

Role of Indian Judiciary in Child Trafficking



Neha

Research Scholar,
Deptt. of Law,
BPS Mahila University,
Khanpur Kalan,
Sonipat, Haryana

Abstract

The Present study titled "Role of Indian Judiciary in child trafficking". The main purpose is this topic is to provide the knowledge about Indian Judiciary regarding the child trafficking. Child trafficking is burning issue front of us. We are responsible for using children in begging because when any child comes near us for begging we are given to him some money quickly without any thought .while reality is that, it's a big network, which used children in begging and collect money daily evening from them. Indian movie "Traffic Signal" and An Oscar nominated movie "SLUM DOG MILLENIUR" also made on this reality. But people do not wake up. If we are take oath that don't give begging to any child, then we can stopped many crime related to children, like begging, kidnapping, trafficking etc. The lack of effective implementation of existing laws and people awareness, their participation and cooperation is reason behind the problem of child trafficking. The current topic provide the knowledge about the role of judiciary regarding this problem, and Indian laws and policies for protection of child rights.

Keywords: Trafficking, Judiciary, Child Rights.

Introduction

Parliament is a body of legislatively elected members who form a part of government. A country is run by its parliament. Traditionally there are three key functions accorded to the union parliament:

Legislative Function

To govern a country efficiently we need policies and laws. The function of the legislative is to form policies and laws that will govern the nation. The union parliament is chiefly concerned with this function.

To ensure that these functions are duly followed, constitution of India provides for two houses, Loksabha or the lower house and Rajya sabha or the upper house. Together these houses ensure that the legislative functions of the government are executed properly by passing relevant laws and making citizen friendly policies.

Executive Function

Once the laws have been duly made and sanctioned, the duty of implementation falls on the executive body. The state governments and other relevant bodies are responsible for this function. Legislative and executive functions are interdependent functions of the parliament. Execution of laws and policies are ensured by the office of the executive. These offices are that of prime minister and his cabinet at the central level. At an administrative level, the civil servants have the responsibility of ensuring that all the policies introduced by the government are duly implemented and its benefits reach the people.

Judiciary

Once the rules have been made and compensations for breaking them established, it becomes imperative that there is a body which monitors proper adherence to these rules. Judiciary ensures that those who do not follow the rules are punished. It also acts as a conflict resolver for the government, in order to ensure justice and fairness, the judiciary has been made independent of the other two functions. Thus, a court has the authority to try members of parliament, members of executive and citizens of the country, if it finds them guilty of any misdeed.

Thus, we say that while the legislative makes the laws, the executive implements the law, the judiciary upholds the law. All three bodies of the union parliament.

Objective of The Study

The nature and main objective of Role of Indian Judiciary in Child Trafficking is that to provide the knowledge about the role of judiciary in trafficking cases, that how to judiciary play very important role in prohibiton of trafficking. A study of the judicial response will facilitate not only in

understanding their perception but also in assessing the strength and weakness in the response by the police, prosecution and community. This can go a long way in bringing about appropriate changes in the principles and practices of counter-trafficking and in ensuring human rights of all concerned. It is in this context that an effort has been made to have an objective analysis of the response by the judiciary to the issues of trafficking in women and children.

Review of Litreture

The trafficking of persons around the world is a serious violation of human rights and a manifestation of social injustice. Although valid and reliable data are hard to find, a recent report estimated that 24.9 million individuals around the world are currently victims of forced labor (ILO, 2017). These individuals are exploited in economic activities such as agriculture, fishing, domestic work, construction, manufacturing, and the commercial sex industry. Although the majority of detected victims are trafficked across international borders, 42% are victimized within their own countries (UNODC, 2016). Among these detected victims, 71% are female and 28% are children (UNODC, 2016). MWCD (Ministry of women and child development) continued to fund NGO- and government-run shelter and rehabilitation services for women and children through the Ujjawala program, specifically for female sex trafficking victims, and the Swadhar Greh program, for women in difficult circumstances. The central government's budget for the Ujjawala program increased from 203 million INR (\$3.2 million) in 2016-2017 to 350 million INR (\$5.5 million) in 2017-2018 and the Swadhar Greh budget decreased from 840 million INR (\$13.2 million) to 750 million INR (\$11.8 million). NGOs continued to report the number of government shelters was insufficient and overcrowding compromised victim rehabilitation. Both government- and NGO-run shelters faced shortages of financial resources and trained personnel, particularly of counselors and medical staff. NGOs relied primarily on donor contributions to provide victim services, although some received government funds.

