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JUDICIAL APPROACH TO CHILD TRAFFICKING IN INDIA

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Abstract

This research paper delves into the crucial role played by the Indian judiciary in addressing the pervasive issue of child trafficking. Recognizing child trafficking as a severe violation of human rights affecting numerous children across India, the study examines key judgments and directives issued by both the Supreme Court and various High Courts. Notable cases such as Vishal Jeet vs. Union of India and Gaurav Jain vs. Union of India are scrutinized to illustrate how the judiciary acknowledges the socio-economic factors driving trafficking and emphasizes the need for comprehensive rehabilitation schemes. Furthermore, the paper evaluates the effectiveness of existing legal frameworks, such as the Immoral Traffic (Prevention) Act, 1956, and the Bonded Labour System (Abolition) Act, 1976, in conjunction with judicial mandates aimed at protecting and rehabilitating trafficked children. Through an analysis of implementation challenges and gaps in enforcement, the research underscores the necessity for an integrated approach involving governmental agencies, non-governmental organizations, and community participation. By critically examining judicial pronouncements and their real-world implications, this study highlights the judiciary's pivotal role not only in delivering justice but also in shaping policy and advocacy efforts to eradicate child trafficking. The paper concludes with recommendations aimed at bolstering judicial interventions and fostering collaborative efforts to ensure the effective protection and rehabilitation of trafficked children in India. This research aims to contribute significantly to the ongoing discourse on child rights and the urgent need for systemic reforms to combat child trafficking comprehensively.

Keywords: children, child labour, bonded labour, immoral trafficking, juvenile justice

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Introduction

Human trafficking has roots in ancient history and has manifested in various forms across nearly all civilizations and cultures. This heinous trade exploits the vulnerability of individuals, particularly women and children, resulting in gross violations of human rights. Victims are commodified through force, coercion, or deceit for purposes such as commercial sexual exploitation and forced labour. In India, one of the world's largest democracies, the Constitution explicitly prohibits human trafficking and guarantees the right to be free from exploitation as a fundamental right. Violations are punishable by law. Despite these legal safeguards, trafficking remains a significant issue in India.

Victims predominantly come from marginalized segments of society, suffering from caste and tribal discrimination, as well as socio-economic deprivation. Additionally, individuals are trafficked into India from neighbouring countries like Nepal and Bangladesh. Statistics reveal that approximately 80% of trafficked individuals are women and girls, with up to 50% being minors. Globally, millions of men, women, and children fall prey to human trafficking for sexual exploitation, forced labour, and other forms of abuse and exploitation. This ongoing crisis calls for concerted efforts to address and eradicate trafficking, ensuring the protection and dignity of all individuals.³

Reports of factory and workshop raids rescuing children surface regularly, highlighting a widespread issue. Victims come from diverse regions including West Bengal, Bihar, Jharkhand, Assam, Delhi, Bangalore, and Kerala. Children from Nepal have been rescued from rat-hole coal mines in Meghalaya; girls from Assam are often forced into marriage in Haryana due to a gender imbalance; and children from Tamil Nadu are trafficked to Europe.⁴

In Goa, girls frequently end up in spas and parlors, coerced into providing services far beyond massage and health treatments. This ongoing crisis underscores the urgent need for more effective measures to protect vulnerable children and combat trafficking.

³ Monika D. Banode, Comparative Human Trafficking Law “Legal Framework against Human Trafficking”, International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212: Volume 2 Issue 4.

⁴ <https://haqrcr.org/wp-content/uploads/2016/06/child-trafficking-in-india-report.pdf> (as visited on June 3, 2024)

Trafficking: Meaning

The Immoral Traffic (Prevention) Act (ITPA) 1956, the only law still in force for trafficking, deals only with trafficking of girls and women for prostitution. Amendments to this law have been long pending.

HAQ's report in 2000, made a salient observation with regard to this –

“The problem in dealing with this very complex phenomenon begins with its very definition. There is no single definition of trafficking. In the absence of a common understanding, it becomes difficult to design policies, guidelines or even interventions to tackle this issue.”

