparison with the need for such homes. Funds are scarce, infrastructure is lacking, and staff is generally untrained and unsympathetic. The staff has a fixed conception of rehabilitation, which is part of the state's attitude of treating prostitutes as criminals and deviants. Generally the homes take on a prison-like atmosphere and the movement of the women is restricted. They are always chaperoned by the custodial staff on their infrequent trips outside the home. Avenues for recreation, entertainment, personality development and skill development are exceedingly restricted. So are facilities for counselling and follow-up of women discharged from the institutions. The period of stay in these homes, which is minimum of two years and maximum of three years, is looked upon as a period of punishment and generally on leaving the home, the prostitute goes back to her original trade. The recent arrests that made the headline in the leading dailies are a

pointer to that effect. Nine minor girls who were rescued in a dramatic manner, by the Delhi Police under the supervision of a committed lady police officer and a determined Roma Deabrata, of STOP, an organisation to stop trafficking in women and children, are now in a fix about their future.³⁶ Presently at Nirmal Chhaya, a government run shelter home for women, one of them was lucky to be accepted back by her family. Others have now reportedly expressed their willingness to go back to from where they had been rescued. Instead of government, NGOs should run the shelter homes and focus should be on their proper rehabilitation in the society with active involvement in income generating activities.



Practical problems

Unfortunately, while the crime is very well organized and continues unabated, its detection and punishment does not match it, there is sometimes a lack of co-ordination between the laws and law enforcement between the place of removal or disappearance of the victim and place of landing or lodging of the victims. As it is a buyer's and suppliers market, the methods adopted suit them and work to the disadvantage of the 'goods'. The absence of strong network of surveillance mechanism is a boon to traffickers to escape the arms of law. Multiple laws involving multiple jurisdictions make prosecution of traffickers in the country of destination very low. For example, the country of disappearance would have one police department to police that area. The crossing of borders is looked after by usually the border security forces. From the border to the ultimate destination may involve crossing a number of interstate borders having separate jurisdictions as far as the police is concerned. The country of re-surfacing which is the place of exploitation would again have a different police force. Another problem is the difference of languages, legal provisions and also the enforcement procedures. Then there is lack of reporting of the missing persons. It is still considered a shame for the family that one of their daughters is tricked into sex trade through deceptive means. They hesitate to report the matter to the police for fear of stigma and sometimes also with frustration that nothing is going to come out of it. The fear of exploiters taking revenge on them by using muscle power is also one of the reasons for few cases being reported to the police. An additional and in fact the most disturbing factor is the regular payments that the traffickers make to the police for ensuring safe and hassle free trafficking. Called '*hafta*' or bribe, it takes care of the police looking the other way or blindly shutting their eyes or actually co-operating with them in this immoral traffic. In some cases the police actually discourages or displays an uncooperative attitude when parents of girls go to lodge a missing report with them. No wonder that trafficking continues unabated despite tall claims of proposed or actual action taken by the government. Even the raids on the brothels are followed by the tip offs by the police staff themselves. The recent raid on brothel no. 42 in the G.B. Road area of Delhi is an illustration of the kind of deep nexus existing between the police and the brothel owners. A report was lodged by the parents at the police station that a minor girl was missing from Calcutta. The informer spotted her near a *Kotha* in the red light area. At the time when the informer went to give the information at the police station, he was asked to write the name of the *Kotha* on the piece of paper by the incharge of the police station and not say it aloud for fear of leakage of information. The decoy customer was immediately sent and he actually paid money to spend time with the



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minor girl who was to be rescued. However, after the raiding party reached the brothel the frantic decoy customer met them and deposed that the information about the raid had already reached the brothel and the girls were hidden. The girl along with eight others was later found in a tiny attic, the passage to which was through a secret door small enough for a man to just crawl through.⁸⁷ What was alarming, was that despite the commitment showed by the senior staff and the efforts made to conduct the raid, the information reached the brothel even before the raiding party could reach there. The informers were the policemen themselves posted at the very police station, which is supposed to take action against the brothel owners for exploiting the girls.

VII What can be done?

It is apparent that unless all the relevant authorities co-operate not much can be achieved. The target is the pimp and the procurer and not primarily the sex worker. The trafficker-police nexus is the first thing that needs to be broken. For this purpose sensitisation of the police persons is a must. Their real commitment is required to eradicate the menace. Public awareness and social mobilization through citizens and a development approach involving the different departments - education, health, social welfare, social defense, department of women and child development, media, NGOs and social groups is required.⁸⁸

Importance of NGOs is undeniable. No program of action to tackle interstate trafficking is adequate without their cooperation. It is only the NGOs working in an area who after gaining the confidence of people can create awareness and warn people about these offences and the *modus operandi* of the traffickers. The information to be given to the people may include ways of reporting the crime, how to prevent it by being alert on bogus marriages and employment promises in far off areas and by organizing community watch programs. NGOs should encourage parents and guardians of minor children that in case they are approached with an offer of employment, marriage or adoption which appears to be too tempting they must approach the police with the NGOs for necessary identification and verification of the offer or. The penalties for the traffickers should also be publicized. In a close-knit society of the Asian culture it is not difficult to have community watch programs especially for this purpose.



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Increased surveillance

The transit points of the countries both in intra state and inter state trafficking needs to be closely monitored. Surveillance mechanisms would have to match the *modus operandi* that operates in trafficking. As trafficking involves movement at rail and bus stations, tourist, registration and passport offices have to be targeted for surveillance. All job advertisements for going abroad would also come under the scope of scrutiny. It is essential that police with the help of railway and transport authorities carries out concerted raids. Where minor girls in number are found in the company of the traffickers it should be presumed that they are being taken for the purposes of exploitation.

S. Sridevi, DIG police, Mumbai, writes⁸⁹ that the traffickers in Maharashtra used to

travel by train But as the police increased their vigil at railway station, they would get down a stop earlier and would enter Mumbai by bus or taxi. Therefore, increased surveillance at all transit and entry points is must. Foreign offenders found involved in the prostitution of minors should be denied immunity against prosecution. Government, international organizations, non-governmental organizations and the society have to work together to eliminate this scourge.

Create database

The need is to create a database of the disappeared children and women and also the habitual traffickers. The active involvement of the NGOs is necessary both for its preparation and effectiveness. The tendency of police to underplay crime in the specific area of their jurisdiction is not uncommon. More so in cases of kidnapping. A sharp increase in the number of crimes throws a reflection on their performance and is also viewed as their inability or incompetence to combat the crime. Secondly, many of the abductions are not reported to the police. The reason is that people are ready to confide in the friendly NGO rather than formal and sometimes fearsome police. With the cooperation of both the NGOs and police on both sides of the border the reality of disappearance from native place and re-emergence at the place of exploitation may be unearthed. Thirdly, amazing, as it may seem, such large scale trafficking cannot be carried on without the knowledge or connivance of the police. It has already been mentioned that the collusion of police and corruption at all levels are the basic reasons why trafficking continues unabated. Honest policing is therefore the primary need to check it.



The need is also to educate people and create awareness among them about the usefulness of lodging the report about the missing persons and also the fraud played on them through bogus marriages and adoptions. Strengthening of the state-level missing persons bureau and rigorous pursuing of all cases of missing persons may trace them to the demand areas and brothels.

Further, as the primary aim of the law is to check trafficking and exploitation, the arrests and punishment of persons under the ITPA must match it. Till now the statistics show that the number of arrests of persons under ITPA and the amount of penalty imposed on the sex workers and their pimps and brothel owners tells its own story. Exploiters are let off with warnings, fines or lighter punishments, but it is the sex worker who is arrested and is subjected to penalties. The traffickers should be subjected to severe penalties.

Checking entry of children through cooperation of sex workers

The National Commission for Women has identified this problem as a key area of concern and has formed an expert committee with knowledgeable people and has formulated a 10-year National Plan of Action (1997-2006) split into two parts to coordinate with the 9th and 10th Indian Five Year Plans.⁹⁰ In the meeting that the NCW had with groups of sex workers, it emerged that cooperation is the most suitable way of controlling child prostitution in India. Groups of women were to form co-operatives to safeguard the interest of children who are kidnapped, sold and brought to the brothels and these women who have formed the cooperatives would act as rescuers and prevent their entry at an early age. It will closely monitor the activity of procuring of new minor girls, their sale etc.

The judicial concern at the situation of the children has been quite encouraging. In

*Public at large v. State of Maharashtra*⁹¹ the court directed the police to rescue minors from brothels and in pursuant to that order, 473 girls were rescued. The court directed for their rehabilitation and the prosecution of the brothel owners. The court also relaxed the rules for compulsory HIV tests to be carried on the girls and their identity and the results were ordered to be kept a secret. Upon the order of the court to frame a proper rehabilitation program, the Directorate of Women and Child Welfare framed a program consisting of housing, education, medical care, health awareness, counselling, guidance, formal and informal education and vocational training suited



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to their capabilities. The Supreme Court also in *Vishal Jeet v. Union of India*,⁹² had directed the state to set up advisory committees to eradicate child prostitution.

Children of sex workers need special care and attention. The mechanics set up under the Juvenile Justice Act and the lack of infrastructure cannot ensure their normal development. It merely substitutes the environment from that of the brothel to the juvenile home. Rescued child should not end up more exploited than she was earlier, perhaps languishing in institutions for the rest of her life. In Maharashtra, UNICEF has offered to provide opportunities to such children to understand themselves and the situation they are in, provide coping skills, life skills, recreation and self-expression, apart from health care.⁹³ The Supreme Court's concern over the inhuman and barbarous conditions under which they live in the brothels was expressed in *Vishwajeet v. Union of India*.⁹⁴ Various directives have been issued to the state to take preventive and remedial steps for their rescue and rehabilitation. The Central Advisory Committee on Child Prostitution has also directed state governments to implement the provisions of PITA effectively, notify NGOs working in the red-light areas to assist the police officers in the rescue of minors, establish advisory committees and special cells to monitor implementation of the law, starting projects through NGOs in red-light areas, exercise of vigilance at inter-state bus depots, railway stations, etc. emphasis on the education of the children of prostitutes, providing night shelters for children, family counselling centres, institutionalisation and survey of red-light areas to assess the magnitude of the problem.⁹⁵

Need for bilateral agreements

The country of origin, transit and destination, all are required to enter bilateral, agreements for exchange of information on all missing persons directly and through Interpol and exchange information on crime syndicates across sectors. It is often found that once the victims ceases to be of use to the traffickers and brothel owners, either because they have reached a particular age or have been infected sufficient enough to become visibly ill, the traffickers in collusion with police facilitate raids with a view for their deportation to the country of their origin. It becomes a second phase of exploitation for them as the home country as well as



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their relatives hesitate or even refuse to accept them back for fear of social stigma or for fear of spread of diseases. Rather than gaining sympathy they encounter apathy of their own people. Also, in absence of any adequate rehabilitation facilities, they have no option but to be at the mercy of those who are not ready to have them back. Agreements must also focus on victim-oriented rehabilitation and reintegration

procedures to facilitate re-entry of victims to the country of origin and their non-treatment as illegal immigrants. As state above also, the difference in the jurisdiction and legal procedures in different countries is also a problem, the need is to pursue diplomatic and legal channels to prosecute offenders in home country. Mutual agreements should also cover a very important aspect that most of the cases of deception are through bogus marriages and adoptions and therefore one area of focus should be to check this aspect also. Where victims are rescued from brothels their assistance should be taken for identifying as far as possible the possible routes of trafficking and the traffickers.