Indian Acts Related To Child Rights

Immoral Traffic (Prevention) Act, (ITPA) 1956

[Renamed as such by drastic amendments to the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) it deals exclusively with trafficking and objective is to inhibit / abolish traffic in women and girls for the purpose of prostitution as an organized means of living. Offences specified are as:

1. Procuring, including or taking persons for prostitution;
2. Detaining a person in premises where prostitution is carried on;
3. Prostitution is or visibility of public places;
4. Seducing or soliciting for prostitution;
5. Living on the earnings of prostitution;
6. Seduction of a person in custody; and
7. Keeping a brothel or allowing premises to be used as a brothel.

Child Labour (Prohibition and Regulation) Act, 1986

Prohibits employment of children in certain specified occupations and also lays down conditions of work of children.

Information Technology Act, 2000

Penalizes publication or transmission in electronic form of any material which is lascivious or appeals to prurient interest or if its effect is such as to tend to deprive and corrupt persons to read, see or hear the matter contained or embodied therein. The law has relevance to addressing the problem of pornography. India has also adopted a code of conduct for Internet Service Providers with the objective to enunciate and maintain high standard of ethical and professional practices in the field of Internet and related services.

Juvenile Justice (Care and Protection of Children) Act, 2000

1. Enacted in consonance with the Convention on the Rights of the Child (CRC);
2. Consolidates and amends the law relating to juveniles in conflict with law and to children in need of care and protection;
3. The law is especially relevant to children who are vulnerable and are therefore likely to be inducted into trafficking.

Indian Penal Code, 1860

There are 25 provisions relevant to trafficking; the most significant among them are:

Section 366A

Procuration of a minor girl (below 18 years of age) from one part of the country to another is punishable.

Section 366B

Importation of a girl below 21 years of age is punishable.

Section 374

Provides punishment for compelling any person to labour against his will. Some states also enacted their own Acts like:

Karnataka Devadasi (Prohibition of Dedication) Act, 1982

Act of dedication of girls for the ultimate purpose of engaging them in prostitution is declared unlawful whether the dedication is done with or without consent of the dedicated persons. Some states also enacted some Acts related to trafficking.

Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989

Penalty of imprisonment for three years and fine are stipulated in respect of anyone, who performs, promotes, abets or takes part in Devadasi dedication Ceremony.

Goa Children's Act, 2003

1. Trafficking is specially defined;
2. Every type of sexual exploitation is included in the definition of sexual assault;
3. Responsibility of ensuring safety of children in hotel premises is assigned to the owner and manager of the establishment;

4. Photo studios are required to periodically report to the police that they have not sought obscene photographs of children;
5. Stringent control measures established to regulate access of children to pornographic materials

Decisions/Judgments by the Supreme Court and High Courts

In *Vishal Jeet vs. Union of India and others*¹ there was a PIL against forced prostitution of girls, devadasis and *jogins*, and for their rehabilitation. The Supreme Court held that in spite of stringent and rehabilitative provisions under the various acts, results were not as desired and, therefore, called for evaluation of the measures by the central and state governments to ensure their implementation. The court called for severe and speedy legal action against exploiters such as pimps, brokers and brothel owners. Several directives were issued by the court, which, *inter alia*, included setting up of a separate Zonal Advisory Committee, providing rehabilitative homes, effectively dealing with the devadasi system, *jogin* tradition etc. The apex court held that 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 are 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.

The apex court had demanded an objective multidimensional study and investigation into the matter relating to the causes and effects of this evil. The Central and State governments had initiated several programmes and policies in compliance with the directive of the Supreme Court.

In *Gaurav Jain vs. Union of India*², the Supreme Court passed an order dated 9 July 1997, directing, *inter alia*, the constitution of a committee to make an in-depth study of the problem of prostitution, child prostitutes and children of prostitutes, and to evolve suitable schemes for their rescue and rehabilitation. Taking note of the fact that "children of prostitutes should not be permitted to live in the inferno and the undesirable surroundings of prostitute homes", the apex court issued directions to ensure the protection of human rights of such persons. The court also desired that the Ground realities should be tapped with meaningful action imperatives, apart from the administrative action which aims at arresting immoral traffic of women under the ITP Act through inter-state or Interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes. The rulings mentioned above have to be seen in the context of the pleadings and the arguments advanced by both sides. Moreover, one needs to distinguish *ratio* from *obiter*, as the former is a binding law and the latter is only a persuasive value relevant to the facts of the concerned case. Keeping these in mind, it can be said that these two cases have laid down the ground rule

