

## SOME PROACTIVE LANDMARK JUDGMENTS RELATED TO COMBATTING HUMAN TRAFFICKING

### 1. Forced Labour Defined – Supreme Court

*People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235*

While considering a PIL for the emancipation of Bonded Labour the Supreme Court defined the meaning of Forced Labour vis a vis Article 23 of the Constitution of India. With increase in Labour trafficking across the country the judgement is very relevant in order. The Supreme Court stated *“Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is “forced labour” that is labour or service which a person is forced to provide and “force” which would make such labour or service “forced labour” may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force” and if labour or service is compelled as a result of such “force”, it would be “forced labour”. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly “forced labour”. There is no reason why the word “forced” should be read in a narrow and restricted manner so as to be confined only*

*to physical or legal “force” particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution-makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word “force” must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is “forced labour” because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be “forced labour” and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23. ”*

## **2. Guidelines for Inter Country adoptions laid down to check trafficking through adoption rackets.**

### **In Laxmi Kant Pandey vs Union of India (1984) 2 SCC 244**

The Supreme Court while supporting inter-country adoption stated it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in a worse situation than that in his own country. The court has laid down procedures to check and monitor inter country adoptions so that the children don't end up trafficked.

## **3. Rehabilitation of Bonded Labour ordered and Vigilance Committee set up in prone areas**

### **Bandhua Mukti Morcha Vs. Union of India and others AIR 1984 Supreme Court 802**

Whenever it is shown that a labourer is made to provide forced labour the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration and he is, therefore, a bonded labourer entitled to the benefits under the law. The State government, the Vigilance Committees and the District Magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of law. The State government should adopt a non-formal and unorthodox approach in implementation of the law which is an important instrument for ensuring human dignity. The Central and State governments will take all necessary steps for the purpose of ensuring that minimum wages are paid directly to the workmen employed in the stone quarries and stone crushers and not through middlemen.

### **Neerja Chaudhury Vs. State of Madhya Pradesh AIR 1984 Supreme Court 1099**

In this case the Supreme Court gave directions on the rehabilitation of Bonded Labours. It stated that rehabilitation must follow in the quick footsteps of identification and release, if not, released bonded labourers would be driven by poverty, helplessness and despair into serfdom once again. Social action groups operating at the grass root level should be fully involved with

the task of identification and release of bonded labourers. The district and sub-divisional level Vigilance Committees should be reorganized and activated. Their meetings should be held at more frequent intervals than now. Officers who are posted at different levels to deal with the problem of bonded labour system should be properly trained and sensitized so that they may develop a sense of involvement with the misery and suffering of the poor. Officers who are socially committed, naturally motivated, inspired by idealism, unpolluted by all kinds of pulls and pressures and are prepared to brave opposition should be encouraged and their efforts commended by way of suitable public recognition. An intensive survey of the areas which are traditionally prone to debt bondage should be undertaken by the Vigilance Committees with the assistance of social action groups operating in such areas. The pace and progress of schemes under implementation must be evaluated. Such evaluation should be target group oriented.

#### **4. Release Certificates to be provided to Bonded Labour who are Liberated**

**Santhal Pargana Antyodaya Ashram Versus State of Bihar and Others  
1987 (Supplementary) Supreme Court cases 141.**

The Collector should issue a release certificate to each of the persons so released. Each of the released bonded labourers shall be paid a sum of Rs.3000-00 by way of interim relief. The released bonded labourers must be rehabilitated by the State government on a permanent basis. Implementation of the rehabilitation programme should not wait on account of the pendency of the present proceeding in the apex Court. The State government will submit within 2 weeks from the date of receipt of the order a report setting out the permanent rehabilitation programme formulated by them for scrutiny and approval by the Court.

#### **5. NHRC made the Nodal Agency for Monitoring the Rehabilitation of Bonded Labours in the Country**

***Public Union for Civil Liberties v. State of Tamil Nadu & Others*  
(Writ Petition Civil No. 3922 of 1985)**

The Apex Court directed that the National Human Rights Commission (NHRC) should be involved in monitoring the pace and progress of implementation of the law, national policy and programme of action as also directions of the apex Court issued from time to time. The NHRC is monitoring the bonded labour situation in the country. In order to ensure compliance of the above directions, the Ministry of Labour constituted a Task Force, comprising officers of the Central Government and the Government of Haryana who are responsible for enforcement of various labour laws. The Task Force is required to undertake periodic visits and inspections of the stone quarries and crushers to ascertain facts about working and living condition of the workers. The task force is carrying out its assignment by meeting regularly and submitting reports to the Central as well as the State Government indicating therein status

of compliance on the part of the concerned authorities with the statutory provisions and the directions of the Supreme Court.

## **6. Formation of Advisory Committee ordered for all States and Union Government to Combat Trafficking.**

### ***Vishal Jeet v. Union of India, (1990) 3 SCC 318***

The Supreme Court while putting on record the growing exploitation of young women and children for prostitution and trafficking reported that in spite of the stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. The Supreme Court ordered for 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. It stated that 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. It was of the view that 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. Apart from legal action, both the Central and the State Governments would have an obligation to safeguard the interest and welfare of the children and girls of this country and had to evaluate various measures and implement them in the right direction. The Court after bestowing deep and anxious consideration on this matter laid down guidelines for formation of Advisory Committee in all States and Central Government to oversee and prepare programme for combating trafficking.