As the cross-border trafficking lies beyond the realms of domestic legislation courts should be given extraterritorial jurisdiction in respect of crimes committed against women and children abroad. India has not made any significant move in this direction. Rather the government seems to be hesitant as it might have an adverse affect on tourism.

Need for tougher laws

Even if the Act is implemented sincerely, the punishment provided under the Act is inadequate to deter people from this crime particularly in view of the enormous income that can be earned from this traffic. The punishment of not less than three years and not more than seven years for kidnapping a girl and ruining her life is not sufficient. It is strange why the customer still continues to evade penalties. While in case of minor girls it is indeed surprising that the law does not punish the customer for an offence of rape. According to the Act, person with whom prostitution is carried on is punishable for imprisonment which may extend to three months and where the victim happens to be minor, the person with whom prostitution is carried on would be punished for a term which is not less than seven years and which may extend to life imprisonment. Jurists believe that if the legislature intended that the customer is the one with whom prostitution is carried on then the legislature would have substituted the word sexual intercourse for prostitution. However, it cannot be ruled out that an interpretation in accordance with the spirit of the Act may bring the customer within the meaning of the term "person with whom prostitution is committed". It would also be in tune with the punishment provided under the penal laws for rape of a minor child.



In view of the Law Commission's hesitation to recommend prosecution of the customer one fails to see how ITPA can protect victims if they stick to the traditional interpretation. If cigarette smoking at public places is punished the same analogy should apply. The pimps are the sellers, the client-the purchaser, while the victim is the 'goods'. The punishment should be of the seller and the purchaser and not of the goods as they have no voice or no choice in being there. For example, if tomorrow a law is passed which says anyone who purchases sex from a commercial sex worker is to be punished and is enforced strictly, trafficking may be minimized. The National Expert Committee on Women Prisoners, headed by V.R. Krishna Iyer, retired judge of the Supreme Court, in its report submitted to the Minister for Human Resource Development in May 1987, has made a forceful plea to penalize the client by amending the law in the interest of attuning it to the present day context of gender parity.⁹⁶

In a case decided by the Orissa High Court in the year 2000,⁹⁷ the problems in

securing any conviction under the Act is barred. In a police raid, three girls between the age group of 18 to 25 were caught hidden under a cot in the ground floor of a lodge along with three men, one of whom was trying to escape. All of them were produced before the magistrate. The high court on finding that the men gave no money to the girls and also there was till the time of raid no sexual contact between them let them off. According to the judgment it is only when either the act was being committed or after its commission and that too when exchange of money is proved can the penalty be imposed by the authorities. The mere fact that these men had hired the girls for sexual favours was not sufficient to bring them under the Act.

Making parents more accountable

Finally, parents cannot be absolved from their responsibility of not only being negligent but actually responsible for the utter life of misery they inflict on their own daughters. But for them, majority of traffickers would not be able to effectively operate. Treating the daughter as a burden is nothing new for Indian as well as South East Asian parents and there is an eagerness to relieve them of the responsibility of marrying them as early as possible. Unable to raise enough finances to marry them off and trying to actually benefit monetarily from the alliance, they marry off their daughters to men old enough to be their fathers. Marriage of minors should be made void and parents should actually be



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punished. Where the age gap between the girl who is a minor and the groom is abnormally high it should be presumed to be a sale of the girl and should incur penalty. A recent case in the newspaper reported the marriage of a sixteen-year-old girl to a seventy-year-old man. These parents who want to fill their belly by sale of their girls over which they exercise complete control have no right to roam free themselves. Accountability and responsibility of parenthood is must.

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¹ Bhamathi "Interstate Trafficking of Women and Children - A-SAARC Perspective", *CBI Bulletin* Vol. VII No. 4 at 10 (April 1999).

² S. 366, The Penal Code, 1860.

³ *Id.* s. 366B.

⁴ *Id.* s. 367.

⁵ *Id.* s. 368.

⁶ *Id.* s. 370 A & B.

⁷ *Id.* ss. 372 and 292.

⁸ Art. land 2.

⁹ Art. 16.

¹⁰ Art. 20.

¹¹ See, s. 2(h), Immoral Traffic Prevention Act, 1956. See also, s 7: If prostitution is carried on in any public premises or in a place which is within a distance of two hundred meters of any public religious worship, educational institution, hostel, hospital, nursing home or such public place notified by the Commissioner of Police or District Magistrate.

¹² *Id.*, s. 2(f).

¹³ *Id*, s. 3: Keeping, managing, acting or assisting in the keeping or managing of a brothel is punishable on first conviction with rigorous imprisonment between 1 year to 3 years and fine upto Rs. 2,000/- and in subsequent conviction with rigorous imprisonment between 2 and 5 years and fine upto Rs. 2,000/-. Rigorous imprisonment means that the convict has to work in prison.

¹⁴ Tenant, lessee, occupier or person in charge of premises who uses or allows any person to use or being the owner, lessor or landlord or his agent lets out the premises or a part of it with the knowledge that it or any part thereof is going to be used as a brothel shall be punished on first conviction with imprisonment upto two years and fine upto Rs. 2000/- and subsequently with rigorous imprisonment upto 5 years and fine.

¹⁵ See, s. 4: Any person over the age of 18 years who knowingly lives wholly or in part on the earnings of the prostitution of another shall be punished with imprisonment upto 2 years and/or fine. If the prostitute is a child or minor, then the punishment shall be between 7 to 10 years imprisonment. If the accused is proved (a) to be living with or to be habitually in the company of a prostitute or (b) to have exercised control, direction or influence over the movement of the prostitute to show that he is aiding, abetting or compelling her prostitution, or (c) to be acting as a tout or prmp, then it shall be presumed that he is knowingly living of the prostitution of another. A husband of the prostitute can also be convicted under this section.

¹⁶ S. 5 provides that a person who procures or attempts to procure a person whether with or without his consent, for purpose of prostitution; or induces a person to go from any place, with intention that he may become an inmate or frequent a brothel for purpose of prostitution; or takes or attempts or causes to be taken from one place to another to carry on or be brought up to carry on prostitution; or causes or induces a person to carry on prostitution shall be punished with rigorous imprisonment between 3 yrs to 7 yrs and fine upto Rs. 2000/-. If the prostituted person is a child then the punishment shall be between 7 years upto 14 years. See also, s. 6: Detention of person with or without consent in a brothel or any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punished with imprisonment of not less than 7 years but extending upto 10 years or life imprisonment and also fine. 1) A person found with a child in a brothel shall be presumed to have committed offence under this section unless contrary is proved and 2) Where a child or minor found in a brothel on being medically examined is found to have been sexually abused, it shall be presumed unless contrary is proved, that the child or minor has been sexually abused, it shall be presumed unless contrary is proved, that the child or minor has been detained for purpose of prostitution or has been sexually exploited for commercial purposes. 3) If a person withholds the jewellery, clothes, money or other property of a woman or girl in a brothel or in or upon any premises or threatens her with legal proceedings if she takes the same away or property supplied, lent by or by direction of the person with intent to compel or induce her to remain there shall be presumed that the same was done to detain her for purpose of sexual intercourse with a man other than her lawful husband.

¹⁷ Sec, s. 9.

¹⁸ Department of Women and Child Development *available at* <http://wcd.nic.in/proamendment.htm>.

¹⁹ S. Sridevi Goel, "Girl Child Prostitution, Society's Responsibility - Indian Scenario", *CBI Bulletin* Vol. VII No. at 14 (April 4, 1999).

²⁰ Film, "The Selling of Innocents" (1997).

²¹ Tim McGirk, "Nepal's lost daughters, India's soiled goods", 27 January 1997 quoted in Donna M Huges, Laura Joy Sproic, Nadine Z Mcndelson, Vanessa Chirgwin, "Coalition Against trafficking in Women" in *The Facebook on Global Sexual Exploitation* (1999) *available at* <http://uri.edu/artsci/wms/huhei/catw/factbook.htm>.

²² *Id*. Robert I. Freedman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe," *The Nation* 8 April 1996.

²³ *Ibid*

²⁴ Centre for Development and Population Activities (CEDPA) and Planning Rural-Urban Integrated Development through Education (PRIDE), "Devadasi System Continues to Legitimate Prostitution: The Devadasi Tradition and Prostitution," *The Times of India* 4 December 1997.

²⁵ Indrani Sinha, SANLAAP India, "Paper on Globalization and Human Rights" quoted in *Factbook on Global Sexual Exploitation* supra note 21.

²⁶ *Supra* note 24.

²⁷ Fawzia Karim Firoze and Salma Ali of the Bangladesh National Women Lawyer Association, *Bangladesh Country Paper: Law and Legislation*

²⁸ *Supra* note 23.

²⁹ *Ibid*

³⁰ Masako Iijima, "S. Asia urged to unite against child prostitution", *Reuters*, 19 June 1998.

³¹ Satkhira and Rajshahi, "Trafficking in Women and Children Cases of Bangladesh", 18, 19 IIBINIG, (1995), quoted in *The Factbook on Global Sexual Exploitation*, supra note 21.

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³³ Central Welfare Board, Meena Menon, "The Unknown Faces" quoted in *The Factbook on Global Sexual Exploitation*, supra note 21.

³⁴ *Ibid*.