for several executive decisions and commencement of many programmes thereafter. These judgments have flagged off the importance of the individuals' human rights and brought to focus the mandatory role and responsibility of the state in ensuring that such violations do not take place. A writ petition, CrI. W. No. 532/92, was filed in the Delhi High Court by the Honest Organisation, Delhi, through its honorary chairman **Shri Shyam Sunder Lal Gupta (petitioner) vs. Secretary, Ministry of Home Affairs; Secretary, Ministry of Welfare; Lt. Governor, Delhi; Chief Secretary, Delhi Administration; Director, Prosecution, Delhi; Director, Social Welfare, Delhi; Commissioner of Police, Delhi and the SHO, Kamla Market Police Station (respondents)**. The petitioner had sought the intervention of the High Court for directing the concerned officials to ensure appropriate enforcement of the provisions of ITPA. During the pendency of the proceedings, the High Court on its own motion vs. Union of India and others (vide CrI. M. No. 862/01) initiated several proactive steps. The court summoned various officials and NGOs working in the field, heard them and thereafter gave them specific directions with respect to rescue and rehabilitation and reintegration of the victims. Senior officials of different states like Rajasthan, Uttar Pradesh, etc., from where the girls had been trafficked, were also summoned by the court to ensure that the rehabilitation package was implemented properly and that the concerned officials were made accountable for their activities to ensure that the victims were not re-trafficked and were at the same time economically and socially empowered. Judicial activism in Delhi has made remarkable changes in the entire scenario, which has been widely appreciated. (For details see case study No. CS-DL-26). It is important to note here that due to the intervention by the High Court of Delhi, especially during the period 2001–2003, the law enforcement scenario in Delhi has seen a radical change in ensuring justice delivery. One of the highlights is that during this period, 28 traffickers/exploiters have been convicted as against the preceding years when the conviction of traffickers and exploiters was rare and almost nil. As a part of judicial activism, in accordance with the provisions of ITPA, the court has ordered closure of several *kothas* where a large number of girl children were found to have been sexually exploited. The bottom line is that judicial activism has brought about institutionalization of integration of policy and programmes and triggered adequate sensitivity among the officials, leading to prompt and effective response by them. It brought about the much required networking of the various government departments as well as a working partnership between the government agencies and NGOs. Another important fact is that the High Court intervention facilitated in promoting the interests of women and children, within a human rights paradigm. The limited scope and vision that was commonly prevalent in the existing 'crime perspective' and 'welfare-perspective' were substituted with a larger mandate of 'human rights perspective.' Another order by the High Court of Delhi has made notable improvement in the field of criminal

jurisprudence and victim protection in India. On 27 February 2004, the High Court delivered this order, in *Crl. M.1467/04 in Crl. W. 532/1992*, in a petition filed by an NGO Prajwala of Hyderabad through its advocate Ms. Aparna Bhat. Thanks to the intervention of the Delhi High Court, girls rescued from the brothels in Delhi were repatriated and rehabilitated in their hometowns in several parts of India including Andhra Pradesh. The rehabilitation work was carried out by the Government of Andhra Pradesh with the involvement and participation of the NGO, Prajwala. Many of these girls, who had been rehabilitated to districts like Nellore, were summoned by the trial court in Delhi for providing evidence against the exploiters. Since these girls were repatriated after spending considerable time in the rescue home in Delhi, ideally speaking, their statements should have been recorded by the trial court during that period. However, due to the delays in the trial, this was not done and, therefore, these girls were called to Delhi. The government agencies in Andhra Pradesh tried their best to get in touch with these girls. Since their efforts failed, Prajwala was asked to step in again. The NGO realized that these girls were reluctant and unwilling to go to Delhi mainly because they did not want to relive the trauma and agony which they had undergone. It was decided to move the trial court for facilitating the recording of evidence of these girls to their hometowns. However, the court did not approve of this for want of required infrastructure. The matter was, therefore, taken up with the High Court of Delhi which directed the government counsel to look for alternatives. Since National Informatics Centre did not have the required facilities, the counsels for the government and the NGO took initiative, interacted with the government of Andhra Pradesh and found that video conferencing facility was available in Andhra Bhawan, New Delhi. The A.P. government agreed to provide this facility, which they have in Delhi and the concerned district headquarters in Andhra Pradesh. The High Court confirmed the availability of these facilities at A.P. Bhawan by judicial officers and then gave orders for recording the evidence of the victims through video conferencing. The court also directed that the state of Andhra Pradesh make appropriate arrangements for the same and that the trial court ensure adequate safeguards enumerated in the decision of the Supreme Court in *State of Maharashtra vs. Dr. Praful B. Desai*³. This was a historical decision of the Delhi High Court because, for the first time in India, inter-state video conferencing was being utilised in criminal trials. Once implemented, this judgment can go a long way in protecting the rights of trafficked victims and, therefore, is a judgment truly honouring the human rights of the victims. The initiative by the NGO, government officials and the counsels both the standing counsel for the state and the counsel for the NGO is commendable.

