

JUDICIAL ENDEAVORS AND SOCIETAL CHALLENGES: A REVIEW OF INDIAN COURT JUDGMENTS ON HUMAN TRAFFICKING OF WOMEN AND CHILDREN

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ABSTRACT

Human trafficking, especially involving women and children, is a severe violation of human rights and is likened to modern-day slavery. This paper reviews some major judgments of the Indian Courts on the issue, revealing the judiciary's efforts to combat and address the problem. Despite international agreements, trafficking remains a significant problem in India due to socio-economic factors and certain societal norms. Key cases such as Shama Bai vs. State of Uttar Pradesh and Upendra Baxi vs. State of U.P. illustrate the judiciary's shifting focus from solely punishing traffickers to also emphasizing the rehabilitation of victims. The study critiques the existing legal framework, questioning its effectiveness and calling for more comprehensive laws and better implementation. The paper advocates for a multifaceted approach to trafficking, combining strict law enforcement with robust victim support and societal change to protect the rights and dignity of vulnerable individuals. It highlights the importance of legislative reform and proactive judicial action in addressing this critical issue.

Keywords: Women, Children, Indian Law, Judgments, Human Trafficking.

Introduction

Trafficking involves the movement of individuals and is both a planned and unplanned economic activity that leads to their exploitation. Trafficking, particularly of women and children, is among the most atrocious crimes against humanity. Women and children are crucial to the strength of a nation, and protecting their dignity and safety is our duty. The UN protocol, which is intended to prevent, suppress, and penalize trafficking, particularly of women and children, is an adjunct to the 2000 UN Convention Against Transnational Organized Crime, which India has endorsed. The protocol defines trafficking as the act of recruiting, transporting, transferring, harbouring, or receiving people through threats, force, coercion, abduction, fraud, deception, abuse of power, or exploitation of a vulnerable situation. This definition also includes the provision or receipt of payments or benefits to secure control over another individual for the purpose of exploitation. Exploitation, as defined, encompasses but is not limited to, the exploitation of individuals through prostitution, sexual exploitation, forced labor or services, slavery or practices akin to slavery, servitude, or organ removal.

It is crucial to understand that trafficking is never consensual, which is a key distinction from other forms of migration. Trafficking is now recognized as an organized crime against humanity, thriving both nationally and internationally. It is often described as modern-day slavery. Although slavery has been abolished in most countries, it persists globally in the form of human trafficking. Women involved in trafficking are often dehumanized and portrayed as mere sexual objects or commodities. They are depicted as sexual objects that enjoy humiliation or pain or are shown deriving pleasure from rape, incest, or other sexual assaults.

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The available literature on the subjects shows that there is no authoritative definition of trafficking. The term has continued to be used to denote activities that range from voluntary migration to movement of persons through force or violence for exploitative purpose. This means that it is the movement of persons from one place to another coupled with exploitative intent. Movement may be trans-border or interstate or intrastate. The role played by traffickers actualized the exploitation. The agents/traffickers enjoy a symbiotic relationship with the customers, who prey on the hapless victims. The traffickers, through various modus operandi takes the persons through unknown and unfamiliar routes, to make retracing practically impossible of their routes, alienating and isolating them. Perfect market conditions exist in this trade, where there is unfailing supply of persons to meet the burgeoning demand for various illegal purposes. In this, there is minimal loss of time and galloping profits the winners being the traffickers, who help to meet demand at the appropriate time, place and appropriate people. Therefore, trafficking of women and children is one of the worst violations of human rights. It is a matter of great shame that even after half a century since the adoption of Universal Declaration of Human Rights, 1948 the scourge of trafficking continues to afflict the global community. "The international organization for migration estimates that the global trafficking industry generates up to \$ 8 billions each year from what may be described as 'trade in human misery'" (Sen, 2023). Moreover, the future well-being of the nation, depends on how these neglected humans cannot be deprived of their basic right to live with human dignity.

The deep concern of our constitution makers to safeguard women and children from exploitation is evident in different constitutional clauses. However, it's distressing to observe that despite India's commitment to various international agreements concerning the well-being of women and children, the country is entangled in the issue of illicit trafficking. Among these, the most prevalent and conspicuous is the trafficking of women and children for commercial sexual exploitation, commonly referred to as prostitution.