³⁵ Meena Menon "The Twilight Zone," quoted in *The Factbook on Global Sexual Exploitation*, supra note 21.

³⁶ Deepak Tiwari, "Sex-Stops on the Highway", *The Week* June 24, 2001 at 56.

³⁷ *Ibid*.

³⁸ *Ibid*.

³⁹ *Ibid*

⁴⁰ *Supra* note 35.

⁴¹ *Supra* note 21.

⁴² Rahul Bedi. "Bid to Protect Children as Sex Tourism Spreads", *London's Daily Telegraph* 23 August, 1997.

⁴³ *Supra* note 23.

⁴⁴ *Id*. Scethalakshmi "Karnataka girls being sold to Goa brothels," *The Times o/India* 28 May 1998.

⁴⁵ *Ibid*.

⁴⁶ Soma Wadhwa, "For sale childhood", *Outlook* 1998, quoted in *The Factbook on Global Sexual Exploitation*, supra note 21.

⁴⁷ Indrani Sinha, SANLAPP India, "Paper on Globalization and Human Rights" quoted in *The Factbook on Global Sexual Exploitation*, supra note 21.

⁴⁸ *Supra* note 21.

⁴⁹ *Supra* note 27.

⁵⁰ Boys rescued in India while being smuggled to become jockeys in camel races, available at www.elsiglo.com, February 19, 1998.

⁵¹ *Supra* note 19.

⁵² Meena Menon, "Tourism and Prostitution", 1997 quoted in *The Factbook on Global Sexual Exploitation*, supra note 21.

⁵³ *The Hindustan Times*, July 22, 2001 at 2.

⁵⁴ *Supra* note 22.

⁵⁵ *Supra* note 19.

⁵⁶ Trivedi. H.R. - A survey on exploitation of Scheduled Castes women undertaken by the Hanjan Sevak Sangh for the Committee. Quoted in *Status of women in India report* at 92.

⁵⁷ Farida Lambey, "Devadasi System Continues to Legitimate Prostitution," supra note 24.

⁵⁸ "Women are sold off for Rs. 5,000 in Andhra Auction" *Indian Express* Dec. 4, 1998.

⁵⁹ "Government to look into sale of women in Andhra Pradesh", *The Hindu* Dec. 5, 1998.

⁶⁰ "Women sold and bought in Rajasthan", *The Hindu* Dec. 12, 1998

⁶¹ "Going Going Gone," *Indian Express* Dec. 5, 1998.

⁶² *Supra* note 36.

⁶³ AIR 1987 M.P. 126.

⁶⁴ Ameena a 14-year-old girl was found weeping in the company of a 60 year old Sheikh of Saudi Arabia in an airline by the airhostess. On enquiry it was found that she had been married by her parents to the Sheikh who was taking her to Saudi Arabia. The girl was the eldest of 9 children and the parents were very poor and hence they married her off to this rich Sheikh. Similar was the case of Aneej, both these girls were from Hyderabad.

⁶⁵ Rahul Bedi, *Bid to Protect Children As Sex Tourism Spreads* (1997).

⁶⁶ CATW "Asia Pacific, Trafficking in Women and Prostitution in the Asia Pacific".

⁶⁷ *Supra* note 39.

⁶⁸ *Supra* note 22.

⁶⁹ *Supra* note 62

⁷⁰ Mumtaz Khanum, Kolsur Nair Vikas Kendra, Center of communication and development, Madhyagram, *The Tunes of India* 1 October 1997 quoted in *The Factbook on Global Sexual Exploitation*, *supra* note 21.

⁷¹ *Supra* note 39.

⁷² *Ibid.*

⁷³ *Supra* note 23.

⁷⁴ *Supra* note 19.

⁷⁵ C.P. Sujaya, "Women, Prostitution and the Law", in Dr. Shamsuddin Shams, *Women, Law and Social Change* (1991).

⁷⁶ "Getting down to Business", *The Hindustan Tunes* July 22, 2001 at 2

⁷⁷ Debashish Mukherji, "The Master Kidnapper" *The Week* June 10, 2001 at 68.

⁷⁸ B.R. Beotra's, *The Immoral Traffic Prevention Act, 1956* (4th Ed. 1988) at 2.

⁷⁹ *Supra* note 46.

⁸⁰ Radhika Commaraswamy in Gustavo Capdevila, *UN Special Report on Violence Against Women* April 2, 1997.

⁸¹ *Supra* note 74.

⁸² *Supra* note 44.

⁸³ S. 17 & 17(a) lay down that it is the duty of the Magistrate, before whom the woman is produced to satisfy himself that she is restored to the charge of the person who will not exercise a harmful influence over her. The Magistrate has the power to ask the probation officer appointed under the Probation of Offenders Act, 1958, to furnish a complete report on the background of the woman, including the suitability of her parents, guardian or husband for taking charge of her. He also has the power to directly place the person in a children's institution, in case she happens to be a minor. The Magistrate has also been authorized to get an investigation done on the woman by a recognized welfare institution or organization.

⁸⁴ *Supra* note 74.

⁸⁵ Reema Nagarajan, "Escape from Hell" *The Hindustan Times* July 22, 2001 at 2.

⁸⁶ *Ibid.*

⁸⁷ *ibid.*

⁸⁸ *Supra* note 19.

⁸⁹ *Ibid.*

⁹⁰ *Ibid*

⁹¹ A *suo moto* writ petition no. 112 of 1996.

⁹² (1990) 3 SCC 318 : AIR 1990 SC 1412.

⁹³ *Supra* note 19.

⁹⁴ *Supra* note 92.

⁹⁵ *Supra* note 19.

⁹⁶ *Supra* note 74.

⁹⁷ *Sushanta Kumar Patra v. State of Orissa*, 2000 Cri LJ 2689.

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Prostitution: Sexual autonomy or Exploitation of Women?

PROSTITUTION: SEXUAL AUTONOMY OR EXPLOITATION OF WOMEN?

by

Rachita Agrawal¹

Introduction

Prostitution is perhaps the most stigmatized and condemned line of work in the society in which women is engaged. In most of the third world countries talking about sexuality and sexual preferences in itself considered as a sin. Indeed, it is women who majorly take part in prostitution as work; the over whelming majority of prostitutes are female, while nearly all of their customers are male.² Though largely in many parts of the world, women are considered as property of men and perceived as a sexual commodity, but the level of perception declines more in case of a prostitutes as they are well-thought-out as a sick person, who has no sense of character, purity and is physically as well as morally ill.

Prostitution around the world is accepted with varying degrees of legality. In some places, prostitution itself is legal but the varying degrees of legality. In some places, prostitution itself is legal but the activities that make it possible-such as "soliciting" or "pandering"- are not. Prostitution is illegal in the vast majority of areas in the United States as a result of state laws rather than federal laws. It is, however, legal in some rural counties within the state of Nevada. In Germany, Switzerland, Austria, Greece, Turkey, the Netherlands, Hungary, etc. prostitution is legal and regulated.

In Indian context, traffic in human beings and forced labour is prohibited under article 23 of the Constitution of India³. As regards the Directive Principles of State Policy under Part IV of the Constitution, it is significant to refer Article 39 which particularly contains certain directives. Under clause (e) of Article 39⁴, one of the directives is that the State should, in particular, secure that childhood and youth are protected against abuse and against moral abandonment. The objectives reflect the intent of the Constitution makers to safeguard the welfare of the children of our country, who often become victims of immoral trafficking and forced illegal acts.

'Freedom' and 'liberty' is usually understood to be virtually synonymous terms and defines them both as the absence of coercion.⁵

Women in prostitution is often looked upon as they are deprived of basic notion of liberty which is considered to be a state of being free from oppressive restrictions imposed on one's way of life, behavior, profession, social or political views by people in the mainstream society.

This research paper tries to analyze the areas where liberty of sex workers is compromised along with how persistent inequalities have led to devastating and harmful situation in a way that injustice is a gift to them from the society.

Transition from non-prostitute to a prostitute

Young women or children are majority of trafficked persons who have been forced into sex work or sexual activities. Forced human trafficking for sexual purposes is outcome of poverty, illness in family, worse economic conditions, sexual activity for enjoyment, peer association, family neglect often when they are in age group of 12-20 years.



Not only this but domestic clashes, drug addiction in husbands and in involuntarily, forced rape, sexual assault, early marriages, trafficking, deceived by family or lover are also factors contributing in substandard and worse conditions of women.

Published literature further points to an growing demand for younger children and virgins led to overall sophistication of human trafficking systems controlled by organized crime and development of new destinations for trafficked persons partly fueled by the fear of HIV/AIDS.⁶ There are certain freedoms and fundamental rights that are significant part by virtue of being born as a human being. These inalienable principles and fundamentals are violated at large extent in forced organized crimes against children at very tender age.

Prostitution as a vicious form of violence against women and maintains that, where prostitution is legal, human trafficking will upsurge to meet the open demand for sex.⁷ It can be noted that it is intrinsically a form of violation of human rights of women perpetuating men's dominance in society and forms the basis of gender inequality serving as social evil. From ancient times, man arbitrary deprives women from material and non- material sources that she is entitled to, behind the alleged aseptic exchange of sex for money lies a relation of power in which women are required to sacrifice their respect and dignity.⁸ Stigma, discrimination and marginalization demeaning very existence violate the fundamental equality of all persons associated

with prostitution. In a country like India where practicing untouchability in any form is considered to be a constitutional violation, still prostitutes are looked upon and treated as untouchables. There might be claims that society have headed towards progressive change but at the grassroots level, in villages or small towns women are pushed into forced sex in exchange of money and are suffering as a victim of male dominating social order and patriarchy.

Whoredom is “the great social evil” representing a flagrant defiance of common decency and social norms governing women's sexuality. The harlot is a threat to the family, societal predetermined structure and she corrupts the young. To engage in prostitution signifies a total loss of social image and character.⁹ With so many negative aspects it's hard to believe that there exists element of freedom of choice for women in prostitution. It is hard to believe that transition of most of the women into non-dignified figure in the society is a liberty that she wants to exercise, for many liberties might have a meaning to get her body secured from objectifying and implementation of fundamental protection provided in Article 17 and 23 of Constitution of India.