It stated that “*all the State Governments and the Governments of Union territories 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 complaint of remissness or culpable indifference. The State Governments and the Governments of Union territories 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 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 members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions for the measures to be taken in eradicating the child prostitution, and the social welfare programmes to be implemented for the care,*

*protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution. All the State Governments and the Governments of Union territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors. The Union Government should set up a committee of its own in the line the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. etc. of the young fallen victims namely the 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”*

*“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. 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. ”*

## **7. CEDAW treated at par with Fundamental Rights**

### **Supreme Court provides for Rehabilitation of Bonded Labour**

#### **M C MEHTA VS STATE OF TAMIL NADU 1996 6 (SCC) 756**

In this Public Interest Litigation the Supreme Court laid down various measures which needs to be taken in order provide support to the child labour and his family. The Court said from each offending persons employing child labour their premises needs to be sealed and they be asked to provide fine of Rs 20,000 which will be used for the Rehabilitation of the Child victim. The Court also asked for a national level survey on Child labour. The Supreme Court stated that “ *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 employed in violation of the provisions of the Act, the employer concerned 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 districtwise or areawise. The fund so generated shall form corpus whose income shall be used only for the child concerned. 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.”*

***Madhu Kishwar v. State of Bihar (1996) 5 SCC 125]***

In this case the Supreme Court considered the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and held the same to be an integral scheme of the Fundamental Rights and the Directive Principles. Article 2(e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the Constitution, International Conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2(f) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act. Section 12 of the Protection of Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedoms.

**8. Coordination Committee at the Central Government Level formed to Frame the National Plan of Action.**

***Gaurav Jain v. Union of India, (1997) 8 SCC***

While clearly stating the violation of Right to Life of trafficked victims the Supreme Court ordered the Union Government to form a Committee to frame the National Plan of Action and to implement it in mission mode.

The Supreme Court ordered to constitute a Committee to make an in-depth study into these problems and evolve such suitable schemes for Rehabilitation of trafficked women and children. A permanent Committee of Secretaries was formed to review the progress of the implementation on annual basis, and to take such other steps as may be expedient in the effective implementation of the schemes. The court taking a proactive view believed and hoped that the directions would relieve the human problem by rehabilitation of the unfortunate fallen

women caught in the trap of prostitution; their children would be brought into the mainstream of the social order; these directions would enable them to avail of the equality of opportunity and of status, with dignity of person which are the arch of the Constitution.

**9. Court Lays down process for care and Protection of Trafficked Children, Rules that Advocates cannot appear before the Child Welfare Committee to take custody of trafficked child.**

*Prerna v. State of Maharashtra* : 2003 (2) Mah.L. J. 105

The Division Bench of the Bombay High Court while examining the court process for child victims of trafficking gave following guidelines to ensure that the child in need of care and protection must be dealt with bearing in mind the possibility of their reformation and rehabilitation.

*(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."*

#### **10. Decisions of Child Welfare Committee are final in terms of Care and Protection of Children.**

#### **Munni vs State of Maharashtra – Criminal Writ Petition No. 227/2011(Bombay High Court)**

The menace of sexual abuse by immoral trafficking of children to force them somehow to enter in the business of prostitution is age-old phenomenon and needs to be tackled by Central as well as State Government with utmost care and precaution. Poverty, illiteracy or helplessness of parents may make the minor girl vulnerable to sexual

abuse/exploitation. Protecting children against any perceived or real danger/risk to their life, their person-hood and childhood is necessary. It is about reducing their vulnerability to any kind of harm or harmful situations. It is also about protecting children against social, psychological and emotional insecurity and distress. It must ensure that no child falls out of the social security and safety net and those who do, receive necessary care and protection to be brought back into the safety net by child-friendly measures.

Child Welfare Committee, constituted under the Act, can do commendable service to fight against child abuse and to protect children from child abuse of various forms. The decision as to protective custody of the child in need of care and protection with a view to rehabilitate the rescued minor child can be left best to be considered by the competent quasi-judicial authority like Child Welfare Committee created under the said Act as it can pass appropriate orders to protect the dignity of the child as well as it's best interest. Welfare of the child is paramount factor. Section 29 of the Act provides constituting five members District (Administrative unit in India) level quasi-judicial bodies" Child Welfare Committee". in which one of the members is designated as Chairperson and at least one of the members shall be woman. The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the 'Children in Need of Care and Protection' as well as to provide for their basic needs and protection of human rights. Child welfare Committees have the final say to dispose of the cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs, protection and restoration to their family.