"This problem isn't novel, but what distinguishes it now is the emergence of an additional aspect in this type of trafficking due to non-traditional methods of commercial sexual exploitation, such as sex tourism and exploitation in venues like massage parlours, dance schools, and bars, as noted in the 2007 report by the Union Ministry of Women and Child Development in India" (Ministry of Women and Child Development, 2007: 57). Trafficked women and children are used for a variety of purposes, like prostitution, domestic work and camel jockeying, illegal adoption of children, organ transplant, begging, drug trafficking, forced marriage and various other exploitative forms of work. Both demand and supply factors relentlessly drive the trafficking operations. Some of the key push factors are inadequate employment opportunity, absence of social safety net, and globalization, open border facilitating movement of population. Other contributing factors include the breakdown of traditional family systems, the relentless pursuit of consumerism, and the practice in certain communities of dedicating girls to gods and goddesses. In India, the social acceptance of prostitution within some communities further promotes this deplorable trade.

Trafficking is an issue that now impacts nearly every country globally. Typically, the flow of trafficking moves from less developed nations to more advanced ones. As trafficking is an underground criminal enterprise, there are no precise statistics regarding the magnitude of the problem. "Very often estimates are found unreliable. An estimated 700,000 to 4 million people around the world are being trafficked for labor and sexual exploitation each year. Human trafficking is the fastest-growing source of profit for organized crime" (Modern-day slavery, 2010). "It has been conservatively estimated that at least 200-225,000 women and children from South-East Asia are trafficked annually, a figure representing nearly one-third of the global trafficking trade (International Organization for Migration, 2000). Out of the estimated 45,000 to 50,000 women and children trafficked into the United States annually, around 30,000 are thought to originate from South-East Asia.

The aim of this paper is to critically analyze the judgments of the Indian Supreme Court, relating to the menace of trafficking of women and children, vis-à-vis the attitude of the society in responding to this challenge. The major limitation faced by the writer was the nature of the decisions themselves which do not provide extensive reasoning relating to the area chosen for study, and also lack of access to writings by Indian authors in this research area; although the literature on trafficking of women is measure, so this paper's focus will be on certain pertinent issue. The questions are: What precisely do we mean by the term "trafficking" in the present context? To what extent trafficking of women and children as we understand it today is destroying all settled norms of morality and decency? Whether the existing legal framework has been able to curb and control trafficking of women and children in this country?

Whether our legislators have paid and adequate attention for developing the law in this regard with the changing lifestyle of our society? How has the judiciary played its role in interpreting the law dealing with immoral traffic? These are some of the vital questions which are proposed to be answered in this paper.

The other view that is emerging is that some of the prostitutes in the profession are participating on a voluntary basis. It appears that the day to day changing life style as well as the higher cost of living vis-à-vis social and economic vulnerable into this socially unacceptable and legally banned profession. Though it is very difficult to measure the extent of the damage which looks although like a cancer is affecting on the moral and decency of the society, nevertheless, despite being an unapproved form of our living fabric, the menace still continues unabated. It cannot be denied that it has a global dimension in the present day setup of fastly changing social values.

Trafficking of Women and Children in Decision of Indian of Judiciary

Although there is limited precedent in this field, an analysis of the following cases indicates that the judiciary consistently offers observations that aim not only to rectify issues but also to address their preventative aspects whenever the opportunity arises. For instance, in the case of "Shama Bai vs. State of Uttar Pradesh, the central issue before the lower court concerned whether the Suppression of Immoral Traffic in Women and Girls Act could be deemed unconstitutional if it infringed upon Article 19(1)(g) of the Constitution of India" (Smt Shama Bai v State of Uttar Pradesh, AIR 1959).