Legal and societal response to prostitution

Major section of society considered talking about prostitution a shameful act. Such discomfort is not limited only to backward or uneducated people but also exists among highly educated persons, working in apex education, administrative and health institutions, who carefully evades pronouncement of the words like prostitution and sex-workers etc. The limited scope of education on sexuality in schools and condemning sex talks in public makes it clear that sex is considered a taboo in countries like India. And, in a social



and cultural structure that makes sex a taboo, legalizing sex work is almost blasphemous.¹⁰ The prostitute body carries with herself the imposed burden of countless identities by the mainstream society dominating her existence. An identity is a mirror of the perception of what society dictates the norms of what is acceptable and unacceptable behaviour in the society.¹¹

An Act named as the Immoral Traffic (Prevention) Act, 1956,¹² has been promulgated in pursuance of the implementation of International Convention signed at New York on the 9th May, 1950, for the deterrence of immoral traffic. The preamble of convention¹³ states:

“Whereas prostitution and the accompanying evil of the traffic in

persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community”

The Suppression of Immoral Traffic Act, 1956 was put into operation in the year 1958 (SITA for short),¹⁴ aimed at defeating the evils of prostitution, and to provide opportunity to fallen women and girls to acclimatize and rehabilitate themselves as decent members of the society.¹⁵ But contrary to all expectations, the said Act has failed to prove an effective deterrent to the commercialized vice of prostitution which still continues unabated, although surreptitiously, in the different industrial belts.

Judicial activism and public interest litigations has emerged over the years, judiciary has a significant influence and manifestation on how an issue is perceived. There has been a constant effort by court to examine into situations of lawlessness that demand consideration, and tried to give a valued well-reasoned judgment. In *Vishal Jeet v. Union of India*¹⁶ the court claims the forced prostitution is “destructive of moral value” and also states that rehabilitative measures would be taken for “these fallen women.”

Different Moral standard for men and women

Women from time memorial have been considered as a social entity and classified on the basis of morality, chastity, purity and promiscuousness, her individuality is denied and suppressed in different forms by the prevailing structure. However, promiscuousness cannot be viewed as prostitution, when there was no system of marriage in the early Vedic era.¹⁷ It is ironical to note that even in the Rigveda the first text that indicates prostitution in the name of female as illicit lover, there is no question on the character and chastity of the male counterpart. Women who could not find husbands, or had grieved early widowhood, or who had been forcefully violated, abducted or enjoyed therefore, deprived of an honourable status in the main stream society.¹⁸ The situation of women as prostitute in past was miserable and same is today, all the burden of shame and disgrace is contemplated upon the women in contrast there are no morality standards are set for men. Women identity in the societal set up has been gradually abridged from “a whole person to vagina and womb” rendering them fit only for sex-labor and perceived as a sexual property of men.¹⁹

There are both male and female commercialized sex workers within the continuum of commercialized sex practices.²⁰ However, according to Hochschild (1983),²¹ there is a significant and more widespread expectation for women to engage in the field of commercialized sex than there is for men. Female sex workers are more vulnerable to violence, exploitation, stigmatization and disease than men. On comparing arrests by police officials in cases of prostitution, it is observed that commercial sex workers, who are predominately woman, are arrested ten times more often than their clients, who are predominately man.²²

Males who are often involved in prostitution think they are really big and real brave as they can dominate sexuality of a women and treat them as their slaves. They're very proud of themselves-they brag a lot and for satisfaction of their ego, there have been instances that sometimes they get involved in abusive sexual ac-tivities.²³ There is a necessity to look into the role of men in romanticizing prostitution and in this process its cost to women as she becomes culturally invisible and subjected to harsh inequalities. Often male use the power of societal structure, the economic power, the cultural power and the social power, to create silence among those who have been injured, miffed and the silence of the women who have been used for sexual pleasures.²⁴

Women as a prostitute is being subject of humiliation and symbol of dirt in the mainstream society and over the years have been overpowered by male dominance and desires.

Identity as a prostitute - Choice or force?

There have been contrasting views whenever it comes to identity of a women as a prostitute, is it a symbol of sexual autonomy and empowerment or as a result of bleak factors resulting in this demean recognition.

A prostitute body by people at large in the society is understood as "flesh and blood body hired in exchange of payment for sexual interaction."²⁵ It is also not at all surprising to learn that wherever women choose to engage in sex work, they are forced to live on the margins of the law. A women enforced in prostitution resign herself to regular rape, thrashings, discernment and all other forms of mistreatment that a human being do not deserve.²⁶ Fundamental dignity and respect as a human being is sacrificed on all fronts.

Fundamental feminists condemning the world's oldest profession, therefore do not view sex work as a legitimate form of labor. The reason

is very much apparent and substantial as sex work embodies male domination over women sexuality and private parts. In problematic historical reference to the anti-slavery movement, these fundamental feminist advocates call themselves “abolitionists”. They seek to supposedly liberate women from shackles of patriarchy controlling and commodifying sexual organs by ‘abolishing prostitution’.²⁷

Women prostitutes had to face worse and severe consequences in respect of their health like unwanted pregnancy, abortion, undesirable children, HIV/AIDS as a result of unprotected sexual activities which are

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part and parcel of this profession. Drug addiction, forcefully abusive acts, violence, threatening, involvement with criminals, ovarian issues, some other psychological and social issues in respect of customers' behavior like refusing of payment, beating, kidnapping and sexual assault have magnified impact on their mental well-being as well.²⁸

With the intensification of the HIV/AIDS epidemic in the 1980s, commercial prostitutes again became scapegoats to proliferate sexually transmitted dis-eases.²⁹ Many commercial sex workers were exposed to greater risk of HIV/AIDS and other sexual transmitted infections as they were unable to enforce the use of condoms by the clients.³⁰ Absence of consent and autonomy while performing sexual acts is a kind of forced violence against female mind, body and reputation. In societal set up like India, where having sex before marriage is considered to be sin and women are deemed as characterless, impure etc. if they do so. Acceptance of prostitutes as a dignified human being is a far from reality in such societal and mental set up.

Fundamental feminism views female sexuality as intimately connected to norms establishing male dominance in the society. Some fundamental feminists argue that over the years all sexual relationships of women with men are inherently subordinating and controlled by desire of man.³¹ Also, trading sex for money is contemplated to be demeaning women and involve the unacceptable commodification of female sexuality.

The counterargument views hold that prostitution is a form of sexual emancipation, expression of sexual desires and women's agency. Moen is his study '*Is prostitution Harmful*'³² suggested that the way people stigmatize and disvalue those who work as prostitutes it is the primary

source of harm to them. Virtually any job or activity would correlate with significant tribulations to its practitioners if the social order and culturally established norms treated them the way prostitutes are typically perceived and treated. Stigma associated with women as a prostitute also averts sex workers from discover employment and clients in the formal labor market.

‘Sex-work is work’ feminists differ in the degree to which they perceive sex work as something which may be empowering or an overall positive experience (sex-radical feminists), and those who think that sex work is largely a negative experience, similar to many other forms of precarious work under capitalism.³³

Long held debate that the agency of prostitutes must be recognized and protected have been supported by sex workers’ rights activists, feminist allies and human rights advocates. That all aspects of sex work should be decriminalized bringing a change into already established societal norms, and that sex in exchange of money should be recognized as work and regulated under legal frameworks.³⁴

The constant tussle between both the views is unending, what is more important is freedom as what it exists. Freedom of women to choose between living a life as prostitute or as a not prostitute is what seems most significant. The path a woman chooses as a right of her freedom should be respected and look upon with dignity. Acts imposed on women by coercion in any form are anti-thesis to their freedom of choice.



Conclusion

All individuals irrespective of their gender, caste, profession etc. must be afforded social/economic justice, equal educational, employment opportunities and access to necessary health care (including mental health and substance abuse treatment). The taboo created around sex work, is leading to marginalization of prostitutes from main stream society. There exists no element of sexual autonomy, prostitution is result of forced factors for instance worse financial conditions, debt, sex for pleasure, peer association, family abandonment, domestic clashes, betrayal from lover etc.

Internationally, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons adopted in 2000,³⁵ United Nations Declaration on the Elimination of Violence against Women in 1993, the

United Nations Convention on the Elimination of all Forms of Discrimination against Women in 1979,³⁶ and these are instruments which tries to condemn forced sex work and support the elimination of human trafficking for sexual abuse and exploitation.

There should be access to all possible health care facilities and HIV prevention activities for sex workers ensuring equality and liberty of their community, acceptance in the mainstream society as a human being along with reduction in negative factors contributing in forced prostitution to secure justice.

There should be access to all possible health care facilities and HIV prevention activities for sex workers ensuring equality and liberty of their community, acceptance in the mainstream society as a human being along with reduction in negative factors contributing in forced prostitution to secure justice.

Many injecting drug users, male and female, work as a sex worker to fund their drug addiction habit. The requirement to earn money for drugs can often supersede the desire to perform safe sex and dignified choice. Many clients who are aware of this weakness, will attempt to procure person for sexual interaction in exchange of less money, sometimes without a condom, exposing the person to sexually transmitted risks. Programs for drug treatment and reducing the risk of HIV should be initiated to with a aim of increasing awareness and understanding about these sensitive issues, breaking the vicious circle of sex work for drugs.

Child and adolescent victims and survivors of marketable sexual manipulation and sex trafficking should be given community-based training and enduring education along with proper health consultancy. The focus should not only be on sex workers, but the customers of sex work who have been criminalized should be given regular sessions, as to what they are doing is not natural rather it is an act of subjugation, violence equivalent to harassment and rape, demeaning the life of person by pushing them into darkness where no autonomy to oneself exists.

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³ Constitution of India

⁴ *Ibid.*

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¹² Act No. 104 of 1956

¹³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, came into force on 25 July 1951. It was signed by Shri Gopala Menon on behalf of India on the 9th May, 1950.

¹⁴ By Section 3 of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986) the nomenclature of the Act has been changed with effect from 20th January, 1987. Now it stands as the Immoral Traffic (Prevention) Act, 1956 (104 of 1956).