#### **11. Sealing of Brothel will ensure in curbing organised crime.**

#### ***Geeta Kancha Tamang vs State of Maharashtra Criminal Appeal No. 858 of 2009***

While denying the release of a women trafficker, on mercy grounds, who had served 14 months imprisonment the court stated that the first aspect that the Court has to consider for such a heinous crime is that trafficking in persons is prohibited under Article 23 of the Constitution

of India. It is, therefore, the Fundamental Right of every Indian citizen not to be trafficked. Such act constitutes the grossest violence of the Human Rights of the victim child. *“The offence is prone to repetition since the Applicant is shown to be a brothel owner and accordingly carries on the business of running a brothel, in which, inter alia, a child was detained. Despite the specific provision under Section 18 of the ITP Act, the learned APP states, upon instructions, that the prosecution has not taken any steps for closure of the brothel or for eviction of the offenders from the brothel premises. In fact, the Applicant’s Advocate also stated to Court that the brothel has not been sealed, as required under Section 18 of the ITP Act. The same offence, albeit for violations upon other persons, including children, is liable to be committed if the Applicant is released, since she is the owner of the brothel which has not even been closed/sealed.”*

## ***12. Courts should Grant Stricter Punishment for Crimes of Sexual Offences***

*State of A.P. v. Bodem Sundara Rao [(1995) 6 SCC 230: 1995 SCC (Cri) 1097]*

The Supreme Court while dealing with a case of reduction of sentence from 10 years’ RI to 4 years’ RI by the High Court in the case of rape of a girl aged between 13 and 14 years, it was observed: *“In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society’s cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court’s verdict in the measure of punishment. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 year old girl shakes our judicial conscience. The offence was inhumane.”* The sentence was accordingly enhanced to 7 years’ RI in the said case.

**13. Sexual Offenders should not be shown leniency. Examination of the victim should be in camera and anonymity of the victim should be maintained. No questions should be asked on a victims character.**

*State of Punjab v. Gurmit Singh [(1996) 2 SCC 384: 1996 SCC (Cri) 316]*

Dealing with the offence of rape and its traumatic effect on a rape victim, Supreme Court stated that crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. *"We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity."*

*"The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime.*

*"We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a Judge. Suchlike stigmas have the potential of not only discouraging an even otherwise reluctant victim of sexual assault to bring forth complaint for trial of criminals, thereby making the society suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole — where the victim of crime is discouraged — the criminal encouraged and in turn crime gets rewarded! Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstance alone. Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone*

*because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial in the court. ”*

*“The courts are obliged to act in furtherance of the intention expressed by the legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327(2) and (3) CrPC and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood. ”*

*“Wherever possible, it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the courts to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. ”*

#### **14. Crimes of violence upon women need to be severely dealt with**

***State of Karnataka v. Krishnappa, (2000) 4 SCC 75***

While overruling the reduction of sentence by the High Court in case of sexual offence the Supreme Court stated *“The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed*

*to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.”*

### **15. Guidelines for search of Missing Children laid down by Supreme Court**

#### **HORI LAL Vs Commissioner of Police , Delhi & Ors Respondents (14.11.2002)**

*The Court in its order dated 14/11/2002 laid out the following guidelines for effective search of the Kidnapped minor girls, which are to be followed by the Investigation Officer in all the States:*

1. Publish photographs of the missing persons in the Newspaper, telecast them on Television promptly, and in case not later than one week of the Receipt of the complaint. Photographs of a missing person shall be given wide publicity at all the prominent outlets of the city /town / village concerned that is at the Railway Stations , Inter-state bus Stands , airport , regional passport office and through law enforcement personnel at Border checkpoints. This should be done promptly and, in any case, not later than one week of the receipt of the complaint. But in case of a minor/major girl such photographs shall not be published without the written consent of the parents /guardians.
2. Make inquiries in the neighbourhood, the place of work/study of the missing girl from friends colleagues , acquaintance , relatives etc. immediately . Equally all the clues from the papers and belongings of the missing person should be promptly investigated .
3. To contact the Principal , Class teacher and Students at the missing persons most recent school /educational institutions. If the missing girl or woman is

employed somewhere, then to contact the most recent employer and her colleagues at the place of employment.

4. Conduct an inquiry into the whereabouts from the extended family of relatives, neighbours, school teachers including school friends of the missing girl or woman.
5. Make necessary inquiries whether there have been past incidents or reports of violence in the family.

**There after the investigation officer/agency shall:**

1. Diligently follow up to ensure that the records requested from the parents are obtained and examine them for clues.
2. Hospitals and Mortuaries to be searched immediately after receiving the complaint
3. The reward for furnishing clues about missing person should be announced within a month of her disappearance.
4. Equally Hue and Cry notices shall be given within a month.
5. The Investigation should be made through women police officers as far as possible.
6. The concerned police commissioner or the DIG/IG of the State Police would find out the feasibility of establishing a multitask force for locating girl children women.

Further, in the Metropolitan cities such as Delhi , Mumbai, Kolkata and Chennai the Investigating Officer should immediately verify the red light areas and try to find out the minor girls. If any minor girl (may or may not be recently brought there ) is found her permission be taken and she may be taken to the children's home (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000, and the I.O. to take appropriate steps that all medical /other facilities are provided to her.