The case of *Upendra Baxi vs. State of Uttar Pradesh*⁴ shows how deeply entrenched is the market for sex trafficking. The Agra Protective Home was constituted by and functioned under the penal law, The Immoral Traffic (Prevention) Act, 1956. In a

letter to the *Indian Express* a member of the Board of Visitors of the Agra Protective Home described the pathetic condition of the Home in which the girls were kept. According to this letter, 'a letter was written to the then Justice P.N. Bhagwati who treated it as a writ petition. The judgment transcending from 1989 to 1998 saw three phases and ultimately the Supreme Court transferred the case to the National Human Rights Commission with certain guidelines recorded by the Supreme Court. The guidelines were far reaching in the changes they proposed to the existing framework while staying within the framework of the Immoral Traffic Prevention Act and the Constitution. They required the person who is either "removed" under Section 15(4) or "rescued" under Section 16(1) of ITPA and produced before a Magistrate to be heard either in person or through a lawyer (assigned by the Legal Aid Committee of the District Court concerned) at every stage of proceedings including admission to a Protective Home, Intermediate custody as well as discharge. The Supreme Court further lay down that *in camera trial* be held and that it should be the duty of the court to ensure the presence of lawyers of both sides. If under section 15(4) and section 16(1) it was a child, the child should be placed in an institution recognized or established under the Juvenile Justice Act, 1986. The guidelines also required Magistrates to maintain a list of those who have been given safe custody of persons rescued or removed on furnishing undertakings. In the event of it being brought to the Magistrates' notice that such person has returned to prostitution, the giver of the undertaking, after an enquiry, would be debarred from furnishing any undertaking in any proceeding under the ITPA. It was further suggested that the post of special police officer shall, wherever possible, be held by a woman police officer and that there should be in place an Advisory Board consisting of five leading social workers to be associated with the special police officer.

Apart from the *Agra Protective Home case*, in *Radha Bai Vs. Union Territory of Pondicherry*⁵, the petitioner's protests against the Home Minister of Pondicherry alleging that he was misusing the protective home for women for immoral purposes landed her in deep trouble. The Commissioner suggested the closing down of such homes immediately. Two decades later she got relief from the Supreme Court

In *Bholanath Tripathi Vs. State of U.P.*⁶ a public interest litigation was filed alleging that a woman was held in confinement and was being used for earning money by prostitution. The Supreme Court directed the Commissioner Appointed to make enquiry and if satisfied prima facie about the allegations, to remove her to a safe place and secure her production before the Court. The Police and the other authorities of the State Government concerned were also directed to afford assistance to the Commissioner. Section 20 of the ITPA was challenged on several occasions. Section 20 permits the removal of prostitutes from any area in the interests of the general public. The Magistrate is further empowered to prohibit the prostitute women

from re-entering the place from which she has been removed.