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¹⁶ *Vishal Jeet v. Union of India*, (1990) 3 SCC 318 : AIR 1990 SC 1412

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Right to Privacy of Unmarried Couples vis-a-vis Immoral Traffic (Prevention) Act, 1956

RIGHT TO PRIVACY OF UNMARRIED COUPLES VIS-A-VIS IMMORAL TRAFFIC (PREVENTION) ACT, 1956¹

by

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Society is often uncompromising with regard to its ideas around morality. In some situations, these stringent ideas lead to moral policing. One such example is the arrest of unmarried couples by the police from hotels/lodges accusing them of prostitution, obscenity and public indecency. Certain provisions of the Immoral Traffic (Prevention) Act, 1956 ("ITPA") allow room for such action by the police. Special focus has been placed on Section 6 of the ITPA which disregards consent before sexual relations and can easily be misused against consensual couples. The present article is an attempt by the authors to critically analyse these provisions against the principles established by the Constitution of India. The authors have systemically argued that the half-baked and short-sighted provisions of ITPA are in gross violation of individuals' right to privacy and sexual autonomy in the light of various judgments by Indian courts. After an intricate discussion of previous attempts at changing the law and the international framework around the matter, certain recommendations are made which must be implemented in order to ensure that sexual rights of these couples are upheld.

INTRODUCTION

India as a society, despite its evident "modernist" trends, has had a rather parochial view on societal behaviour.³ Over the last few years, Indian courts have given a slew of progressive judgments seeking to change this outlook



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and make our society more inclusive.⁴ These judgments have led to the inclusion of several rights including right to privacy,⁵ right to sexual autonomy and bodily integrity,⁶ right to education,⁷ and right to clean and safe environment⁸ within the scope of Part III of the Constitution. Although this has given us a glimmer of hope for a libertarian India, the country's deep-rooted preoccupation with archaic ideas of ideal societal behaviour still subsists.⁹ One of such notions is the discouragement of premarital sex between consenting adults. ¹⁰

Society, in general, frowns upon the idea of an unmarried couple indulging in sexual intercourse.¹¹ Such couples are often looked down upon, publicly shamed, and even shunned by their families.¹² Sometimes, such cases also result in honour killings.¹³ What makes the situation worse is that the law enforcement agencies also harass such couples.¹⁴ There have been a multitude of reports of unmarried couples being arrested by the police from hotels in the name of public indecency and prostitution. In a recent incident of February 2020, the Ludhiana police was accused of arresting



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consensual couples during a raid conducted in the hotels.¹⁵ In 2019, an OYO rooms' lodge in Coimbatore was sealed off by the authorities for allowing unmarried couples to book rooms.¹⁶ In another incident a few years ago, the Mumbai police conducted raids in several hotels and arrested over twenty couples.¹⁷ There were reports of detained couples being humiliated during their arrest, which caused quite the commotion on social media.¹⁸ People called this action out as an act of moral policing and excessive state interference.¹⁹

The tool often used by the police to harass unmarried couples is the Immoral Traffic (Prevention) Act, 1956 ("ITPA").²⁰ ITPA was brought in with an aim to protect the fundamental rights of the victims of human trafficking and forced prostitution,²¹ however, due to sloppy drafting, a myopic amendment and gross misapplication by state machinery, it has become a symbol of tyranny.²² ITPA has been turned into a weapon of snatching away people's fundamental rights.²³ It is ridden with several issues and has been under scrutiny multiple times.²⁴ However, the discussion in this paper is primarily focused on how certain provisions of



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the ITPA are used to torment consenting couples, namely Sections 6, 14, and 15.

The courts in India have held multiple times that a live-in relationship between two consenting adults is not an offence²⁵ and consequently "*occupation of a hotel room by an unmarried couple shall not attract criminal provisions.*"²⁶ Furthermore, these raids and arrests by the police, in our opinion, are a gross violation of such individuals' right to personal liberty, right to privacy, and right to sexual autonomy and bodily integrity. In light of the same, the authors have systemically argued that these provisions read together, go against constitutional morality and values.

Firstly, the authors shall deal with the issue of social and legal hostility against pre-marital sex. *Secondly*, the authors shall substantiate on how certain provisions of ITPA allow for the harassment of unmarried couples with reference to their fundamental rights. *Thirdly*, the authors will discuss the international framework of law surrounding this topic. *Fourthly*, the authors shall analyse the governments failed attempts at amending the ITPA. *Lastly*, the authors shall propose changes for the way forward and conclude the discussion by highlighting the urgent need of reforms.

HOW IT PADI SPARAGES COUPLE'S RIGHT TO PRIVACY

ITPA was originally introduced in 1956 by the name of the Suppression of Immoral Traffic in Women and Girls Act ("SITA") as an instrument to counter immoral human trafficking.²⁷ SITA was subsequently amended in 1986 to enhance penalties and renamed as ITPA.²⁸ While the title of the act bares the terms "*immoral traffic prevention*", the term "*human trafficking*"



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has not been used even once throughout the scheme of ITPA. Instead, the act goes on to criminalize prostitution-related activities.²⁹

The 64th Law Commission report also noted that the scope of ITPA is narrow as it seeks to tackle trafficking for the purpose of commercial sexual exploitation, not trafficking or prostitution.³⁰ The report also highlighted that the widening of the scope of ITPA is not advisable due to several reasons including the corresponding law in

other common law countries, international standards, and lack of prior statutory basis.³¹ However, the Justice J.S. Verma committee observed in its report that the term "*trafficking*" was undefined under ITPA, or under any other Indian law,³² and thereafter recommended that the definition of the term "*trafficking*" from United Nations Palermo Protocol³³ be adopted.

There has been a lot of debate on the matter especially relating to the harassment of consenting sex workers by law enforcement agencies.³⁴ Earlier, under SITA, "*prostitution*" was defined as "*the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind.*"³⁵



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By virtue of the amendment in 1986,³⁶ the definition of "*prostitution*" was subsequently changed to "*the sexual exploitation or abuse of persons for commercial purposes and the expression 'prostitute' shall be construed accordingly*". This amendment has been seen as a bad move, since other provisions of ITPA were not amended consequently in accordance with the change made in the definition of the term "*prostitution*".³⁷

Sex work has always been considered a deviant behaviour by the society and law alike.³⁸ Although it is not explicitly stated to be illegal under any law, the Supreme Court on multiple occasions has called prostitution an immoral act.³⁹ In the case of *Gaurav Jain v. Union of India*, the Supreme Court even went on to state: "*eradication of prostitution in any form is integral to social weal and glory of womanhood*".⁴⁰

ITPA PROVISIONS AGAINST UNMARRIED COUPLES

The police often subject consensual unmarried couples to public humiliation⁴¹ and arrests on charges under ITPA.⁴² It is noteworthy that the offences under ITPA are cognizable⁴³ which means that the special police officer appointed under ITPA may arrest individuals without a warrant. Moreover, Section 15 of ITPA allows the special police officer to conduct search of a premises if he/she has "*reasonable grounds*" to believe that an offence under ITPA has been or is being committed. It is pertinent to note that ITPA provides no guidelines for the exercise of these powers by the special police officer. Clearly, these provisions entrust unguided powers in the hands of such officers as a result of which, they have been



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regularly misused to harass not only sex workers but also consenting unmarried couples staying at hotels.⁴⁴

However, the most preposterous provision of ITPA in this regard is Section 6 which criminalizes "*detaining a person in premises where prostitution is carried on*". Albeit *prima facie* it may seem rather straightforward and even well-placed, but clause (1)(b) of the Section 6 is extremely problematic. It states:

*"Any person who detains any other person, whether with or without his consent in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person shall be punishable..."*⁴⁵

Looking at the dictionary meaning of the word "*detain*", it is defined as "*to hold or keep in*"⁴⁶ or "*to delay that person for a short period of time*".⁴⁷ It is pertinent to note

that the section stipulates that consent is immaterial if a person is detaining another. Another tricky phrase in this provision is, "*with intent that such person may have sexual intercourse with a person who is not the spouse of such person.*" For instance : A man asks his partner (female)(both being over 18 years of age) to stay in a hotel and have sexual intercourse with him, to which she agrees. The man can very well be charged under Section 6(1)(b) considering they were not married to each other and he "*detained*" his partner (with her consent) with an intent of having sexual intercourse.

The situation becomes trickier when a homosexual couple is considered in place of a heterosexual couple, in the example above. After the historic judgment in *Navtej Singh Johar v. Union of India*,⁴⁸ homosexuality has been effectively decriminalized in India; however, same sex marriage is still not legally recognized. Consequently, despite the scrapping down of Section 377 of the Penal Code, 1860 (insofar as it criminalized homosexuality), the police may still use this provision to harass homosexual couples. With



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the already prevalent stigma around the matter,⁴⁹ this makes things all the worse for LGBTQI+ community.

Section 6 has only been amended once, in the last sixty-four years in 1986; when it was made gender neutral.⁵⁰ Shockingly, not even the courts have paid heed to the potential harm such a provision could pose in a modern world. Use of the word "*spouse*" is especially absurd considering the courts have long since recognized the concept of live-in relationships.⁵¹ Now that the offence of adultery has been decriminalized, a provision denying sexual rights to individuals on the basis of their marriage is an apparent violation of such individuals' right to privacy, sexual autonomy and bodily integrity. On the other hand, the ambiguous definition of the term "*public place*" does not help the situation; it is further misappropriated to charge innocent couples for public indecency and obscenity.⁵²

CONSTITUTIONAL MORALITY SHOULD PREVAIL

The above-discussed sections seem to be aimed at upholding "*social morality*" at the cost of individual autonomy. It has been well established by the Supreme Court that constitutional principles must neither be guided, nor be trampled by the obscure notions of "*public morality*".⁵³ The Supreme Court elaborated on the concept of constitutional morality in the *Navtej Singh Johar case*⁵⁴ as:

"It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the constitutional courts to ensure, with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality."



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Decisional autonomy is now read within Article 21 of the Constitution⁵⁵ and hence, Section 6 which evidently promotes the notions of "*public morality*" ought to be declared unconstitutional by the courts, insofar as it prohibits sexual relationship

between two consenting adults. In the landmark case of *K.S. Puttaswamy v. Union of India*,⁵⁶ the Supreme Court has held:

"the dignity of the individual encompasses the right of the individual to develop to the full extent of his potential. And this development can only be if an individual has autonomy over fundamental personal choices and control over dissemination of personal information which may be infringed through an unauthorized use of such information."