## **16. Trafficking is an organised Crime and stringent measures are required to combat it.**

### **Kamaljit vs State of NCT of Delhi 2006**

The court in its order stated that Govt. of India's Action Plan of 1998 to combat trafficking and commercial sexual exploitation of women and children had not delivered the desired results and more stringent measures were the crying need of the day. The court stated that penal statutes of other countries dealt with 'organised crime' in supplying goods and services, including gambling, prostitution, loan sharking, narcotics, racketing and other unlawful activities. In December, 2002 India became a signatory to "UN Convention Against Trans-National Organised Crime", which includes the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. By becoming the participant in the Convention, a global instrument which advocates international and national action against **organised crime**, the Government of India has given a clear mandate to confront evils of trafficking of women and children. The court specified that Interpol defined organised crime as "any enterprise or group of enterprises engaged in continuing illegal activity which has its primary activities that bring together a client-public relationship which demands a range of good and services which are illegal." The court while hearing this appeal stated that investigation shows that the accused had a wide network of persons, financial transactions and telephone numbers. Also he had several cases of ITPA already pending on him. The court took cognizance of the same and ordered that MCOCA in this case was valid.

## **17. High Court orders the creation of Zipnet in order to monitor missing children and orders for registration of FIR in all cases of missing children.**

COURT ON ITS OWN MOTION W.P.(CRL) 249/2009

On 02nd March, 2009, Delhi High Court had suo moto taken cognizance of newspaper reports pertaining to missing children. The Court while deciding this case ordered that *"since majority of the missing children belong to lower strata of the society and their family members are not able to follow up these cases, we deem it appropriate to issue the following directions with regard to missing children upto the age of 16 years:*

*Delhi Police will promptly, without any delay register all complaints of missing children as FIRs. Delhi Police will ensure strict compliance with its revised Standing Order No. 252 dated 18th March, 2009. The information with regard to missing children shall be*

*immediately uploaded on Delhi Polices web based Zipnet programme. The Home Ministry is directed to issue appropriate directions to neighbouring States of Delhi to adopt web based Zipnet programme with regard to missing children. It shall be mandatory for Delhi Police to forward both by e-mail and by post a copy of each FIR registered with regard to missing children to Delhi Legal Services Authority (hereinafter referred to as DLSA) along with addresses and contact phone numbers of parents of the missing children. DLSA will in turn constitute a team comprising a lawyer and a social worker to follow up the case with the Delhi Police. The said team will not only provide all possible legal aid to the parents and families of the missing children but shall also act as an interface between the parents of the missing children and the Delhi Police. DLSA will maintain a record of all cases of missing children. Both DLSA and the Delhi Police shall ensure that the Supreme Court interim directions/guidelines pertaining to missing /kidnapped children passed in Writ Petition (Crl.) No. 610/1996 (Horilal vs. Commissioner of Police, Delhi) and in the case of Lalita Kumari vs. State of U.P. and Ors. (Writ Petition (Crl.) No. 68/2008) are strictly complied with.*

*Whenever a missing child is traced or he/she comes back on his/her own, the Investigating Officer will examine all relevant angles such as involvement of organized gangs, application of provisions of Bonded Labour Act and such other relevant Acts. Whenever, the involvement of any organized gang is found, it shall be the responsibility of the Investigating Officer to refer the matter to the Crime Branch of Delhi Police or the Special Cell constituted in the CBI. An Action Taken Report with regard to implementation of the aforesaid guidelines shall be filed by the Delhi Police as well as by the DLSA prior to the next date of hearing.”*

## **18. Action Plan to Combat Child Labour in Delhi.**

### **Court on its own Motion and with Other Writ Petitions WP 9767/2009**

In this case the Delhi High Court referred the matter to the National Commission for Protection of Child Rights to evolve a Plan of Action to eliminate the menace of child labour and to effectuate the mandate of Articles 23, 24, 39, 45 and 47 of the Constitution. Supreme Court

had given a large number of mandatory directions in “M.C. Mehta v. State of Tamil Nadu reported in AIR 1997 SC 699”. One of the important directions was to direct an employer to pay a compensation of Rs.20,000/- for having employed a child below the age of 14 years in hazardous work in contravention of Child Labour (Prohibition & Regulation) Act, 1986 .The appropriate Government was also directed to contribute a grant/deposit of Rs.5,000/- for each such child employed in a hazardous job. The said sum of Rs.25,000/- was to be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund and the income from such corpus was to be used for rehabilitation of the rescued child. As the constitutional mandate and statutory provisions with regard to children were not being vigorously implemented and there was lack of coordination between different agencies of the Government of NCT of Delhi and other authorities, Delhi High Court, vide a detailed order dated 24th September, 2008 directed the National Commission for Protection of Child Rights (hereinafter referred to as ‘National Commission’), to formulate a detailed Action Plan for strict enforcement and implementation of CLPRA, 1986 and other related legislations. The National Commission was directed to suggest measures regarding education, health and financial support to the rescued children. The National Commission was also directed to suggest measures for timely recovery and proper utilization of funds collected under the Supreme Courts direction in the aforesaid M.C. Mehta’s case. The National Commission after holding consultation with various stakeholders and after conducting research and survey submitted to this Court a Delhi Action Plan for Total Abolition of Child Labour. According to the National Commission, the child labour profile in Delhi is of two types namely, out-of-school children living with their parents in Delhi and migrant children from other states who have left their family behind. The Action Plan for Total Abolition of Child Labour is based on two strategies. The first strategy is an ‘Area Based Approach’ for elimination of child labour, wherein all children in the age group of 6 to 14 years would be covered whether they are in school or out-of-school. The National Commission has proposed that this approach be initiated as a Pilot Project in North-West District of Delhi. The second strategy is an approach to be adopted in the context of migrant child labour. It involves a process of identification, rescue, repatriation and rehabilitation of child labour. This strategy is proposed to be implemented as a Pilot Project in South Delhi District. It is pertinent to mention that both the strategies in essence implement CLPRA, 1986, Delhi Shops and Establishment Act, 1954, Juvenile Justice (Care and Protection of Children ) Act, 2000 and the Bonded Labour System (Abolition ) Act, 1976. The Strategy for Unaccompanied Migrant Child Labourers in Delhi is based on “Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour” issued by Ministry of Labour and Employment, Government of India, 2008. According to the Action Plan, trafficked and migrant child labourers are primarily engaged in prohibited occupations such as zari, bulb manufacturing, auto workshop units and domestic household etc. This strategy contemplates constitution of a Steering Committee on Child Labour at the State level and District Level Task Force on Child

