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MANU/SC/0789/1997

**Equivalent/Neutral Citation:** AIR1997SC3021, 1997(2)ALD(Cri)199, 1998(3)ALLMR(SC)433, (1998)2CALLT9(SC), 1997(3)Crimes40(SC), 1997(2)Crimes40(SC), 1997 INSC 547, JT1997(6)SC305, 1997(4)SCALE657, (1997)8SCC114, [1997]Supp2SCR105

**IN THE SUPREME COURT OF INDIA**

Writ Petition (Civil) No. 824 of 1988 with Writ Pet. (Cri.) Nos. 745-754/54 of 1990

**Decided On:** 09.07.1997

Gaurav Jain **Vs.** Union of India (UOI) and Ors.

**Hon'ble Judges/Coram:**
*K. Ramaswamy and D.P. Wadhwa, JJ.*

**Counsels:**
*For Appearing Parties: V.C. Mahajan, Abha Jain, R. Venkataramani, Niranjana Singh and Sushma Suri, Advs.*

**Case Overruled/Partly Overruled by:**
Gaurav Jain and Supreme Court Bar Association vs. Union of India & Ors. MANU/SC/0248/1998

**Case Note:**
**Criminal - prostitution - Constitution of India, Immoral Traffic (Prevention) Act, 1956 and Sections 4 and 5 of Juvenile Justice Act, 1986 - matter pertaining to right of children of fallen women and scheme to be evolved to eradicate prostitution - direction given to Government to rehabilitate children and child prostitutes after conducting in depth study of matter - rescue and rehabilitation has to be kept under nodal department - suitable schemes has to be formulated for proper implementation - juvenile homes should be used for rehabilitating child prostitutes and neglected children - if they have crossed age limit prescribed under Act of 1986 Government has to make arrangements for their safety and protection with help of NGO's.**

**ORDER**

1. "Frailty, thy name is woman", was the ignominy heaped upon women of Victorian Era by William Shakespeare in his great work 'Hamlet'. The history of sociology has, however, established the contrary, i.e., 'fortitude', thy name is woman; 'caress', thy name is woman; 'self-sacrifice', thy name is woman; tenacity and successful pursuit, their apathetical is women. Indira Gandhi, Margaret Thatcher, Srimovo Bhandarnaike and Golda Meir are few illustrious women having proved successful in democratic governance of the respective democratic States. Amids(sic) them, still, a class of women is trapped as victims of circumstances, unfounded social sanctions, handicaps and coercive forms in the flesh trade, optimised as 'prostitutes', (for short, 'fallen women'). Seeking their redemptions, a few enlightened segments are tapping the doors of this Court under Article 32 of the Constitution, through a public spirited advocate, Gaurav Jain who filed, on their behalf, the main writ petitions claiming that right to be free citizens; right not to be trapped again; readjusted by economic empowerment, social justice and self-sustenance thereby with equality of status, dignity of person in truth and reality and social integration in the mainstream are their magna carta. An article "A Red light trap: Society gives no chance to prostitutes' offspring" in 'India

Today' dated July 11, 1988 is founded as source material and has done yeoman's service to ignite the sensitivity of Gaurav to seek improvement of the plight of the unfortunate fallen women and their progeny. Though Gaurav had asked for establishing separate educational institutions for the children of the fallen women, this Court after hearing all the State Governments and Union Territories which were then represented through their respective standing counsel, observed on November 15, 1989 in Gaurav Jain v. Union of India MANU/SC/0190/1989 : AIR 1990 SC 292 that "segregating children of prostitutes by locating separate schools and providing separate hostels" would not be in the interest of the children and the society at large. This Court directed that they "should be segregated from their mothers and be allowed to mingle with others and become a part of the society". Accepting the suggestion from the Bar and rejecting the limited prayer of the petitioner, this Court had ordered that "Children of prostitutes should, however, not be permitted to live in inferno and the undesirable surroundings of prostitute homes". This was felt particularly so in the case of young girls whose body and mind are likely to be abused with growing age for being admitted into the profession of their mothers. While this Court did not accept the plea for separate hostels for children of prostitutes", it felt that "accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified". In that view, instead of disposing of the writ petition with a set of directions, this Court constituted a Committee comprising S/Shri V. C. Mahajan, R. K. Jain, Senior Advocates and others including M.N. Shroff, Advocate, as its Convenor, and other individuals named in the Order; the Court directed the Committee to submit its report giving suggestions for appropriate action. Accordingly, the report was submitted. Arguments were heard and judgment was reserved but could not be delivered. Resultantly, it was released from judgment. We have re-heard the counsel on both sides. The primary question in this case is: what are the rights of the children of fallen women, the modules to segregate them from their mothers and others so as to give them protection, care and rehabilitation in the mainstream of the national life? and as a facet of it, what should be the scheme to be evolved to eradicate prostitution, i.e., the source itself; and what succour and sustenance can be provided to the fallen victims of flesh trade? These are primary questions we angulate for consideration in this public interest litigation.