"The petitioner sought to classify the profession of prostitution under the scope of the aforementioned provision, arguing that a prostitute's work constitutes a profession, occupation, or trade as per Article 19(1)(g), and therefore, the restrictions imposed by the Suppression of Immoral Traffic in Women and Girls Act, 1956, are not reasonable" (Suppression of Immoral Traffic in Women and Girls Act, 1956). However, the court noted that prostitution tarnishes human dignity and is a blight on human civilization. While its complete eradication is the ultimate goal of all civilized nations, the court acknowledged that until that goal is achieved, it must be tolerated as a regrettable necessity. Nonetheless, the court stressed the importance of imposing reasonable restrictions to mitigate the adverse effects of prostitution and safeguard the interests of the general public. These observations by the Hon'ble Allahabad Court underscore the societal disapproval of prostitution, while also recognizing that prohibition under the law is not extended to it. In another significant judgment, "The applicant was convicted under Section 3(1) and Section 4(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, which will be hereinafter referred to as the Act" (Suppression of Immoral Traffic in Women and Girls Act, 1956). "Soni Bachu Lakhman Vs. State of Gujarat the applicant was convicted under Section 3(1) and Section 4(1) of the SITA" (Soni Bachu Lakhman Vs. State of Gujarat, AIR 1960). Here Judgment of the lower court was confirmed by the Sessions Judge in appeal. In a revision application before the court the prosecution case was that a police officer sent a bogus punter the house of the applicant with a five rupee currency note. The applicant asked the punter to select a girl for the purpose of prostitution. The punter selected the applicant's wife, and both were permitted to enter a room. Subsequently, the police and witnesses conducted a raid, discovering the punter with the applicant's wife in a compromising position. The currency notes were found in the applicant's pocket. He was prosecuted and convicted, with the conviction upheld by the Session judge on appeal. In the revision petition, the primary argument was that there was no evidence indicating the house was used as a brothel. However, the evidence presented showed that the bogus punter had approached the applicant directly for the services of women for prostitution, and it was the applicant who offered two girls to the punter, one of whom was his wife. Based on this definitive evidence, the court concluded that the applicant was managing the brothel. "It pointed out that the conviction under Section 3(1) would be quite proper provide there has been a charge under Section 3(1) would be quite proper provide there has been a charge under Section 3(2) of the Act and accordingly altered the punishment" (Suppression of Immoral Traffic in Women and Girls Act, 1956). This shows that the court took a serious view of offences relating to immoral trafficking.

In the same vein in "Kamalabai Jethamal Vs. State of Maharashtra matters came before the Supreme Court in the form of appeal against judgment of Bombay High Court which had set aside the order of acquittal of the appellant and sentenced her to undergo one year rigorous imprisonment and evicted her from the premises which she was occupying as tenant" (Kamalabai Jethamal Vs. State of Maharashtra, AIR 1962 SC 1189). The primary accusation against the appellant was that she provided girls for prostitution to a specified individual and operated/managed a brothel at a specific location. It was alleged that she lived off the proceeds of prostitution and recruited women for this purpose. The police set a trap by sending two designated individuals to carry out a prescribed task. Subsequently, these

individuals were utilized as witnesses, and all the evidence presented to the High Court, including the recovery of the provided money, indicated that the appellant fell under Section 3 of the SITA. As a result, the appeal was rejected.

Again, in "Krishnamurthy Alias Tailor Krishnan Vs. Public prosecutor, Madras, the accused was convicted under section 4(1) of the SITA by the trial Court though he was charged with an offence under section 3(1). The accused appealed to the High Court against his conviction. Similarly state also appealed to the High Court against his acquittal under section 3 (1) of the Act" (Krishnamurthy Alias Tailor Krishnan Vs. Public prosecutor, 1967). The High Court rejected his appeal but allowed the state government's appeal, changing the conviction to one under Section 3(1) of the Act. Dissatisfied with this decision, the accused then approached the Supreme Court seeking special leave to appeal. According to the facts presented, the appellant's residence was being used as a brothel, accommodating three girls who appointed a middleman to collect the agreed-upon fees. A man visited the appellant's house, where he was shown three girls. During a police raid, the decoy was found in a compromising position in one of the rooms. The appellant argued that this incident alone did not constitute the house being "kept as a brothel." The court rejected the argument, stating that the circumstances surrounding the location and the individual responsible for it provided clear evidence that the place was being operated as a brothel and that the person in charge was maintaining it as such. In dismissing the appeal, the court also underscored that there was no requirement to prove repeated visits by individuals to the place for prostitution purposes. One occurrence, when considered alongside its surrounding context, is ample evidence to confirm both the utilization of the location as a brothel and the alleged involvement of the individual in its operation within the bounds of the law. In "Bai Radha Vs. State of Gujrat, the sole point which arose for decision in this appeal by special leave was whether the trial became illegal by reason of the search not having been conducted strictly in accordance with the provision of Section 15 of SITA 1956" Bai Radha Vs. State of Gujrat, AIR 1970). "The Hon'ble Supreme Court, in dismissing the appeal, observed that while a search conducted under the Act must comply with the provisions of Section 15, it cannot be concluded that a failure to strictly adhere to these provisions renders the trial illegal" (Suppression of Immoral Traffic in Women and Girls Act, 1956). This shows that the mandate of Section 15 is directory in nature. In the first quarter century following independence, court decisions primarily emphasized the punishment of traffickers rather than focusing extensively on the rescue and rehabilitation of victims. In subsequent years, there has been a noticeable change in the judicial approach towards addressing the escalating issue. Courts have increasingly prioritized the rehabilitation of individuals affected by prostitution, including those residing in protective homes.