Judicial intervention by the High Court of Mumbai

This has been instrumental in bringing about radical transformation in the anti-trafficking scenario in Maharashtra and Goa. In **Public at Large vs. State of Maharashtra and Others**⁷, judicial intervention brought about rescue, repatriation and rehabilitation of 487 minor girls (for details case study No. CS-MH-17 may be seen). The High Court order led to the prompt care of and attention to the rescued persons, setting up of an Advisory Committee and networking of various departments of the government, and the repatriation of persons trafficked from various states in India as well as neighbouring countries. In **Public at Large vs. State of Maharashtra and Others**⁸, the High Court of Mumbai gave several directions to the government agencies to ensure the interests of the rescued girls. The court directed that all rescued girls should be subjected to medical examination for assessing their age and to check whether they were suffering from any disease. The methodology of counseling and aftercare was also dealt with in detail. In **Prerana vs. State of Maharashtra and Others**⁹, the Mumbai High Court looked into the issue of violation of rights of trafficked children by various authorities who are supposed to implement the law. The court took serious objection to the judicial authority treating the trafficked minor girls as 'confirmed prostitutes' (for details, see case study No. CS-MH-1). The High Court issued several directions for the proper implementation of the JJ Act and ITPA, keeping in view the human rights of the trafficked persons. The court order addressed several issues concerning child rights, viz. the role of advocates and NGOs in the JJ Act, child friendly procedures in dealing with rescued persons, etc., and has brought out clear guidelines for compliance by all concerned. In writ petition No. 365 of 1997 by an NGO **Savera and Others vs. State of Goa and Others**¹⁰, the High Court of Bombay (Goa Bench) delivered a judgment on 21 July 2003. The object of the petition was primarily to seek the direction of the High Court to the concerned agencies in the "readjustment and rehabilitation" of the persons in the "Red-light area of Baina". The High Court took into consideration the various views in the replies filed by the petitioners, respondents, etc., as well as the report of the Kamat Committee (Mr. Justice G.D. Kamat, retired Judge). The High Court directions included the following:

1. State government to ensure necessary action as per Kamat Committee Report.
2. Ensure effective implementation of the judgment of the apex court in *Gaurav Jain v. Union of India*.
3. Ordered that the District Collector take steps under ITPA and other relevant laws to "close down the cubicles (250 cubicles being used for sex trade in Baina beach). If the said 250 cubicles constructions are illegal, and are on government land or land belonging to local authorities, then to take steps to evict the illegal occupants and then demolish them by following due process of law".

4. State government to take adequate steps to prevent the CSWs (commercial sex workers) being brought into the state of Goa on contract basis, as noted by the Justice Kamat Committee.
5. Since the CSWs are being brought from outside Goa, the Government of Goa is not bound to rehabilitate them except to the extent mentioned by specific directions in the judgments of the apex court. The rescued CSWs be deported to the state where they came from. The Goa State Commission for Women, along with the National Commission for Women to take steps, so that the said women are rehabilitated in the state from where they hail with assistance of the respective state governments.
6. The National Commission for Women to report in nine months the action taken on the implementation of the Kamat Committee Report. As of November 2003, the concerned agencies were in the process of initiating necessary steps in the light of the High Court order. NGOs like Arz, which have been working in this area for long, have drawn attention to the fact that eviction without appropriate mechanisms of rehabilitation would be tantamount to further violations of the rights of the hapless victims.

Research Methodology

The study was conducted through analysis of existing laws related to this crime with an appropriate inclusion of judgements of supreme courts and high courts, PIL, NGO's report, Lawyers and Judges for true representation of the crime and their effect on society. A formal interaction, contained different questions relevant to present study was asked using different ethnographic techniques such as semi structured interviews and participant observation of Law students, conversation (formal and informal) and conversation analysis of eminent personalities related to the field of Law.

Findings

We find that there is various reasons for child trafficked and women trafficked, not only India while whole world effected from this evil. Government makes various Acts for protection of child rights but due to lack of effective implementation of existing laws and people awareness, their participation and cooperation is reason behind the problem of child trafficking.

Conclusion

Courts play a very important role in promoting the rights of Children. Public interest litigation has been used beneficially to realize the protection rights of children. Courts have ensures the implementation of progressive laws and interpretation of restrictive laws in the best interest of the Child. Courts have used innovative methods to ensure justice to the child. Judicial activism, emerging from the concern for protection of human rights, specially of women and children, has been instrumented in bringing about a paradigm shift in the delivery also to the prosecution of exploiters an eventually has been instrumental in leading to prevention of trafficking.

References

1. www.toppr.com
2. *A Report on trafficking in women and children in India 2002-2003—P.M.Nair (IPS)*
3. www.childline.com
4. shodhganga.inflibnet.ac.in(Review of literature)
5. *child trafficking in India: Realities and Realization—S.K. Roy*
6. shodhganga.inflibnet.ac.in(Role of Indian judiciary –A Review)
7. www.state.gov
8. www.researchgate.net

Footnotes

1. (1990)3 SCC 318
2. (1997) 8 SCC 114
3. (2003) 4 SCC 601
4. A IR 1983 2SCC 308
5. (1995)4 scc 141
6. 1990 supp. Sco 151:1990 scc (cri)543
7. 1997(4)Bom CP 171
8. Writ petition no. 112 of 1996
9. Writ petition no. 788 of 2002
10. Writ petition no. 365 of 1997