**2.** The Preamble, an integral part of the Constitution, pledges to secure 'socio-economic justice' to all its citizens with stated liberties, 'equality of status and of opportunity', assuring 'fraternity' and 'dignity' of the individual in a united and integrated Bharat. The fallen women too are part of citizenry. Prostitution in society has not been an unknown phenomenon; it is of ancient origin and has its manifestation in various forms with varied degrees unfounded on so-called social sanctions etc. The victims of the trap are the poor, illiterate and ignorant sections of the society and are the target group in the flesh trade; rich communities exploit them and harvest at their misery and ignominy in an organised gangsterism, in particular, with police nexus. It is of grave social concern, increasingly realised by enlightened public spirited sections of the society to prevent gender exploitation of girl children. The prostitute has always been an object and was never seen as complete human being with dignity of person; as if she has had no needs and aspirations of her own, individually or collectively. Their problems are compounded by coercion laid around them and torturous treatment meted out to them. When they make attempts either to resist the prostitution or to relieve themselves from the trap, they succumb to the violent treatment and resultantly many a one settle for prostitution. Prostitute is equally a human being. Despite that trap, she is confronted with the problems to bear and rear the children. The limitations of trade confront them in bringing up their children, be it male or female. Their children are equally subjected to inhuman treatment by managers of brothels and are subjected to discrimination, social

isolation; they are deprived of their right to live normal life for no fault of their own. In recent times, however, there has been a growing body of opinion, by certain enlightened sections of the society advocating the need to no longer treat the fallen women as a criminal or as an object of shocking sexual abuse; they are victims of circumstances and hence should be treated as human beings like others, so as to bring them into the mainstream of the social order without any attached stigma. Equally, they realise the need to keep their children away from the red light area, particularly girl children and have them inducted into respectable and meaningful avocations and/or self-employment schemes. In no circumstances, they should continue to be in the trap of flesh trade for commercial exploitation. They need to be treated with humanity and compassion so as to integrate them into the social mainstream. If given equal opportunity, they would be able to play their own part for peaceful rehabilitation, live a life with happiness purposefully, with meaningful right to life, culturally, socially and economically with equality of status and dignity of person. These constitutional and human rights to the victims of fallen track of flesh trade, need care and consideration of the society. This case calls upon to resolve that human problem with caress and purposeful guidelines, lend help to ameliorate their socio-economic conditions, eradicate social stigma and to make available to them equal opportunities for the social order.

**3.** Equally, the right of the child is the concern of the society so that fallen women surpass trafficking of her person from exploitation; contribute to bring up her children; Jive a life with dignity; and not to continue in the foul social environment. Equally, the children have the right to equality of opportunity, dignity and care, protection and rehabilitation by the society with both hands open to bring them into the mainstream of social life without pre-stigma affixed on them for no fault of her/his. The Convention on the Right of the Child, the Fundamental Rights in Part III of the Constitution, Universal Declaration of Human Rights, the Directive Principles of the State Policy, are equally made available and made meaningful instruments and means to ameliorate their conditions - social, educational, economical, and cultural, and to bring them into the social stream by giving the same opportunities as had by other children. Thus, this case calls for a careful and meaningful consideration with diverse perspectives, to decide the problems in the light of constitutional and human rights and directions given to the executive to effectuate them on administrative side effectively so that those rights become real and meaningful to them.

**4.** Let us, therefore, first consider the fights of the fallen women and their children given by the Constitution and the Directive Principles; the Human Rights and the Convention on the Right of Child, before considering the social ignominy attached to them and before looking for the remedy to relieve them from the agony and make them equal participants in normal social order. Article 14 provides for equality in general. Article 21 guarantees right to life and liberty. Article 15 prohibits discrimination on the grounds of religious race, caste, sex or place of birth, or of any of them. Article 15(3) provides for special protective discrimination in favour of woman and child relieving them from the moribund of formal equality. It states that "nothing in this article shall prevent the State from making any special provision for women and children". Article 16(1) covers equality of opportunity in matters of public employment. Article 23 prohibits traffic in human beings and forced labour and makes it punishable under Suppression of Immoral Traffic in Women and Girls Act, 1956 which is renamed in 1990 as the Immoral Traffic (Prohibition) Act (for short, the 'ITP Act'). Article 24 prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age.