Labour at District Level. The Delhi Action Plan provides for a detailed procedure to be adopted at the pre-rescue and actual rescue stage. The pre-rescue plan deals with as to how information is to be collected, verified and as to the composition of the rescue team as well as what training is to be imparted in advance to the members of the rescue team. The pre-rescue plan provides for prior preparation of residential centres through RBC, JJ Homes, NGO Shelter for accommodating the child labour proposed to be rescued. The Delhi Action Plan provides a detailed procedure for interim care and protection of the rescued children. It provides for immediate medical examination of the children and as to how investigation is to be conducted and charge sheet is to be prepared. The strategy for Unaccompanied Migrant Children also provides for assessment and verification of Childs background and intra state as well as inter state repatriation. The Action Plan provides for detailed procedure for rehabilitation and social integration of the child labour as well as training and capacity building of duty bearers. In a bid to ensure proper coordination amongst different agencies of the Government of NC Subsequent to the filing of the aforesaid Action Plan, the Labour Department of Government of NCT of Delhi has raised some issues. According to the Labour Department, CLPRA, 1986 prohibits employment of children only in certain scheduled occupations and processes. Consequently, according to the Labour Department, child workers employed in non-hazardous jobs cannot be rescued. The Labour Department has further urged that in the Action Plan it has been stipulated that all children between the age of 14 to 18 years have to be liberated and handed over to the police, even though CLPRA, 1986, defines child as a person who has not completed 14 years of age. On a perusal of CLPRA, 1986, we are of the view that under the said Act, only child workers employed in scheduled occupation and processes can be liberated and children employed above the age of 14 years cannot be rescued. Delhi High Court stated that, the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply to children between the age of 14 and 18 years as well as to those children employed below the age of 14 years in nonscheduled occupation and processes. Consequently, the said children would be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as Bonded Labour System (Abolition ) Act, 1976, if applicable and not by CLPRA, 1986, as stipulated in the Delhi Action Plan prepared by the National Commission. Moreover, at the request of Labour Department, Delhi High Court directed that the responsibility of lodging a police complaint against an employer employing child labour would lie with the Delhi Police and not the Labour Department as directed in the Delhi Action Plan. Delhi High Court further clarified that the authority to take action under the Bonded Labour System Abolition Act, 1976, would be the Deputy Commissioner of District concerned and not the Labour Department. It was further clarified that the recovery of fine of Rs. 20,000/- as stipulated by the Supreme Court in M.C.Mehtas case will not have to await a conviction order of the offending employer. The said amount would be recovered as arrears of land revenue and the said amount would be utilized

for the educational needs of the rescued child even if the child has subsequently crossed the age of 14 years.

**19. National Commission for Protection of Child Rights ( NCPCR) made the Nodal Agency for Implementation of the Juvenile Justice (Care and Protection of Children) Act 2000.**

**Bachpan Bachao Andolan v. Union of India, (2010) 12 SCC 180**

*“In order to faithfully implement the directions of this Court, there is requirement of a nodal agency. We have considered this aspect carefully and we deem it appropriate to appoint the National Commission for Protection of Child Rights, constituted under the Commissions for Protection of Child Rights Act, 2005 as the nodal agency which will monitor the implementation of the directions passed by this Court from time to time. The nodal agency would be given all assistance and support by the Union of India in monitoring and complying with the directions of this Court. The nodal agency may also take assistance from other organisations, including the non-governmental organisations. The Supreme Court also ordered it has become imperative to direct all the States to implement the provisions of this Act forthwith and constitute Juvenile Justice Boards, Child Welfare Committees and special juvenile police units in every district.”*

**20. State Legal Services Authority made the Nodal Agency for training and implementation of Special Juvenile Police Unit.**

