

Role of Judiciary in Human Trafficking Crimes

Dr PM Nair

Former Nodal Officer NHRC

Formerly with UNODC

Former DG, NDRF

Former TATA Chair Professor, TISS

Mobile: 9987102315

Email: nairpm@hotmail.com

Expediting Human Trafficking Trials

- How Judicial Officers Can Deliver Timely and Effective Justice.
- Issue-based approach with legal tools, best practices, and case insights.

Important SC decisions

- Recognising HT as an organised crime.
- Swift disposal of cases.
- Humanistic approach.
- Protection & Rehabilitation to be assured.
- Importance of departmental conveyance.
- State Government's responsibility for prevention.
- SLSA for monitoring / advocacy.

1. The Reality: Delays Undermine Justice

- 80% of trafficking trials take more than 3 years (NCRB 2023).
- Victims drop out, witnesses turn hostile.
- Accused free on bail, repeating crime.
- Justice delayed = justice undone.
- SC emphasized swift disposal of trafficking cases (Laxmi vs. UoI, 2014 SCC 4 427)

2. Repeated Adjournments: Common Delay

- Routine adjournments for IO/witness absence or casual grounds.
- Misuse of Section 309 CrPC / 346 BNSS.
- 🔍 Solution:
 - Enforce Section 346 BNSS strictly.
 - Not more than 2 adjournments.
 - Record reasons for adjournment (State v. Mohd. Arif, Delhi HC).
 - Fix 'evidence window' post charge-framing.

3. Delay in Recording Victim Testimony

- Victims may go missing, retract or be influenced.
- 🔍 Solution:
- Record 164 CrPC /183 BNSS statement within 24–48 hrs.
- S 184 BNSS: Medical examination report to be sent by Medical Official to IO in 7 days.
- Use video conferencing in trial to reduce trauma / inconvenience (Delhi HC Guidelines, 2021).
- Engage DLSA: Support Person to escort victim.

4. Witness/Victim Turns Hostile

- Due to fear, threats, trauma, or long delays.
- 🔍 Solution:
- Apply Sections 151–152 CrPc/155, 156 CrPc for hostile witnesses.
- SC in Mahender Chawla vs. UoI (2018): Enforce witness protection.
- Closed courtrooms & early trial scheduling.
- Telangana (Hyderabad) model.

5. Court Environment : Passive?

- Courts sometimes operate mechanically: Pressure of work / unfavourable ambience, etc.
- 🔍 Supreme Court:
 - “Judges cannot be tape recorders.” — State of Punjab vs. Gurmit Singh (1996)
 - Judges use Section 165 IEA/168 BSA to clarify.
 - Ensure comfort and respect in courtroom.
 - Activate time and safety management.

Specialities of S 168 BSA / 165 EVA

- Confers vast and unrestricted power on Trial Court to ask questions from witnesses to elicit truth (Rajasthan vs. Ani @ Hanif 1997 6 SCC 162)
- Trial Court Judge has powers to “ask any question he pleases, in any form, at any time, of any witness, or of the parties, about the fact relevant or irrelevant”. (Dinesh Kumar vs. Haryana, AIR 2023 SC 2795.529)

Court not a Spectator / Tape Recorder

- “Duty of the presiding judge of a criminal court is not to watch the proceedings as a spectator or a recording machine, but to evince active interest in the trial process by putting questions, questioning to witnesses in order to ascertain the truth”. (Ibid)
- Zahira Habibullah Sheikh vs. Gujarat, 2004 3 SCC 158.
- What does it mean for the Presiding Officers?

Case study: Trafficking from
Tashkent to India:
How sensitive Judiciary made
tremendous impact

6. Poor Coordination: IOs, PPs & Courts

- Incomplete or weak charge sheets.
- IOs or PPs unprepared.
- Witness / victim mixed up with accused.
- 🔍 Solution:
- Conduct pre-trial IO–PP–Court meetings.
- Provide space for victim / witness.

Investigating further

- Judges can order further investigation or *denovo* investigation [173 (8) CrPC, 193(9) BNSS]
- Police can also do with prior permission of the court (if the case is under trial).
- “If the Trial Court fails to exercise their power and discretion vested in it, then the judgement of the Trial Court may be said to be vitiated” (Pulen Phukan vs. Assam, AIR 2023 SC 1639)

If charge sheet is incomplete / improper

- Judge can direct addition or alteration of charges (Sec 216 CrPC/239 BNSS).
- Even appellate court can alter / add charges based on evidence (police charge sheets is not the final word).
- Ensure trafficking elements are reflected clearly.
 - S – T – D (all SOC)
 - All offenders.
 - All type of evidences brought in.
 - Tracing assets for confiscation.

7. Bail Misused to Silence Victims

- Accused on bail often harass or coerce victims.
- Victims often give up (without reporting).
- 🔍 Solution:
- Victim's say mandatory before bail [Kalyan Ch Sarkar vs. Pappu Yadav, 2004 (2) RCR 284 (SC)].
- Impose 'no contact' and location restrictions.
- Victim legal representation at bail hearings.
- Child minder, if required.
- Child minder / translator – to be oriented.

Preventing secondary victimization

- Primary / secondary victimization:
 - Police inaction
 - Police insensitivity – Treatment / interview / care
 - Embarrassing questions
 - Uncomfortable environment
 - Lack of clarify on proceedings
 - Unsure future
 - Fear – real / imagined
- Role of judiciary.

8. Replicable Best Practices

- Telangana: Special court norms.
- Tamil Nadu: Time-bound trafficking courts.
- Maharashtra: Special circulars to prioritize trials.
- Mumbai: Executive court.
- Kolkata: Child-friendly courts + victim liaison.
- Rajasthan: Checklist-based judicial monitoring.

9. SC Rulings on other relevant aspects

- Missing child matters – SC Judge Horilal vs Commissioner of Police, Delhi dated 14/11/2002 – describes the duties of police.
- HT as an organised crime – Kamaljeet vs. State of Nct of Delhi, 2006 : Stringent measures are required to combat HT, an organised crime.

SC Rulings on topical aspects (Contd.)

- NCPCR made Nodal agency for implementation of JJ Act 2000 (BBA vs. UoI, 2010, 12 SCC 180)
- SLSA made Nodal agency for training and implementation of SJPU (Sampura Behrui vs. UoI, 2011, 9 SCC 801)
- SC appoints panel of lawyers / activists to monitor and suggest rehabilitation of trafficked “sex workers” (Budhadev Karmaskar vs. West Bengal, 2011, 11 SCC 538)

10. Checklist for Trial Judge

- ✓ No adjournments without written cause
- ✓ Victim testimony early
- ✓ Video conferencing
- ✓ IO–PP coordination
- ✓ Victim/witness protection
- ✓ Bail orders with conditions
- ✓ Ensure compensation / relief even while under trial.

Sentencing and fine

- Concurrent sentences should not be passed casually in serious crimes (Hari Om vs. Maharashtra, 1994 2 BLR 219).
- No soft pedalling.

11. Justice Must Be Swift and Sensitive

- “Delay defeats the victim and emboldens the trafficker.”
- Judicial courage, compassion and clarity must drive these cases.
- Timely and sensitive judicial process rebuilds victim trust.
- Judicial leadership is key to preventing / combating human trafficking.

Add on points

- See ppt NIA slide 81 [below](#)

Thanks for your kind attention

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Mobile: 9987102315
Email: nairpm@hotmail.com