**5.** Article 38 enjoins the State to secure and protect, as effectively as it may, a social order in which justice - social, economic and political, shall inform all the institutions of national life. It enjoins, by appropriate statutory or administrative actions, that the State should minimise the inequalities in status and provide facilities and opportunities to make equal results. Article 39(0) provides that the children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 46 directs the State to promote the educational and economic interests of the women and weaker sections of the people and that it shall protect them from social injustice and all forms of exploitation. Article 45 makes provision for free and compulsory education for children, which is now well settled as a fundamental right to the children upto the age of 14 years; it also mandates that facilities and opportunities for higher educational avenues be provided to them. The social justice and economic empowerment are firmly held as fundamental rights of every citizen.

**6.** Article I of the Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2 provides that everyone, which includes fallen women and their children, is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind such as race, colour, sex. language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 provides that everyone has the right to life, liberty and security of person. Article 4 enjoins that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. The fallen victims in the flesh trade is no less than a slave trade. Article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The fallen/trapped victims of flesh trade are subjected to cruel, inhuman and degrading treatment which are obnoxious, abominable and an affront to Article 5 of the Universal Declaration and Article 21 of the Indian Constitution.

**7.** Equally. Article 6 declares that everyone has the right to recognition everywhere as a person before the law. The victims of flesh trade are equally entitled before the law to the recognition as equal citizens with equal status and dignity in the society. Article 7 postulates that all are equal before the law and are entitled, without discrimination, to equal protection of the law. So. denial of equality of the rights and opportunities and of dignity and of the right to equal protection against any discrimination of fallen women is violation of the Universal Declaration under Article 7 and Article 14 of the Indian Constitution.

**8.** Article 8 of the Universal Declaration provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or the law. The Supreme Court of India, which is the sentinel in the qui vive, is enjoined to protect equally the rights of the poor, the deprived, the degraded women and children trapped in the flesh trade, kept in inhumane and degrading conditions, and to grant them the constitutional right to freedoms, protection, rehabilitation and treatment by the social engineering, in law. Constitution and appropriate administrative measures so as to enable them to work hand-in-hand to live life with dignity and without any stigma due to their past conduct tagged to them by social conditions, unfounded customs and circumstances which have become blot on the victims and their children. They too are entitled to full equality, fair and adequate facilities and opportunities to develop their personality with fully grown potentiality to improve their excellence in every walk of life. Article 51-A of the

Constitution enjoins duty on every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform and to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

**9.** Preamble to the Declaration of the Right of the Child adopted by the UND on November 20, 1959, provides that the child by reason of his or her physical or mental immaturity, needs special safeguards and care including her appropriate legal protection before as well as after birth. Recalling the provisions of Declaration on Social and Legal Principles relating to Protection and Welfare of the Children with Special Reference to Foster or Placement and Adoption Nationally and Internationally: the General Assembly Resolution 41/85 of December 3, 1986; the United Nations adopted Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) dated November 29, 1985. India is a signatory to the Declaration and has the same and effectively participated in bringing the Declaration in force. Article 3(1) postulates that in all actions concerning children, whether undertaken by public or private social welfare institutions. Courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration. Article 3(2) enjoins to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally and all the appropriate measures in that behalf shall be taken by the State. Article 3(3) postulates that the State shall ensure the availability of institutional services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their self as well as competent supervision. Article 4 obligates by appropriate legislative, administrative or other measures, implementation of the rights recognised in the Convention. The State has undertaken to implement economic, social and cultural rights, such measures to the maximum extent of the available resources and where needed within the framework of international co-operation.