***Sampurna Behura v. Union of India, (2011) 9 SCC 801 at page 801***

The Court in this case passed several orders for constitution of Juvenile Justice Boards under Section 4 of the Act and Child Welfare Committees under Section 29 of the Act in different States and Union Territories and most of the States and Union Territories have taken steps to constitute the Juvenile Justice Boards and the Child Welfare Committees. As there were complaints that in many districts Child Welfare Committees were not operational or functional and even Juvenile Justice Boards had not been constituted in the manner provided in the Act. ,The court in its order requested the State Legal Services Authorities to coordinate with the respective Child Welfare Departments of the States to ensure that the Juvenile Justice Boards and Child Welfare Committees are established and are functional with the required facilities. On the official laxity of non implementation of the Special Juvenile Police Unit Supreme Court in its order stated that the court will monitor the implementation of the provisions of the Act relating to Special Juvenile Police Unit. (Section 63 of the Act). The Court ordered that the

Home Departments and the Directors General of Police of the States/Union Territories will ensure that at least one police officer with aptitude in every police station is given appropriate training and orientation and designated as Juvenile or Child Welfare Officer, who will handle the juveniles or children in coordination with the police as provided under sub-section (2) of Section 63 of the Act. The required training will be provided by the District Legal Services Authorities under the guidance of the State Legal Services Authorities and Secretary, National Legal Services Authority will issue appropriate guidelines to the State Legal Services Authorities for training and orientation of police officers, who are designated as the Juvenile or Child Welfare Officers. The training and orientation may be done in phases over a period of six months to one year in every State and Union Territory. The Home Departments and the Directors General of Police of the States/Union Territories will also ensure that Special Juvenile Police Unit comprising of all police officers designated as Juvenile or Child Welfare Officers be created in every district and city to coordinate and to upgrade the police treatment to juveniles and the children as provided in sub-section (3) of Section 63 of the Juvenile Justice (Care and Protection of Children) Act 2000 .

### **Bachpan Bachao Andolan Vs Union of India 2011 SCC (5) 1**

In a writ petition concerning the exploitation and trafficking of children in Circuses the Supreme Court the formation of special scheme for rehabilitation of Children rescued from circuses . The Court laid down the following actions which need to be taken by the State:

*In order to implement the fundamental right of the children under Article 21A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today. 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. 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 proper scheme of rehabilitation of rescued children from circuses. We direct the Secretary of Ministry*

*of Human Resources Development, Department of Women and Child Development to file a comprehensive affidavit of compliance within ten weeks.*

**21. Chief Secretary of each state asked to submit a circular for implementation of actions to combat Human Trafficking.**

***Bachpan Bachao Andolan Vs Union of India 2011 SCC (5) 1***

In this case the Solicitor General of India provided a detailed report on the issue of child trafficking in India. He 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 Collectorate/Executive Administration with a point in Legal Aid i.e. the Executive Chairman of the State Legal Services Authority 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. 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. The court while appreciating the research paper submitted by the Solicitor General stated that – *“It is, therefore, necessary that a coordinated effort must be made by the three agencies, namely, the Commission, the Ministry and the State Governments. Learned Solicitor General submitted that the recommendations be implemented by the concerned agencies. In the State/Union Territory, the responsibility must be vest either on the Chief Secretary or a Secretary Incharge 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. 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. "*

The Court further ruled that "*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 21A 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*".

## **22. High Court orders convergence in action, Recovery of Wages of Child Labour, registration of Placement Agencies by Delhi Police and Public display of information related to Placement Agencies**

### ***Bachpan Bachao Andolan 2011 177 DLT 198***

The Petitioner in this case referred to Police Circular issued by DCP, Headquarters, New Delhi. This Circular required the Delhi Police to:

1. Regulate the functioning of placement agencies.
2. To ensure proper screening of domestic workers being recruited by placement agencies by maintaining the register of all such agencies;
3. Ensure that the agencies enrol applicants on the basis of formal applications containing full details including the photographs and contact addresses of the applicants, the details of previous employers, etc.
4. Verification of domestic workers is to be done by the Police.

The Delhi Police has filed the response wherein it stated that the matter was examined in detail and the guidelines stated in the Circular cannot be implemented as Delhi Police is already too overburdened with the law and order, security, inquiries and investigations, etc. It was also mentioned that to keep a check on the maintenance of registers, etc. of the placement agencies would not be feasible in the current scenario of heightened security concern. It stated that the Circular is merely an executive instruction and non-compliance thereof cannot entail any penal consequence on the placement agencies. The court stated that once a circular is issued, it does not behave

Delhi Police now to wriggle out of that on the pretext that this was for internal instructions and thereby refusing to adhere to the same. The court directed that the administration at the highest level in Delhi Police shall reconsider the feasibility of implementation of the instructions contained in the said.

### **23. Supreme Court appoints a Panel to monitor and Suggest Rehabilitation scheme for Trafficked Sex Workers and Trafficked Victims.**

***Budhadev Karmaskar v. State of West Bengal, (2011) 11 SCC 538***

In this case the Supreme Court while dismissing a appeal by the accused in a case of murder of a Sex Worker the Supreme Court stated 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. The Court observed that 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. The Court directed 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. In this regards the Court issued notice to all States and the Union of India. The Supreme Court stated that *“from a perusal of the UJWALA Scheme it appears that the Central Government has a scheme only for rescued trafficked women but no scheme for those sex workers who voluntarily want to leave the sex trade. In our opinion, proper effective scheme should be prepared for such women also. In this connection, we would like to say that the Central Government Scheme has placed a condition that the rescued sex workers must stay in a corrective home in order to get technical training. In our opinion, no such condition should be imposed, as many sex workers are reluctant to stay in these corrective homes which they consider as virtual prison”*.

