

CASE ANALYSIS – GAURAV JAIN VS UNION OF INDIA (1997) 8 SCC 114 : 1998 SCC (CRI) 25

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ABSTRACT

This case relates to a two-judge bench, formulating the guidelines to ameliorate the conditions of the prostitute’s progeny and child prostitutes. They are the unfortunate and underprivileged set of the society and are victims of flesh trade. The judges enjoin the State and other public-service organizations to ensure these victims are rescued, rehabilitated, protected and are given equal opportunities. The court also formed an Advisory Committee comprising of senior advocates, to submit its report suggesting measures for better implementation of rehabilitation work and create awareness. Overall significance of a Public Interest Litigation filed under article 32 was also explained by reiterating various precedents.

KEYWORDS: – Prostitution, Rehabilitation, Neglected children, Public Interest Litigation (PIL), Equality.

Case Title	Mr. Gaurav Jain v. Union of India
Case No.	Writ petition (Civil) No. 824 of 1988 with Writ petition (Criminal) Nos 745-54 of
Date of Judgement	9 th July 1997
Court	Supreme Court
Coram	Honourable Justice K. Ramaswamy & Justice D.P. Wadhwa
Author of Judgement	Justice K. Ramaswamy
Acts and Sections involved	<ul style="list-style-type: none"> • Articles of Indian Constitution-32, 142,21,23,13,14,15,16,38,39(f), 46 • Juvenile Justice Act, 1986 • Juvenile Justice (Care and Protection of

<ul style="list-style-type: none"> Children) Act, 2015 • The Immoral Traffic (Prevention) Act, 1956 • Universal Declaration of Human Rights 1948 • Convention on Elimination of All forms of Discrimination against Women (CEDAW), 1979

I. INTRODUCTION:

Prostitution is one of the oldest vicious practices dated back from the Vedic ages and continued to exist even now in various parts of the world. Prostitution is an act where an individual engages in any sexual activity with another person in return of money. Prostitutes are considered as degraded community of the society having no dignity and life of quality. Since ancient times, these targeted groups are never treated as humans but as commodities usually abandoned in abject misery and ignominy, exposed to vulnerability and cruelty by the society. Therefore, progeny of those

victims especially young girls is bound to fall prey to such ill practices, as soon as they attain their puberty, in their mother's workplace often called as a 'House of ill repute'. These unfortunate children are usually not accepted in the society and face discrimination at every step of their lives unlike any 'normal child' would. It is believed that if one enters the world of prostitution there is no way back. It is a disease which no permanent cure.

II. FACTS OF THE CASE:

Gaurav Jain, the petitioner and an advocate by profession filed a Public Interest Litigation (PIL), under article 32 of the constitution, in the Supreme Court of India for rehabilitation of children of prostitutes. After the read of the article published by the India Today named "A Red-Light Trap: Society gives no chance to prostitute's offspring"¹ fuelled him to file this case. Issuing a writ petition, he prayed to the court, on behalf of all unfortunate mothers and their progeny stuck in this field of prostitution, to establish Separate educational institutions and other amenities for the children of the prostitutes (up to 16 years of age) for the sole purpose of preventing them from the physical and mental abuse and ignominy. However, the Court was of the view that setting up a different institute and hostels would be considered as making an open offer or giving an access to the society to disregard their existence and further isolating and segregating from the rest, as a result, affecting the overall growth and well-being of those children of the fallen women. Hence, The Court, setting aside the petitioner's plea for separate schools and hostels, directed to segregate the progeny (especially girl child) from their mothers and from the foul atmosphere, allowing them to live and participate in the society like any other. Court further added that there must be adequate rooms in the school hostels to accommodate such unfortunate segregated children

Alongside the court formed an Advisory Committee under the chairmanship of V.C

Mahajan. This committee was required to submit its report as to their suggestions to;

- eradicate child prostitution and provide rehabilitation, protection of young children from the red-light areas.
- Amend laws or make new laws
- Prevent sexual exploitation of children
- Suggest measures for effective implementation.