**10.** Article 6 postulates that State Parties recognise that every child has the inherent right to life which is already granted by Article 21 of the Constitution of India which has been interpreted expensively by this Court to make the right to life meaningful, socially, culturally, economically, even to the deprived segments of the society with dignity of person and in pursuit of happiness. Article 6(2) enjoins to ensure development of the child and Article 7(2) postulates that the State shall ensure implementation of these rights in accordance with law and their obligations. Article 9(3) envisages that the State shall respect the right of the child who is separated from her parents to maintain personal relations and contact with her parents on regular basis. Article 14(2) provides that the State shall respect the rights and duties of the parents, and when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. Article 17(2)(c) enjoins the State to encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well being bearing in mind the provisions of Articles 13 and 18. Article 18(1) provides that the State shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents and State have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. Sub-para (2) postulates that for promoting the rights set forth in this Convention, parents, legal guardian or the State in the performance of their child-rearing responsibilities, shall ensure the development of institutions, facilities and services for the care of children.

**11.** Article 19(1) provides that the State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child. Equally, Sub-para (2) of Article 19 postulates protective measures, as may be appropriate, should include effective procedure for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child as well as for other forms of prevention etc. Article 20 which is material for the purpose postulates " as under:

> **1 .** A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
>
> **2.** States Parties shall in accordance with their national laws ensure alternative care for such a child.
>
> **3.** Such care could include, inter alia, foster placement, Kafala or Islamic Law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethic, religious cultural and linguistic background.

**12.** Article 28 recognises the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, the State shall in particular: (a) make primary education compulsory and available free to all; (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) make higher education accessible to all on the basis of capacity by every appropriate means; (d) make educational and vocational information and guidance available and accessible to all children; and (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates. Article 29 envisages that the State Parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, languages and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and (e) the development of respect for the natural environment.

**13.** Article 32 recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Articles 34 36 and 37(a) are equally relevant and read as under:

**34.** State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials.

**36.** States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare:

**37.** State Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

Article 8 of the Declaration on the Right to Development provides that the State shall undertake at the national level, all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injuries.

**14.** The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 enjoins by Article 1, prohibition of discrimination of women. Article 5 enjoins to modify social and patterns of conduct of men and women with a view to achieving elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women. Article 12 prescribes discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services, including those related to family planning. Article 13 prescribes discrimination and directs that the State Parties shall eliminate discrimination against women in other areas of economic and social life in order to ensure on the basis of equality of men and women, the same rights, in particular, the right to family benefits, the right to participate in recreational activities, sports and all aspects of cultural life. Article 16(d) enjoins the State to ensure on the basis of equality of men and women, the same rights and responsibility as parties, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount. In Madhu Kishwar v. State of Bihar MANU/SC/0468/1996 : AIR 1996 SC 1864 , this 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 integral scheme of the Fundamental Rights and the Directive Principles. Article2(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.

**15.** Human Rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth - cultural, social and economical. All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights. It would, therefore, be imperative to take all steps to prohibit prosecution. Eradication of prostitution in any form is integral to social weal and glory of womenhood. Right of the child to development hinges upon elimination of prostitution. Success lies upon effective measures to eradicate root and branch of prostitution.

**16.** Section 2(a) of the Immoral Traffic (Prevention) Act, 1956 (for short, the 'ITP Act') defines 'brothel' to mean any house, room, conveyance or place or any portion of any house> room, conveyance or place which is used for purpose of sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutes. The essential ingredient, therefore, is a place being used for the purpose of sexual exploitation or abuse. The phrase 'for the purpose of indicates that the place being used for the purpose of the prostitution may be a brothel provided a person uses the place and ask for girls, where the person is shown girls to select from and where one does engage or offer her body for promiscuous sexual intercourse for hire. In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove is that a girl/lady should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of prostitution would be drawn from diverse circumstances established in a case. Sexuality has got to be established but that does not require the evidence of more than one customer and no evidence of actual intercourse should be adduced or proved. It is not necessary that there should be repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it. The prosecution has to prove only that in a premises a female indulges in the act of offering her body for promiscuous sexual intercourse for hire. On proof thereof, it becomes a brothel.

**17.** The Juvenile Justices Act, 1986 (for short, the 'JJ Act') was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. The preexisting law was found inadequate to tic over social knowledge, instrument, delinquency or improvement of the child. The Act sought to achieve a uniform legal framework for juvenile justice in the country as a whole so as to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts to deal adequately with the subject. The object of the Act, therefore, is to provide specialised approach towards the delinquent or neglected juvenile to prevent recurrence of juvenile