This notion has been further reinforced by the judgments in the *Shafin Jahan case*⁵⁷ and the *Shakti Vahini case*.⁵⁸ The Supreme Court has stipulated in *Joseph Shine*⁵⁹ and *Navtej Singh Johar*⁶⁰ that the right to privacy must be interpreted in a broad sense encompassing the decisional autonomy over one's own body as well. It has been further held that the right to privacy must be construed as containing the right to sexual autonomy, bodily integrity, and self-determination.⁶¹ The State must not only scrape laws violating such rights but also take positive steps in order to ensure their protection. However, it dejects us to see the state machinery use statutes like ITPA to violate the aforementioned rights of young unmarried couples. In this context, the idea of "Minimalist State" or "Night-Watchman State" seems quite relevant.⁶²



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Libertarian philosopher Robert Nozick developed the concept of "minimalist state" deriving from the Lockenian philosophy.⁶³ He argued that every individual has certain rights that are inviolable in nature, like liberty, life, justice, and property.⁶⁴ According to Nozick, there is a need for a state to protect these rights, although he was very keen to limit its role.⁶⁵ This minimalist state, as Nozick argues, would have very limited power for providing only the most basic resources namely, law and order, police, army, et cetera.⁶⁶ In a nutshell, the minimalist state must use legitimate power just to protect the inalienable rights of the individual. It can also be derived from the above that the state should limit itself by not interfering with every aspect of its citizen's life to protect individual rights and liberty; otherwise, it would be the beginning of the police state where the law enforcing organ of the state is not subject to rule of law and in such situation no individual rights can be guaranteed.⁶⁷

The idea is relevant in the present context to the extent that the state organs use ITPA to categorically harass young unmarried couples,⁶⁸ thus denuding them of their fundamental rights. It is apparent that Indian law has not been much sympathetic towards unmarried couples as the age of consensual sex is kept as 18 years⁶⁹ (as opposed to 15-16 years in many other common law countries).⁷⁰ Acting as salt on a sore wound, the State even fails to protect the rights of consensual unmarried couples (both over 18 years of age) from its own police. The police have, at times gone to the extent of publicly shaming the couples or threatening to inform their family



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and friends.⁷¹ This act is not only violative of their rights but can be considered downright unlawful behaviour.

The *grundnorm* of Indian legal system is that the Constitution and constitutional principles must be upheld⁷² and we believe that obscure notions of "public morality"

cannot be used by the state machinery to trample individuals' decisional autonomy; constitutional morality must prevail over social morality. In the succeeding section, we will proceed to conduct a comparative analysis of these provisions with international law as well as the position in other common law countries.

INTERNATIONAL FRAMEWORK

There are various international instruments that seek to safeguard the people against the vice of human trafficking.⁷³ Among all, the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others ("1949 Convention") is the primary international document focusing on "immoral trafficking". After its ratification by India, the government enacted ITPA, following the obligations of this convention.⁷⁴ The 1949 Convention requires the signatory states to punish "any person who procures, entices, or leads away" another person into prostitution or exploits the prostitution of another person even with consent.⁷⁵ It also makes financing of brothels⁷⁶ and renting a building for such purpose an offence and states are duty-bound to punish the individuals convicted of the same.⁷⁷ It is to be noted that these two are the only substantive provisions under the convention.

The convention reflects the abolitionist approach of the drafters, which proclaims that prostitution as an institution itself constitutes a human



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rights violation and should be abolished.⁷⁸ The document focuses more towards eliminating the profession of prostitution than protection of persons from immoral trafficking, since it terms all sex workers as victims who need to be rehabilitated.⁷⁹ The most recent development on the issue is the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children ("PPSPTPEWC"), supplementing the United Nations Convention against Transnational Organized Crime⁸⁰ to which India is a signatory.⁸¹ However, the PPSPTPEWC still conveys the language of the 1949 Convention as it has failed to distinguish between forced and unforced prostitution.⁸² The biggest drawback of the 1949 Convention is that it lacks a comprehensive set of guidelines regarding offenses and procedures and even proper definitions of crucial terms; resulting in the rise of a half-baked legislation like ITPA.

PROTECTION OF SEXUAL RIGHTS UNDER INTERNATIONAL LAW

The issues plaguing the 1949 Convention have only further escalated in ITPA. For all its vices, in our opinion, the convention never allowed room for the harassment of innocent couples. A lackadaisical drafting has left ITPA with countless absurdities,⁸³ with the most prominent being Section 6. As deliberated in the previous section, this provision violates basic human rights of the individual which are guaranteed by the Constitution as well as under international law.

International documents like the Universal Declaration of Human Rights ("UDHR") and the International Covenant on Civil and Political Rights ("ICCPR") prohibit any arbitrary interference with an individual's right to privacy.⁸⁴



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Moreover, they also stipulate that no person shall be subjected to attacks upon his honour and reputation and everyone has the right to be protected by law against any such interference.⁸⁵ In addition to this, the International Planned Parenthood

Federation declaration ("IPPF declaration") was adopted specifically for the protection of the sexual rights of people.⁸⁶ This declaration seeks to protect the highest possible standards of human rights in the context of sexual conduct.⁸⁷ Article 5 of the IPPF declaration asserts sexual freedom, including the opportunity for individuals to choose their sexual partners and to decide upon the matters pertaining to their sexuality without anyone's control.⁸⁸

LEGAL FRAMEWORK IN OTHER COMMON LAW COUNTRIES

It is important to reiterate here that consensual sexual intercourse between two adults in a private space is not an offence under Indian law.⁸⁹ It is the poorly drafted provisions which result in its misuse by the police against consensual couples.⁹⁰ Laws against immoral trafficking and commercial sexual exploitation exist in several common law countries. For example, in the United Kingdom ("UK"), Section 24 of Sexual Offences Act, 1956 stood as a counterpart to Section 6 of ITPA. Section 6 prohibited detention of any woman "against her will" for the purposes of sexual intercourse with any man,⁹¹ however, it was repealed in 2003.⁹² Even when Section 6 was in force, it was not applicable to consensual detention for sexual intercourse,



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thus eliminating any chances of misuse.⁹³ The laws in the UK affirm paramount importance to the right to privacy and autonomy, as given under the European Convention of Human Rights.⁹⁴ It is prohibited for a public authority to act in a way incompatible with a right prescribed in the convention, and aggrieved individual may seek remedy against such authority.⁹⁵ Lord Hoffman in the *Campbell case*⁹⁶ stated that privacy under human rights law has been identified as something worth protecting against the State as well as private persons. This framework ensures that laws are not misused by the state machineries to violate people's rights.

Privacy and sexual autonomy are valued rights in the United States of America ("USA") as well. First recognized in the case of *Griswold v. Connecticut*,⁹⁷ these rights have only grown with the overall development of human rights jurisprudence in the country.⁹⁸ Similar protection has been guaranteed under the laws of Canada,⁹⁹ and many other common law countries. With the above discussion, we acknowledge that the Indian Constitution now confers the right to privacy and sexual autonomy to individuals.¹⁰⁰ However, we believe that the lack of an appropriate executive framework hinders the protection of these rights in practice and results in their infringement at the hands of state machinery.

RECOMMENDATIONS FOR CHANGES IN THE FRAMEWORK

Section 6 of the ITPA comes off as the most problematic provision, often being misused against consensual unmarried couples, thereby violating the constitutional principles of our country as discussed earlier. On that note, one ought to wonder as to why such an unreasonable provision is still a



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good law. Neither the legislature nor the judiciary have assessed this aspect of the statute.

The amendment of the ITPA in 1986¹⁰¹ was short-sighted; it further complicated the problems of ITPA as discussed earlier. Although the amendment bill brought in

2006¹⁰² intended to make substantial changes, it was referred to the Parliamentary Standing Committee on Human Resource Development and never became an act.¹⁰³ Certain changes were suggested in the draft bill, including scrapping down of the offense of soliciting clients by prostitutes¹⁰⁴ and inclusion of certain offenses relating to "*trafficking in persons*" rather than prostitution.¹⁰⁵ However, no substantial changes were proposed in Section 6(1)(b) by the draft bill. In fact, in a sense it would have further escalated the problems as the bill recommended that the rank of "*Special Police Officer*" be lowered from "*Inspector*" to "*Sub-inspector*".¹⁰⁶ ITPA vests exceptional power in the hands of the special police officer and delegation of the same to an even junior officer would increase the odds of misuse of such power.

In 2018, another bill was proposed to counter human trafficking titled - Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill 2018. The draft bill focused on trafficking as a whole and included provisions regarding "*trafficking for forced labour, bearing children, begging, or for inducing early sexual maturity*" within its ambit.¹⁰⁷ However, it was never intended to take ITPA's place, rather it was brought in addition to the already existing trafficking related laws, including ITPA.¹⁰⁸ Keeping in mind



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the above-discussed constitutional values, it is the need of the hour that certain changes be made to ensure that unmarried couples' rights remain protected. However, it cannot be achieved merely by scrapping Section 6 of ITPA.

We recommend that ITPA be completely repealed as it stands as an outdated piece of statute promoting archaic ideas. With the Committee for Reforms in Criminal Law currently deliberating over the issues plaguing criminal law jurisprudence in India, ITPA must be looked into. In the event the ITPA is not repealed, drastic changes must be introduced to certain provisions of the act, promptly.

First, an amendment must be made to Section 6 of the ITPA. As discussed earlier, Section 6 bears two problematic elements - use of the word "*spouse*" and disregard for the consent of the detainee. This section must be altered to the extent that it does not affect consenting couples having sexual intercourse. To that end, it is suggested to narrow down the scope of the section by making it applicable only to cases wherein a person is forcibly detained for prostitution related activities, as defined under ITPA.

Second, the special police officer under ITPA, in our opinion, has been given unfettered discretionary powers to arrest without a warrant and conduct search of a premises when he has "*reasonable grounds*" to believe that an offence under this act has been committed. Such unguided discretion in the hands of an authority births arbitrariness.¹⁰⁹ Hence, the checks and balances over the powers of the special police officer, as given in ITPA must be reassessed. In addition to this, certain guidelines may be prescribed for the officer to follow while exercising his discretionary powers under ITPA.

Third, besides Section 6, the definition of "*public place*"¹¹⁰ when read with Section 294 of the IPC also creates room for misuse by police. Section 294(a) of the IPC prohibits obscene acts to the annoyance of others in any public place. The lack of clarity on the phrase "*annoyance to others*" in Section 294 of the IPC makes the section very subjective, leading to police



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interference even in non-obscene activities like holding hands and eating in a parked car.¹¹¹

Lastly, the state must also take positive steps to safeguard the privacy and autonomy of young couples. A major step in this regard could be conducting regular sensitization sessions for the police officers on the issue. The State may also introduce a direct remedy against the public authorities in case of a violation of an individual's privacy, somewhat on the lines of Section 7 of the Human Rights Act, 1998 in the UK.¹¹² This would go a long way in establishing a congenial environment for unmarried couples, where they can exercise their choice.