The Court also appointed a Panel of NGOs Activist and Lawyers to study, research and suggest a scheme in terms of :

- (1) Prevention of trafficking,
- (2) Rehabilitation of sex workers who wish to leave sex work, and
- (3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity.

**The Court in its order dated : 2-8-2011 [Budhadev Karmaskar (3) v. State of W.B., (2011) 10 SCC 277] observed:**

*“We are fully conscious of the fact that simply by our orders the sex workers in our country will not be rehabilitated immediately. It will take a long time, but we have to work patiently in this direction. What we have done in this case is to present the situation of sex workers in the country in the correct light, so as to educate the public. It is ultimately the people of the country, particularly the young people, who by their idealism and patriotism can solve the massive problems of sex workers. We, therefore, particularly appeal to the youth of the country to contact the members of the Panel and to offer their services in a manner which the Panel may require so that the sex workers can be uplifted from their present degraded condition. They may contact the Panel at the e-mail address: [panelonsexworkers@gmail.com](mailto:panelonsexworkers@gmail.com). We again reiterate our appeal to the public, and particularly to the youth of the country to contact members of the Panel at the e-mail address [panelonsexworkers@gmail.com](mailto:panelonsexworkers@gmail.com) and give their valuable suggestions and inputs. This would surely be of great help to the Panel. ”*

## **24. High Court of Haryana and Punjab Orders for Registration of FIR in cases of missing Persons**

### **Lawyers for Human rights International (Decide 24/05/2012)**

This Punjab and Haryana High Court direction came while disposing of a bunch of public interest litigations (PIL) filed by NGOs World Human Rights Protection Council and others. The NGOs had sought directions for formulating special cells at state/district level in which specially trained police officials should be posted for only dealing with missing persons' cases. The bench also directed authorities to comply with directions issued by the Supreme Court dated November 14, 2002, in case of “*Hori Lal vs Commissioner of Police, New Delhi.*” The apex court's judgment had issued comprehensive guidelines for the investigation officers in missing children cases like publishing photographs of children in print media and telecasting it through electronic media within a week of receipt of complaints and pasting the photos at

prominent places. Reward for giving clue in a missing girl's case should be announced within a month of girl's missing report. The police commissioner/IG/DIG concerned would find out the feasibility of establishing multi-task force for locating girl child or women, the apex court directed.

## Pinki vs State of Uttar Pradesh 2025 (Historical Context and Facts)

The case at hand centres around a deeply disturbing interstate child trafficking racket uncovered in Varanasi. The children belonging to vulnerable and impoverished backgrounds were kidnapped and sold across states for illegal adoption. The case was brought before the Supreme Court after the Allahabad High Court granted bail to multiple accused, many of whom absconded, severely hampering the investigation and trial. The following are the facts of Pinki vs State of Uttar Pradesh

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### Background and Registration of FIRs

The case arose from the exposure of a major interstate child trafficking racket operating in Varanasi, Uttar Pradesh. Multiple FIRs were registered across different police stations. These FIRs invoked serious charges under Section 363, Section 311 and Section 370(5) of the IPC.

### Nature of the Offence and Victims

The victims were children from extremely poor families, abducted while sleeping with their parents on streets and pavements. Two specific victims, a four-year-old boy named **Rohit** and a one-year-old girl named **Mohini** were among those trafficked. The abducted children were sold to childless couples across states like Rajasthan, Bihar and Jharkhand, for amounts ranging from Rs. 40,000 to Rs. 10 lakhs.

### Roles of the Accused and Structure of the Racket

The trafficking operation was highly organized. Some individuals were directly involved in kidnapping the children, others handled transportation across state borders and a few acted as agents brokering illegal adoptions. One accused, **Manish Jain**, was identified as a kingpin while others such as **Santosh Sao** and **Jagveer Baranwal** were active participants in the racket.

### Bail Orders and Challenge Before the Supreme Court

Despite the serious nature of the offences, the **Allahabad High Court granted bail** to 13 accused persons. The families of the victims challenged these bail orders through **Special Leave Petitions** filed before the Supreme Court. Post-release, several accused absconded which complicated the investigation and stalled trial proceedings.

## Status of Legal Proceedings

The chargesheets were submitted before the **Special Chief Judicial Magistrate, Additional Chief Judicial Magistrate Court No. 5** and the **Chief Judicial Magistrate in Varanasi**, the cases remained pending and had not yet been committed to the Sessions Court. This procedural delay further obstructed justice.

## Recovery of a Trafficked Child

In a key breakthrough, on **20th March, 2025**, one of the trafficked children was rescued from the custody of accused **Anil Prasad Baranwal** in **Kolkata, West Bengal**. This recovery was facilitated through the direct intervention of the **Supreme Court**.