During their extensive research operations, they found, 12-15% constitute child prostitutes in any area and that the prostitution is mainly due to ignorance, illiteracy, poverty and social stigma attached to it. In its report, committee stated that initially the process of segregation and rescue operations of the children of prostitutes and child prostitutes were executed poorly without proper planning. The committee of senior advocates suggested that the particularly the women members of NGOs, should counsel the mothers and managers and persuade them, for due care & rehabilitation, to give the custody of children to them. The committee in the report has also furnished details of the Child Development and Care Centres (CDCC), has functions as a nodal agency in the field and work with the departments of the government to contrive different programmes and schemes for Children of Prostitutes and Children Associating with Prostitutes and Prostitution.

III. ISSUES:

- a) Whether the court in this case should focus only on the rehabilitation aspect or they should simultaneously formulate strategies to eliminate prostitution resorting to Article 142 of the Constitution?
- b) What would be the effective procedure to prevent prostitution and provide care, protection and rehabilitation to the victims of flesh trade and their offspring.
- c) What action to take to rescue rehabilitate and bring the children into the mainstream society

IV. JUDGEMENT:

The court highly focused on the rehabilitation, protection, right to equal opportunities, dignity

¹ July 11, 1988

to the children of the prostitutes and child prostitutes. The court was of the opinion that the society should view the woman, used as a commodity for commercial exploitation, as a victim of “adverse socio-economic circumstances” rather than seen as a criminal in the society.

The children born to such fallen woman including child prostitutes should be treated as “neglected juvenile”² and rescued from the red-light areas and shifted to juvenile homes for safe short stay, to help them adapt with the outside world and facilitate for their overall development and thereafter rehabilitating them.

The Court further added that it is a mandatory obligation of the State to provide adequate accommodation in the hostels and establish reformatory homes (“Juvenile Homes”³) along with establishing Juvenile Justice Boards in every district.

Moreover, the Bench emphasized on the three C’s i.e., counselling, cajoling and coercion (last resort) for effective enforcement of the Immoral Traffic (Prevention) Act, 1956 & Juvenile Justice Act, 1986

The State, NGOs and public as a whole should be associated with the rehabilitation process (largely concentrating in the economic rehabilitation) and actively assist in generating awareness and in implementing the Three C’s.

The various other Acts that the court mentioned in this case are CEDAW and UDHR which may provide for improvement in their conditions and bring them in the social mainstream.

The second justice, Justice Wadhwa, however, dissented with the opinion of Justice Ramaswamy on issue of directions under Article 142 to the centre and state. He pointed out, in the present case, the issue raised in the petition was the rehabilitation of the children of prostitutes and not to eliminate the prostitution. According to Justice Ramaswamy, proceedings of PIL are not adversarial. Apex Courts in the case of *Rural Litigation and Entitlement Kendra*

vs. *State of UP*⁴ opined that issues raised or petitions filed was a PIL and not interparty disputes. Such Litigation are not a normal litigation with adversaries against one another.⁵ Instead, it should be seen as a ‘constitutional duty’ which offers a ladder to justice to weaker sections of the society which would otherwise not be achieved through ‘conventional private litigation’⁶. Courts were of the view that PIL requires cooperation & collaboration from the State Government, the lawyers appearing in *that* case and the Bench, for determining the rights and ensure socio-economic justice to the unfortunate⁷.

Again, in *M.C Mehta vs UOI*⁸, the court ascertained the scope of Public Interest Litigation to grant compensation to the injured victims during the conduct of any dangerous activity. It was held that if the past law is not at par with the changing times, then the court have a duty to evolve a new law in the public interest litigation. All Courts has the power to “devise new methods and strategies” for benefit of the public.

Similarly, the court in *Bandhua Mukti Morcha vs UOI*⁹, was of the opinion that the judges should forge new tools, apply new methods and adopt strategies to assist the needy effectively, entirely for securing their fundamental rights.