In "Upendra Baxi Vs. State of U.P. A letter, treated as a writ petition, brought to the attention of the Apex Court highlighted the dire conditions faced by girls and women residing in the Government Protective Home in Agra" (Upendra Baxi Vs. State of U.P. AIR 1987). These individuals were being deprived of their fundamental right to live with basic human dignity within the protective facility. In response, the court issued several directives, including the establishment of a Board of Visitors comprising at least three social activists engaged in the welfare of women, particularly in combating the trafficking of women. Additionally, measures were ordered for continuous police protection for the inmates throughout the day and night. The court also directed the district judge of Agra to appoint socially committed advocates to visit and inspect the Protective Home at least once every fortnight. It is imperative that individuals residing in the Protective Home receive comprehensive rehabilitation programs. This ensures that upon leaving the facility, they possess the skills to support themselves and avoid turning to prostitution due to financial hardships. Vocational training and rehabilitative guidance are essential components of this process.

In the second case of "Gaurav Jain Vs. Union of India, the plight of prostitutes and fallen women in the flesh-trade and their progeny was highlighted. In this instance, the Supreme Court of India prioritized rehabilitation over crime prevention" (Gaurav Jain Vs. Union of India, AIR 1997). The court underscored the need to reassess relevant laws, ensuring the effective execution of schemes aimed at offering self-employment opportunities, training in various skills such as weaving, knitting, and painting, and implementing other meaningful programs to provide women involved in prostitution with sustainable income sources. These efforts would include vocational education and employment schemes within government, semi-governmental, or private sectors. Furthermore, the Apex Court issued an order mandating the formation of a committee to conduct a comprehensive study on issues related to prostitution, child prostitution, and the children of women engaged in such activities, with the aim of devising appropriate rescue and rehabilitation schemes. Additionally, the Court directed the establishment of juvenile homes staffed by qualified social workers or homes operated by NGOs, with

financial support from the Indian government or respective state governments. Shocked by the distressing conditions faced by female children and the exploitative trade they endured, the Apex Court issued a landmark judicial directive aimed at establishing procedures to curb the illegal sale of children disguised as adoption by child welfare agencies.

“Laxmikant Pandey Vs. Union of India, in this landmark case, the court provided several guidelines concerning the adoption of Indian children by foreign parents” Laxmikant Pandey Vs. Union of India, AIR 1984). The adoption process must be conducted exclusively through a recognized social or child welfare agency, and any application for appointing a foreigner as the child's guardian must also be submitted to the court through such an agency. This measure minimizes the likelihood of trafficking by agencies or individuals bringing children from other states for adoption, reducing such risks to nearly zero.

Conclusion

Human trafficking, especially of women and children, remains a grave violation of human rights and a modern-day form of slavery that persists globally, including in India. Despite efforts by the judiciary to combat this issue, challenges persist due to socio-economic factors, societal norms, and limitations within the legal framework. The analysis of key Indian court judgments, such as those in the cases of Shama Bai vs. State of Uttar Pradesh and Upendra Baxi vs. State of U.P., reveals a shifting focus from solely punishing traffickers to prioritizing the rehabilitation of victims. However, gaps in legislation and enforcement continue to hinder progress. To effectively address trafficking, a multifaceted approach is essential, combining stringent law enforcement with comprehensive victim support and societal change. Legislative reforms are needed to strengthen existing laws and improve implementation mechanisms. Moreover, proactive judicial action, as demonstrated in recent cases, is crucial in interpreting and enforcing laws to combat trafficking effectively. Ultimately, safeguarding the rights and dignity of vulnerable individuals requires concerted efforts from all stakeholders, including government agencies, law enforcement, civil society, and the international community. Only through collaborative action can we hope to eradicate the scourge of human trafficking and ensure a safer, more just society for all.

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