## Legal Issues

The following issues were also addressed in *Pinki vs State of Uttar Pradesh 2025*:

- The main issue was whether bail should be granted to accused persons involved in serious offences like child trafficking?
- The Court examined whether High Courts and State authorities failed in their duty to ensure accountability in granting and overseeing bail and whether trials in child trafficking cases are being unduly delayed, undermining justice?
- The Court in *Pinki vs State of Uttar Pradesh* analysed whether the recommendations of the BIRD report should be mandatorily implemented by all States and Union Territories and whether non-compliance with Supreme Court directions warrants contempt proceedings?
- Lastly, the Court also examined whether the rights of trafficking victims are adequately protected during investigation and trial and whether a coordinated, national-level enforcement mechanism is necessary for effectively combating human trafficking?

## Legal Provisions

Article 21 of **Indian Constitution** and Section 370 and Section 370A of Indian Penal Code played an important role in *Pinki vs State of Uttar Pradesh 2025*. The following are analysis of these provisions:

- **Article 21 of Indian Constitution: Protection of life and personal liberty**

Article 21 under Part III of Indian Constitution states no person can be deprived of life or personal liberty except in accordance with procedure established by law.

- **Sections 370 and 370A of Indian Penal Code**
  - Section 370: Trafficking of persons (Now Section 143 of BNS 2023.)
  - Section 370A: Exploitation of a trafficked person (Now Section 144 of **BNS, 2023**)

# Pinki vs State of Uttar Pradesh 2025 Judgment and Impact

On 15th April, 2025, in a landmark move, the Supreme Court of India in *Pinki vs State of Uttar Pradesh* cancelled the bail of all accused in a major child trafficking case and issued several directions aimed at reforming the systemic handling of such cases across India. A 2-Judge Bench comprising Justice JB Pardiwala and Justice R. Mahadevan laid down urgent measures with specific emphasis on expedited trials and implementation of expert recommendations from the **Bharatiya Institute of Research and Development (BIRD)** report dated **12th April, 2023**.

## Supreme Court Key Judicial Directions

The Supreme Court issued following directions to ensure expedited justice in cases of child trafficking and strict enforcement of earlier guidelines. The directions aim to enhance judicial accountability and ensure timely trials. The guidelines are as follows -

- **On Status and Speedy Trial of Child Trafficking Cases:** All High Courts are directed to:
  - Collect detailed data on **pending child trafficking cases**.
  - **Issue administrative circulars** to all subordinate courts mandating **completion of trials within 6 months** including **day-to-day hearings**, if needed.
  - Submit **compliance reports** to the Supreme Court.
- **On Enforcement of Supreme Court 2013 Guidelines:** The Court in *Pinki vs State of Uttar Pradesh* reiterated that **cases of missing children** must be **registered and treated as trafficking or abduction** until proven otherwise.
- **On Accountability:** The Court also addressed that **non-compliance** with the directions by any authority will be viewed **strictly** with the potential for **contempt proceedings**.
- **Next Hearing:** The Matter *Pinki vs State of Uttar Pradesh* to be reviewed again by the Supreme Court in **October 2025**.

## Implementation of BIRD Report Recommendations

The Supreme Court in *Pinki vs State of Uttar Pradesh* directed **all State Governments** to implement the BIRD report 20-point action plan with important highlights including:

- **Law Enforcement & Investigation**
  - Missing children to be treated as **trafficking/abduction cases** initially.
  - Establish **independent AHTUs (Anti-Human Trafficking Units)** in every district.
  - Police must undergo **capacity-building** and **gender sensitisation training**.
  - Mandatory use of **material and forensic evidence, digital videography, and witness protection measures**.
  - Involvement of **RPF and GRP** at railway stations for preventive actions.
- **Victim-Centric Approach**
  - Victims to be treated with **dignity, privacy**, and provided with **interpreters**.
  - **Child-friendly courts** and **video conferencing** for victim testimonies.
  - Strong witness protection to be institutionalised.
- **Legal and Administrative Reforms**
  - Enforce relevant laws: **JJ Act, Child Labour Act, BLSA, IPTA, IPC**.

- Establish **CWCs (Child Welfare Committees)** in every district with proper infrastructure and multidisciplinary composition.
- First Information Report to be **mandatorily filed** in all child labour cases.
- **Social and Community Engagement**
  - Promote **community policing** and involve **NGOs** in rescue and rehabilitation.
  - Strict action against **brothel keepers, traffickers, corrupt officials**.
  - Rehabilitation of **sex workers** and victims into dignified livelihoods.
- **Infrastructure & Monitoring**
  - Formulate a **time-bound action plan** to strengthen prosecution and investigation.
  - Maintain a **district-level database of interpreters**.
  - Ensure **standard rescue protocols** are followed with multidisciplinary rescue teams.

In **Pinki vs State of Uttar Pradesh 2025** the Supreme Court on 15th April, 2025, addressed important issues in child trafficking cases including enforcement of guidelines, need for speedy trials and protection of victims rights. The directions of the Apex Court including the implementation of the BIRD report's recommendations, marked a major step toward ensuring more efficient and victim-centric handling of such cases with further review scheduled for October 2025.