CONCLUSION

Indian society is witnessing a steady shift in its outlook.¹¹³ It is gradually becoming more inclusive and accepting.¹¹⁴ However, a major portion of the society is still sticking to their archaic moral values and refusing to accept liberal ideas such as pre-marital sex.¹¹⁵ Moreover, the current legal regime, as discussed in this paper, only reinforces the social stigma around pre-marital sexual relations. The social disregard towards pre-marital sex is bad as it is;¹¹⁶ police actions worsen the situation manifold.

Edwin M. Schur (1965) has explained the concept accurately as "*the criminalization of deviance*".¹¹⁷ He argues that criminalizing an act is the ultimate form of stigmatization.¹¹⁸ Terming a specific behaviour as "*deviant*" has intense impacts on the persons engaging in it.¹¹⁹ On the other hand, criminalizing such behaviour takes it one-step further and may even take



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such persons toward a "*criminal career*".¹²⁰ A criminal behaviour invites social reactions, which in turn may result in further criminal actions.¹²¹ In the present context, arresting or publicly calling out an unmarried couple for having sexual intercourse in a private space (a hotel room) and accusing them of obscenity, prostitution, or indecency may have a long-term impact on their lives. Such instances may harshly affect their social life, education, careers as well as mental health.

In any case, the state must ensure that the provisions of ITPA, which have the potential to be misused, are amended to that effect. It is high time the Indian State realizes that individuals' rights and interests must not be neglected in the face of social morality. If we ever wish to reach the zenith of societal development, that is.

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Human Trafficking for Organ Removal in India: A Victim-Centered, Evidence-Based Report

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Background. Enhancements in the national transplant law to prohibit commercial transplants in India have curbed the trade. Yet, the human rights abuse of human trafficking for organ removal (HTOR) continues in various transplant centers throughout India.

Methods. Beginning in September 2010 until May 2012, in-depth interviews were conducted with 103 victims of HTOR in India in which victims described their experiences of a commercial kidney removal in compelling detail. Victims were located in Tamil Nadu, and reference is made to the broader study that included 50 additional victims in small towns and villages in West Bengal and Karnataka.

Results. Fourteen cases (14%) in Tamil Nadu and an additional 20 cases (40%) from West Bengal and Karnataka occurred between 2009 to May 2012. The cases in Tamil Nadu ranged in age from 19 to 55 years, with an average age of 33 years in Erode and 36 years in Chennai. Fifty-seven percent of the victims in Erode are female, and 87% of the victims in Chennai are female. Twelve percent of the individuals were widowed or abandoned, 79% were married, and 91% were parents with an average of two kids. Of those interviewed, 28% had no formal education, 19% had some primary schooling, 22% had some secondary schooling, and no individuals reported schooling above high school. All victims interviewed lived in abject poverty with monthly income levels well below the national average. The majority of victims reported long lasting health, economic, social, and psychological consequences. No matter the reason expressed for an organ sale, all victims reported that they would not have agreed to the organ removal if their economic circumstances were not so dire. One hundred percent of the victims interviewed expressed that they need assistance to cope with these consequences.

Conclusions. Human trafficking for an organ removal continues in private transplant centers throughout India, service to foreign patients is ongoing, and victims' consequences are long lasting. A rights-based response to HTOR that invokes a universal commitment to prevent, protect, and suppress its continued practice is recommended. The United Nations Trafficking Protocol is the key international instrument to address trafficking of persons, including for organ removal. India has signed the UN Trafficking Protocol and should ratify it to better address this form of human trafficking.

Keywords: Organ trafficking, Human rights, India.

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Substantial efforts to prohibit human trafficking for organ removal (HTOR) in India via enhancements to the national transplant law have curbed the organ trade. Yet, the Coalition for Organ-Failure Solutions (COFS)–India has gathered evidence that this human rights abuse continues in

various private transplant centers across the country, service to foreign patients is ongoing and victims' consequences are long lasting.

Beginning in September 2010 until May 2012, COFS-India identified approximately 1000 victims of HTOR in India and conducted semistructured in-depth qualitative interviews with 153 of them. One hundred three victims in Erode and Chennai in Tamil Nadu are included in this study and were beneficiaries of a broader assistance project that included an additional 50 victims in West Bengal and Karnataka (1). Victims described their experiences in compelling detail, and each case involved the commercial removal of a kidney as evidenced by the medical follow-up examinations.

RESULTS

The findings presented here include information about demographics of victims interviewed, time and location of kidney removal, reasons for resorting to a kidney

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sale, awareness of how to arrange the sale, brokers, payment, and consequences for the victims.

Demographics of Victims Interviewed

Of the 103 trafficked persons interviewed, 56 (54%) are from Erode, and 47 (46%) are from Chennai. They ranged in age from 19 to 55 years at the time of the organ removal with an average age of 33 in Erode and 36 in Chennai. In the broader study of an additional 50 persons trafficked for an organ, 30 are from West Bengal, and 20 are from Karnataka. They ranged in age from 20 to 50 years at the time of the organ removal (average age of 35 in West Bengal and 35 in Karnataka). Fifty-seven percent of the victims in Erode are female, and 87% of the victims in Chennai are female (Table 1). Eighteen percent of the victims from West Bengal are female, and 50% of the victims from Karnataka are female.

Twelve percent of the individuals were widowed or abandoned, 79% were married, and 91% were parents with an average of two kids. Of those interviewed, 28% had no formal education, 19% had some primary schooling, 22% had some secondary schooling, and no individuals reported schooling above high school (Table 1). In the broader study, the majority of victims (72% in West Bengal and 71% in Karnataka) had no formal education. All victims interviewed lived in abject poverty with monthly income levels that reach well below the national average.

Time and Location of Kidney Removal

Persons trafficked for an organ in this study indicated that the organ removal occurred between 1981 and 2012. A sum of 14 cases (14%) from Chennai (9 cases) and Erode (5 cases) occurred between 2009 and May 2012 (the close of the study). From the broader study, an additional 20 cases (40%) from West Bengal (14 cases) and Karnataka (6 cases) occurred between 2009 and May 2012.

TABLE 1. Descriptive statistics

	Chennai	Erode	Average
N	47	56	
Age	36	33	35
Sex			
Female	0.87	0.57	0.72
Male	0.13	0.43	0.28
Monthly household income			
Indian Rupees	2728	3509	3119
U.S. Dollars	51	66	59
Education			
No schooling	0.41	0.14	0.28
Primary (Class 1–5)	0.17	0.21	0.19
High school (Class 6–10)	0.22	0.21	0.22
Unknown	0.20	0.43	0.32
Marital status			
Married	0.74	0.84	0.79
Single	0.09	0.09	0.09
Widowed/abandoned	0.17	0.07	0.12

Note: Figures in tables are proportions or means.

Note: Items may not add up to 100% because of rounding.

Reasons for Resorting to an Organ Sale

Individuals interviewed in this study reported that debt was the primary reason to sell a kidney (98%), and they resorted to the sale with the hope of eliminating debt and transcending poverty. In the broader study, 82% of victims in West Bengal and Karnataka gave debt as the primary reason. Wedding expenses, medical, food, and household expenses were the most common source of these debts in the 2002 study in Chennai (2). Related reasons for debt that victims reported in this study, over a decade later, include wedding expenses, family illness, being abandoned or widowed, children's education, familial substance abuse, loss of job, and lack of income. It is noteworthy that victims provided numerous reasons for sale, and these categories are not mutually exclusive.

A small percentage of victims in this study (7% in Erode) identified the reason of "new opportunity." No individuals in Chennai cited this reason. More individuals in West Bengal (34%) and Karnataka (12%), however, explained that the potential for a "new opportunity" was a reason for sale. These individual victims explained that the sale had represented an opportunity for personal and familial growth and stability. Purchasing a home, obtaining land, or realizing a business dream were among the noted potential opportunities for individuals. No matter the reason expressed for an organ sale, all victims reported that they would not have agreed to the organ removal if their economic circumstances were not so dire.

Awareness of How to Arrange the Sale

An overwhelming percentage of trafficked persons (93/90%) gained knowledge of organ sales from a member of the community, and 13 of these individuals (13%) made specific mention that this informant was also a victim. These data point to the occurrence of targeting of victims in specific impoverished areas, particularly in Chennai, where 95.3% of victims noted that the practice was common knowledge in their community. Brokers also played a significant role in the victim's understanding and involvement in organ sales.

Brokers

Trafficked persons from Erode collectively identified 17 brokers (3 women and 14 men) who were active offenders of HTOR. The majority of the brokers were from Coimbatore, but four brokers were from Bangalore. Several victims from Erode explained that a minimum of three of the brokers were victims of HTOR before brokering and four brokers pressured their own wives to sell a kidney. In Chennai, trafficked persons collectively identified 18 brokers (13 women and 5 men) who were active offenders of HTOR.

Payment

Reports on the price of a kidney in India vary, but it has been estimated that recipients pay approximately \$25,000 U.S. dollars (USD), and the donors receive between \$1250 and \$2500 (3). In this study, one trafficked person reported that they received no payment, 67 received less than 900 USD (50,000 INR), 11 received 900 USD (50,000 INR), and 17 received more than 900 USD (50,000 INR), with the highest payment of 1400 USD (80,000 INR).

Knowledge About the Recipient

Most of the trafficked persons interviewed in this study had some information about the patient who received their kidney. In Erode, victims reported that three recipients were foreign (from Malaysia), and the remainder 53 recipients were from India and included 10 patients from Kerala, 1 from Andhra Pradesh, 2 from Karnataka, 1 from Bihar, and 39 from Tamil Nadu. In Chennai, victims reported that five recipients were foreign (three from Malaysia, one from Sri Lanka, and one unknown), and 42 recipients are Indian and include one patient from Kerala, one from Andhra Pradesh, one from Maharashtra, and 39 from Tamil Nadu. It is noteworthy that, although one of the victims knew the recipient of their kidney was foreign but the country was unknown, there was also a news report that a transplant tourist from the United States had purchased a kidney in Chennai in the same month with few barriers (3).