As a result, the report said: For purposes of this analysis, we have defined trafficking of children as: “Sale and purchase of children for gain, within the country (intra-country) and across borders (inter-country), by deceit, fraud or force, resulting in exploitation of the person trafficked.”

The Palermo Protocol says: “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”⁵

Laws Relating to Human Trafficking in India

A trafficked victim is 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.

- Constitutional provisions
- Indian Penal Code 1860
- ITPA-1956
- J.J. Act-2015.

Constitutional Provisions

The Constitution of India, the nation's supreme law, explicitly forbids human trafficking. Article 23 prohibits "traffic in human beings and begar and other similar forms of forced labor," while Article 24 bans the employment of children under 14 in factories, mines, or other hazardous jobs. Key fundamental rights relevant to trafficking include Article 14, ensuring equality before the law; Article 15, prohibiting discrimination based on religion, race, caste, sex, or birthplace;

⁵ See Article 3, paragraph (b) of the Palermo Protocol.

Article 21, protecting life and personal liberty; and Article 22, safeguarding against arrest and detention except under specific conditions.

The Directive Principles of State Policy in the Constitution also play a vital role. Article 39 emphasizes the right to adequate means of livelihood and equal pay for equal work for both men and women, protection against being forced into unsuitable occupations due to economic necessity, and the safeguarding of children and youth from exploitation. Additionally, Article 39A mandates that the legal system should provide equal opportunities for securing justice, regardless of economic or other disabilities. These provisions collectively underscore India's commitment to combating trafficking and ensuring the protection and rights of all its citizens.

Indian Penal Code 1860

There are at least 20 provisions that are linked to trafficking. Under the IPC a trafficked girl child has been subjected to multitude of violations for example displacing her from her community would tantamount to kidnapping/ abduction under Section 361, 362, 365, 366, 366A may apply.

- Sold by someone (sec 372)
- Bought by someone (Sec 373)
- Imported from a foreign country (366B)
- Outraging her modesty (354, 354A, 354B, 354C, 354D)
- Rape, gangrape, repeatedly raped (Sec 375)
- Subjected to perverse Sexual Exploitation (Sec 377)
- subjected unlawful compulsory labour (Sec 374)⁶

Other Relevant Laws

- Immoral Trafficking Prevention Act 1956
- The Child Labour (Prohibition and Regulation) Act 1986
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989
- Transplantation of Human Organs Act 1994
- Juvenile Justice (Care and Protection of Children) Act, 2015
- The Protection of Children from Sexual Offences Act, 2012

⁶ The Indian Penal Code has been replaced with the Bhartiya Nyaya Sanhita, 2023. So, corresponding sections of the Bhartiya Nyaya Sanhita, 2023 may be gone through.

- The Code of Criminal Procedure, 1973⁷
- The Bonded Labour Abolition Act, 1976
- The Right of Children to Free and Compulsory Education Act, 2009

Judicial Approach to Child Trafficking in India

In the case of *Vishal Jeet v. Union of India and others*⁸, a Public Interest Litigation (PIL) was filed against the forced prostitution of girls, including devdasis and joginis, and called for their rehabilitation. The court highlighted the dire plight of the victims, stating, "Prostitution remains a persistent blight on civilization, eroding moral values. The notorious and terrifying impacts of prostitution are well-known and undeniable, threatening society with its slow but relentless advance, leaving behind a trail of broken hopes."

The court emphasized the urgent need for decisive action to eradicate this evil, acknowledging that ultimate success depends on public involvement. The exploitation of impoverished children and young girls, forced into the 'flesh market' and subjected to the 'flesh trade,' flagrantly violates all principles of morality, decency, and human dignity. There is unanimous agreement that this abhorrent crime, committed with unimaginable vulgarity, must be eradicated through stringent measures. In response, the Honourable Supreme Court issued specific guidelines aimed at eliminating this grave issue. These directives underscore the necessity for comprehensive and drastic steps to combat and ultimately eradicate forced prostitution in India.