Relying on the above precedents, Justice Ramaswamy aimed to establish the importance of PIL as a collaboration and cooperation between State and court. Courts can give relief on matters not pleaded before it for providing justice and empowerment and enforce Fundamental Rights. Therefore, when petitioner Gaurav plea a limited relief, court enlarged the scope and passed orders accordingly.

Justice further added that in an adversarial litigation, any difference of opinion would require a resolution of larger bench. However,

⁴ 1989 Supp (1) SCC 504

⁵ Vincent Panikurlangara vs. UOI 1987 2 SCC 165

⁶ Labourers Working on Salal Hydro Project vs. State of Jammu and Kashmir 1983 2 SCC 181. 1983 SCC (L&S) 389.

⁷ Upendra Baxi (II) (Dr) vs. State of UP 1986 4 SCC 106; 1986 SCC (Cri) 381

⁸ 1987 1 SCC 395

⁹ 1984 3 SCC 161

² Section 2(i) of the Juvenile Justice Act, 1986

³ Section 2(j) of the Juvenile Justice Act, 1986

this petition was a PIL, and reference of such matter would only cause further delay.

After this judgment, a review petition¹⁰ was filed before a three-judge bench. They held that Article 142 would not entitle a judge on a Bench of two judges, who differs from his colleague, to issue directions for the enforcement of his order. They also observed that in a two-judge bench, if one judge resorts to Article 142 for enforcing his directions, similarly the second judge can do the same for enforcing his directions. Disruption in the judicial system is inevitable. Therefore, when two judges differ, the matter will be decided by a larger bench.

The three Judges enunciated that the justification given for resort to Article 142 as the reference would cause delay, is no sufficient ground to not follow the provisions of Article 145 of the constitution.

The Court overruled the directions formulated for the elimination of prostitution but upheld the order of rehabilitation to children of prostitutes and child prostitutes.

V. CONCLUSION:

This case intends to advance and enforce Fundamental Rights and other rights to those children whose existence is disregarded and excluded by the society. NGOs all over India, to some extent played its part in bringing them out from the dark foul environment. Prajwala, Apne App Women Worldwide, Prerna are organizations devoted to the cause of women and child victims of trafficking particularly for prostitution¹¹

Child trafficking has increased over the years. According to data of 2021, presented by National Crime Records Bureau, about 95% of the trafficked victims are forced into prostitution¹². Under Indian Penal Code (IPC), 1860 prostitution is not regarded as a criminal offence, however under section 373 of the IPC buying a minor for the purpose of prostitution is a punishable offence.

Furthermore, the provision under section 222 of The Bhutan Child Care and Protection Act, 2011, states any person using a child for any sexual activity for receiving money, that person will be a felony of the third degree.

VI. RELATED CASE LAWS:

- a. Gaurav Jain v UOI, 1841 of 1997
- b. M. C Mehta vs UOI 1987 1 SCC 395
- c. Bandhua Mukti Morcha vs. UOI 1984 3 SCC 161
- d. Rural Litigation and Entitlement Kendra vs. State of UP 1989 1 SCC 504
- e. Vincent Panikurlangara vs. UOI 1987 2 SCC 165
- f. Upendra Baxi (II) (Dr) vs. State of UP 1986 4 SCC 106: 1986 SCC (Cri) 381
- g. Labourers Working on Salal Hydro Project vs. State of Jammu and Kashmir 1983 2 SCC 181. 1983 SCC (L&S) 389.

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4. Indian Penal Code, 1860
5. The Bhutan Child Care and Protection Act, 2011

¹⁰ Review Petition (C) No. 1841 of 1997

¹¹ UNODC on Anti Human Trafficking by Non- Governmental Organizations

¹² Jaffer Latief Najjar, 'Human Trafficking in India : How the Colonial Legacy of the Anti-Human Trafficking Regime Undermines Migrant and Worker Agency' (LSE Human Rights, 11 February 2021)

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