Consequences After the Commercial Kidney Removal

Victims in this study reported that their lives worsened after the nephrectomy. Eighty-nine percent expressed deterioration in their health. Their negative health consequences are likely a result of factors such as insufficient donor medical screening and preexisting compromised health conditions of this vulnerable population. Common experiences among individuals who have been trafficked for organ removal include pain and cramping at the site of the incision, an inability to lift heavy objects or do labor-intensive work, swelling of legs, loss of appetite, insomnia, and considerable fatigue. There were also consistent expressions of anxiety about the kidney removal including a guilt, depression, and ongoing fear that death would result from it.

A total of 30 victims (29%) expressed they had been seen by a physician since the kidney removal: 15 in Erode and 15 in Chennai. Of those who did see a doctor in Erode, most of these consultations were a result of a single follow-up that the transplant center provided. Of those who saw a physician in Chennai, it was never by the medical professional(s) who performed the kidney removal but instead was by a physician or nurse in local low-cost clinics when they sought treatment for pain and related health consequences. Thus, the majority (78%) of victims interviewed for this study did not receive medical follow-up care, and many reported fear of consulting a doctor and reliance upon pain medicine from local pharmacies.

Results from studies released in 2002 (2) and 2003 (4) as well as the findings in this study, indicate that a sale of a kidney in India has not been associated with an improvement in economic status and is associated with a subsequent decline in family income. Only four victims (4%) of those interviewed whose debt drove them to the kidney sale expressed that they were able to resolve the debt from the payment. The trafficked persons have predominantly worked in labor-intensive jobs in fishing and agriculture, construction, weaving mills, power loom factories, and domestic servants. Seventy of the 79 victims (89%) who disclosed details of their financial consequences of the organ removal reported that they could not return to labor-intensive jobs after the kidney removal; this compromised their ability to generate an income and led to further debt.

Victims of HTOR in this study also reported significant social consequences that resulted from the commercial kidney removal. Nearly half (43%) of the victims in this study (53% from Erode and 30% from Chennai) expressed that a loss of dignity accompanied the loss of their kidney when they became ridiculed by their family, friends, and community. The broader study included similar results as 60% of the victims from West Bengal and 40% of those from Karnataka reported such loss of dignity.

Individuals at each field site expressed frustration that media coverage heightened stigma for them within their communities and that the media attention also did not result in assistance for their hardships because of the experience. One hundred percent of those interviewed expressed that they need assistance to cope with these consequences. Finally, persons trafficked for organ removal unanimously regretted the commercial removal of a kidney and would advise others against it.

DISCUSSION

Human trafficking for organ removal continues in private hospitals in various centers throughout India. Persons are trafficked for an organ removal in India largely via deception, fraud, and a play of power on destitute conditions, and their consequences are long lasting. The majority of commercial transplants are for Indian nationals, but service to foreign patients is ongoing. This study recommends a rights-based response to HTOR (5). It is noteworthy that, although India has been considered the only country that hosts HTOR to have more female than male victims (6), the findings in this study reveal that this is not the case in all locations where HTOR operates in India. Although further research is required to better understand how this abuse targets women and men distinctly in India, it is important to highlight that only women trafficked for organ removal cited familial substance abuse (primarily alcoholism) as a reason for sale (Table 2). Approximately ten percent of the trafficked women explained that substance abuse had negatively affected the family unit and contributed to their decision to sell. These women almost exclusively explained that their husband's substance abuse reduced their financial stability. Debt because of a lost relationship (abandoned or widowed) was a reason provided by nearly 12% of all women, where only 3% of men provided this reason. This could have been a result of unsettled debts, before the loss of a relationship, being posited on the women after this loss. This increased economic strain seems to have increased the instance of organ sales among women as a response. Although reported as "debt," many women's narratives also conveyed the pressures they felt from within the family, and especially from their husbands, to sell a kidney for the sake of the family.

The International Monetary Fund suggests that a third of the population in India lives below the government's poverty line (7). The average Indian citizen's monthly income is approximately 5000 INR or 90 USD (8). Persons trafficked for organ removal interviewed in this study fair worse than the average Indian with an average monthly income of 3119 INR or 59 USD.

With regard to the location of the kidney removal, all commercial transplants addressed in this study occurred in private, nongovernmental, transplant centers. However,

TABLE 2. Reason for sale by sex

		Female	Male
N	103	73	30
Reason for sale			
Debt			
Debt from family event (marriage)		0.37	0.10
Debt from personal or family health condition		0.26	0.33
Debt related to loss of relationship (abandoned or widowed)		0.11	0.03
General debt from lack of income (unspecified)		0.36	0.60
Harassment and physical abuse from loaners		0.18	0.13
Familial substance abuse		0.10	0.00
Future opportunity		0.03	0.07

Note: Figures in tables are proportions and individuals may have indicated numerous reasons for sale and they are accounted for in the table.

each of these centers are recognized and licensed by state and federal level authorities of the Ministry of Health and Family Welfare Department. Table 3 indicates the place of residence of the trafficked person and the location of her/his kidney removal.

With regard to reasons for an organ sale, exploitative financial lending schemes have commonly resulted in insurmountable debt burdens that are especially harsh on India's poor. In a report on kidney sales released in 2002, 96% of the 305 "kidney sellers" interviewed in Chennai sold a kidney because of debt (9).

With regard to awareness about an organ sale, it is likely that more of the victims' family or community members who told them about organ selling were in fact victims themselves. The 13% captured here were only captured indirectly via an open-ended question.

In addition to the direct findings from victims in this study, interviewed victims and media reports indicate that the organ trade is ongoing in additional locations in India including Dharmapuri, Selam, and Tirunelveli in Tamilnadu; Bangalore, Osloor, Mandiya, and Mangalore in Karnataka; Uttar Dinajpur, Raiganj, and Kolkata in West Bengal; Hyderabad, Guntoor, and Vijayawada in Andhra Pradesh; Lucknow in Uttar Pradesh; and Mumbai in Maharashtra (10–13). Coalition for Organ-Failure Solutions does not engage in payments for

TABLE 3. Location of residence a transplant center where organ was removed

Trafficked persons' residence	Erode	Chennai
Location where kidney was removed	Erode 1	Tirunelveli 1
	Chennai 3	Madurai 4
	Palakkad 3	Coimbatore 5
	Bangalore 18	Chennai 37
	Coimbatore 31	

interviews (as brokers requested). Information about brokers reported here is entirely provided by those interviewed as a part of the study (Table 4).

Negative health, economic, social, and psychological consequences for victims of organ trafficking have become evident from studies conducted in Egypt (14), India (15), Iran (16), Pakistan (17), and the Philippines (18). There were also reports of marriages broken when a spouse learned that their wife/husband sold a kidney, that relatives "disowned" the individual, and that a grown child's fiancé and family cancelled a planned wedding when it was revealed that their parent sold a kidney.

Recognizing HTOR as a human rights abuse invokes a universal commitment to prevent, protect, and suppress its continued practice. State parties that have ratified the relevant human rights treaties are legally bound to ensure, respect, and fulfill their human rights obligations. The United Nations Trafficking Protocol is the key international instrument to address the trafficking of persons, including for organ removal. Article 2(b) affirms that the protection and assistance of trafficked persons "with full respect to their human rights" is one of the three major purposes of the Protocol. India has signed the UN Trafficking Protocol (19) and should ratify it to better address this form of human trafficking.

MATERIALS AND METHODS

The protocol for this study was approved by the internal review board of the University of Pennsylvania where the first author was a Visiting Research Associate at the UPenn Center for Bioethics.

The Coalition for Organ-Failure Solutions–India field researchers identified victims via local development and human rights organizations and via a snowball technique in which victims told COFS fieldworkers how other victims could be reached. All victims identified agreed to participate in the interview. The field researchers explained that the interview was to serve the purpose of gaining an understanding of their experiences of a commercial organ removal and to coordinate assistance services according to their needs that resulted from the commercial organ removal. Interviews were conducted

TABLE 4. Reason for sale by region

	Chennai	Erode
N	103	56
Reason for sale		
Debt		
Debt from family event (marriage)	0.28	0.23
Debt from personal or family health condition	0.20	0.36
Debt related to loss of relationship (abandoned or widowed)	0.20	0.00
General debt from lack of income (unspecified)	0.30	0.54
Harassment and physical abuse from loaners	0.20	0.14
Familial substance abuse	0.07	0.07
Future opportunity	0.00	0.07

Note: Figures in tables are proportions.

Note: Individuals may have indicated numerous reasons for sale and they are accounted for in the table.

in either the privacy of a home or in an office of a local development or human rights organization.

A consent form was read to all victims, and a COFS field researcher explained that participation was voluntary and that identities would remain confidential. Verbal consent was then obtained from each participant, and additional consent was obtained for several video recordings of testimonies. Compensation for travel to the interview site was provided, but no other monetary compensation was provided for an interview. Coalition for Organ-Failure Solutions field researchers also explained that because COFS' commitment is to assist victims to deal with the abusive experience and its consequences, COFS provides assistance services, regardless of a victim's decision to participate in the interview.

The instrument used to interview victims consisted of an oral questionnaire with closed-ended question to collect demographic and background data and open-ended questions to elicit narratives about their experiences and how these experiences have affected their lives. Field researchers conducted interviews in victims' native language, and many interviews were arranged with COFS local partner organizations. In Erode, interviews were conducted with the assistance and at the office of a trade union that works as advocates for unemployed mill workers; in Chennai, interviews were conducted in the home of the lead local field researcher.

The fieldwork involved four of COFS-India field researchers, each of whom are Indian citizens and trained in social science research methods. Three have Masters degrees in Social Work, and one is a civil rights attorney. The lead researchers were certified by the Collaborative Institutional Training Initiative and included as research personnel on the protocol for the study. In addition to their research, the field researchers are also active social workers and victim advocates working to arrange ongoing medical follow-up and related outreach services to COFS beneficiaries.

Considering the clandestine nature of this activity, it is impossible to know a precise number of victims or to what extent the sample identified here represents the larger group of such victims. The relatively small number of participants in this study is a reflection of such clandestine operations, lack of victim protection, and limited resources to afford more extensive data collection. The findings nonetheless speak to the experience of being a victim of HTOR in India and the processes this crime entails, from victims' points of view. Individuals are being systematically exploited based, in these cases, upon their destitute conditions. Thus, this sample size of interview subjects provides an important window into the secretive operations of HTOR that targets the poor and vulnerable.

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