In *Lakshmi Kant Pandey v. Union of India*⁹, the Hon'ble Supreme Court emphasised on proper upbringing and welfare of the children thus: "In a civilized society, the importance of child 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. The great poet Milton put it admirably when he said: "Child shows the man as morning shows the day" and the Study Team on Social Welfare said much to the same effect when it observed that "the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages". The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fulness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual

⁷ The Code of Criminal Procedure, 1973 has been replaced with the Bhartiya Nagarik Suraksha Sanhita, 2023. It will come into force on July 1, 2024.

⁸ 1990 (3) SCC 318

⁹ AIR 1984 SC 469

and spiritual being; otherwise there cannot be a healthy growth of the nation. Now obviously children need special protection because of their tender age and physique mental immaturity and incapacity to look-after themselves. That is why there is a growing realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realisation of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process.”

In the landmark case of *Gaurav Jain v. Union of India*¹⁰, the Supreme Court mandated the formation of a Committee to thoroughly examine the issues surrounding prostitution, including child prostitutes and the children of prostitutes. The aim was to develop effective rescue and rehabilitation schemes. The Court emphasized that children of prostitutes should not be forced to live in the deplorable conditions of brothels. The Supreme Court issued directives to protect the human rights of these vulnerable individuals, highlighting the need for practical and meaningful actions beyond administrative measures. The Court called for coordinated efforts to curb immoral trafficking of women, involving interstate and Interpol collaborations, and tasked the Central Bureau of Investigation (CBI) with investigating and preventing such crimes.

In *Budhadev Karmaskar v. State of West Bengal*¹¹, the Supreme Court expressed deep concern over the dire conditions faced by sex workers, issuing notices to all states. The Court emphasized the need for the Central and State Governments, through Social Welfare Boards, to develop comprehensive rehabilitation schemes for physically and sexually abused women, commonly referred to as prostitutes. Recognizing that these women have the right to live with dignity under Article 21 of the Constitution, the Court highlighted that prostitution often stems from extreme poverty rather than choice. The Court proposed that providing sex workers with opportunities for technical or vocational training would enable them to earn a livelihood through skilled work instead of prostitution. The directive called for the creation of detailed schemes outlining the provision of such training, methods of rehabilitation, and employment opportunities. For example, if training is provided in garment sewing, there must also be arrangements for marketing these garments to ensure the women can support themselves. The Supreme Court's directive aims to address the root causes of prostitution and offer sustainable, dignified alternatives for sexually abused women across India.

¹⁰ 1997 (8) SCC 114

¹¹ [2011] 10 SCR 578

In the *Bandhua Mukti Morcha* case¹², the Supreme Court emphasized the critical need for the rehabilitation of bonded labourers and directed the government to compensate them under the Bonded Labour System (Abolition) Act of 1976. Highlighting serious violations of fundamental and human rights, the Court noted that without proper rehabilitation, freed bonded labourers could end up in even worse conditions than during their bondage, leading to further exploitation and a potential return to serfdom. The Court stressed that freed labourers, when faced with starvation, might prefer the illusory security of bondage over freedom without food. Therefore, the State Governments must prioritize the rehabilitation of bonded labourers, developing effective programs to support their transition to a life of dignity and security. This obligation is mandated by the Bonded Labour System (Abolition) Act of 1976, underscoring the importance of sustained efforts to ensure the rights and well-being of former bonded labourers.

In *M.C. Mehta v. State of Tamil Nadu and Ors.*¹³ observing the violation of fundamental rights in cases of child labour, the Supreme Court has stated thus:

“e is at all a blueprint for tackling the problem of child labour, it is education. Even if it were to be so, the child of a poor parent would not receive education, if per force it has to earn to make the family meet both the ends. therefore, unless the family is assured of income allude, problem of child labour would hardly get solved; and it is this vital question which has remained almost unattended. We are, however, of the view that till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o'-the wisp. Now, if employment of child below that age of 14 is a constitutional indication insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfilment of legislative intendment behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986. Taking guidance therefrom, we are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs.20,000/-; and the Inspectors, whose appointment is visualised by section 17 to secure compliance with the provisions of the Act, should do this job. The inspectors appointed under section 17 would see that for each child

¹² 1984 (3) SCC 161

¹³ AIR 1997 SC 699

employed in violation of the provisions of the Act, the concerned employer pays Rs.20,000/- which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district-wise or area-wise. The fund so generated shall form corpus whose income shall be used only for the concerned child. The quantum could be the income earned on the corpus deposited qua the child. To generate greater income, fund can be deposited in high yielding scheme of any nationalised bank or other public body.

....As the aforesaid income could not be enough to dissuade the parent/guardian to seek employment of the child, the State owes a duty to come forward to discharge its obligation in this regard. After all, the aforementioned constitutional provisions have to be implemented by the appropriate Government, which expression has been defined in section 2(i) of the Act to mean, in relation to establishment under the control of the Central Government or a railway administration or a major port of a mine or oil field, the Central Government, and in all other cases, the State Government.”

In *Public Union For Civil Liberties v. State of Tamil Nadu And Ors.*¹⁴, the plight of the children engaged in bonded labour has been grieved by the judiciary thus:

“The second complaint of then NHRC pertains to the plight of bonded children from West Bengal, Jharkhand and Bihar working under bonded conditions in certain Zari Factories of Kotlamubarakpur Police Station area of Delhi had been released and rescued through raids “no steps have been taken by the administration of NCT of Delhi for issue of release certificates to the victims and for their rehabilitation. Instead of handing over the release certificates to the victims, these were sent to the Resident Commissioners of the three originating States namely West Bengal, Jharkhand and Bihar.” The NHRC has further pointed out that “in the process more than 2 years lapsed and the children who were supposed to have been rehabilitated by now could not be rehabilitated due to acts of negligence both of the part of Government of NCT of Delhi [as] also [the] Government[s] of Bihar, West Bengal and Jharkhand.” Even though the complaint dates back to 2005 and proceedings were initiated by the NHRC in 2006, “till date there is no confirmation from the” States concerned “as to whether all the 129 working children who were rescued and released from work in the Zari making units of NCT of Delhi have been fully rehabilitated.

¹⁴ (2013) 1 SCC 585

..... Large numbers of children are working as domestic help in the urban, town and rural areas with no chance to go to schools even though the education from standard I to VIII is compulsory under the Right of Children to Free and Compulsory Education Act, 2009. Local Panchayats and local bodies should identify such children and ensure that they get proper education. We are not unmindful of the fact that in some households they treat the domestic help just like their children and give food, clothing and education but they are exception.”

Conclusion

The judicial approach to child trafficking in India reflects a complex interplay of legal provisions, societal norms, and proactive jurisprudence aimed at safeguarding the rights of vulnerable children. The Supreme Court of India, through landmark judgments such as Vishal Jeet vs. Union of India and Gaurav Jain vs. Union of India, has underscored the urgent need for comprehensive measures to address the multifaceted issues surrounding child trafficking. These rulings have mandated the formation of committees, the implementation of rehabilitation schemes, and the enhancement of law enforcement capabilities to curb this grave violation of human rights. Despite these judicial interventions, the persistence of child trafficking in India indicates a gap between legal mandates and their on-ground execution. The court's recognition of socio-economic factors, such as poverty and lack of education, highlights the need for a holistic approach that transcends mere legal frameworks. Effective combat against child trafficking requires a synergistic effort involving government agencies, non-governmental organizations, and community stakeholders to ensure the protection and rehabilitation of trafficked children.

Moreover, the judicial emphasis on rehabilitating rescued children points to the necessity of sustainable support systems, including vocational training and psychological counselling, to reintegrate victims into society. This focus on rehabilitation not only addresses immediate needs but also mitigates the risk of re-trafficking, thereby providing a path towards a dignified and independent life for the survivors. While the judicial approach in India has laid a robust foundation for combating child trafficking, the actualization of these legal provisions demands unwavering commitment and coordinated action from all sectors of society. Only through persistent efforts and genuine collaboration can India hope to eradicate the scourge of child trafficking and uphold the fundamental rights of its youngest citizens.