delinquency in its full range keeping in view the developmental needs of the child found in the situation of social maladjustment. That aim is secured by establishing observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles. The JJ Act is consistent with the right of the child to development; the established norms and standards for the administration of juvenile justice and special mode of investigation, prosecution, adjudication and disposition of the juvenile. The JJ Act provides for care, treatment and rehabilitation by developing appropriate linkage and co-operation between formal system of juvenile justice and voluntary agencies engaged in the welfare of the neglected or socially mal-adjusted children; it specifically defines the areas of the responsibilities etc. Section 2(a) defines 'begging'. Section 2(b) defines 'Board' to mean a Juvenile Welfare Board constituted under Section 4. Terms 'Brothel', 'prostitute', 'prostitution' and 'public place' have been adopted as defined in ITP Act. 'Competent authority' or 'Juvenile Court' as the case may be, is defined under Section 2(d). Section 2(f) defines 'fit person' or 'fit institution' to mean any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a juvenile entrusted to his or its care and protection on the terms and conditions specified by the competent authority. 'Guardian' in relation to a juvenile has been defined under Section 2(g). 'Juvenile' has been defined under Section 2(h) to mean a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. 'Juvenile Court' and 'Juvenile Home' have been defined in Sections 2(i) and 2(j) respectively. 'Neglected juvenile' which is more relevant for the purpose of this case, has been defined in Section 2(1) to mean a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitution or any other person who leads an immoral, drunken or depraved life; (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. 'Prostitution' means the sexual exploitation or abuse of persons for commercial purposes and the expression 'prostitute' shall be construed as it is defined under Section 2(0) of ITP Act. After the amendment to the ITP Act, "prostitution' means sexual exploitation or abuse of person for commercial purpose.

**18.** Therefore, prostitution is not confined, as in the ITP Act, to offering of the body to a person for promiscuous sexual intercourse. Normally, the word 'prostitution' means an act of promiscuous sexual intercourse for hire or offer or agreement to perform an act of sexual intercourse or any unlawful sexual act for hire as was the connotation of the Act. It has been brought within its frame, by amendment, the act of a female and exploitation of her person by an act or process of exploitation for commercial purpose making use of or working up for exploitation of the person of the women taking unjust and unlawful advantage of trapped women for one's benefit or sexual intercourse. The word 'abuse' has a very wide meaning everything which is contrary to good order established by usage amounts to abuse. Physical or mental maltreatment also is an abuse. An injury to genital organs in an attempt of sexual intercourse also amounts to sexual abuse'. Any injury to private parts of a girl constitutes abuse under the JJ Act. 'Public place' means any place intended for use by, or accessible to the public and includes any public conveyance. It is not necessary that it must 'be public property. Even if it is a private property, it is sufficient that the place is accessible to the public. It must be a place to which the public, in fact, resorts or frequents.

**19.** The Probation Officer is kept in-charge for enforcement of the provisions of the Act.

Section 4 of the J.J. Act deals with 'Juvenile Welfare Boards' under Chapter III titled 'Competent Authority and Institutions for Juvenile'. It postulates that the State Government by official notification may constitute for any area specified in the notification, one or more Juvenile Welfare Boards for exercising the powers and discharging the duties conferred or imposed on such Board in relation to neglected juveniles under the JJ Act. The powers of the Juvenile Courts, defined in Section 5, have been reiterated in Section 7. Section 9 deals with 'Juvenile homes'. It enjoins the State Government to establish and maintain as many juvenile homes as may be necessary for the reception of neglected juveniles under the JJ Act. Every juvenile home to which a neglected juvenile is sent under the JJ Act shall not only provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also to provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral danger of exploitation and shall also perform such other functions as may be prescribed to ensure all-round growth and development of his personality. Sections 10 and 11 deal with establishment of special or observation homes for delinquent juveniles, details of which needs no elaboration. Section 12 touches upon the need for after-care organisations. Under Section 13 in Chapter III. if any police officer or any other person or organisation authorised by the State Government in this behalf, by general or special order, is of opinion that a person is apparently a neglected juvenile, such police officer or other person or organisation may take change of that person for bringing him before a Board for rehabilitation, care and protection of the child. Section 14 deals with special procedure to be followed when neglected juvenile has parents. Section 15 regulates inquiry regarding the neglected juvenile, the details of which are not material. The question, therefore, is : what procedure is efficacious to prevent prostitution, bring the fallen women and their children into the social mainstream by giving care, protection and rehabilitation?

**20.** Three Cs, viz., counselling, cajoling and coercion are necessary to effectively enforce the provisions of ITP Act and JJ Act. By order dated May 2, 1990, this Court, after hearing the counsel, passed an order to set up an Advisory Committee to make suggestions for eradicating child prostitution and to point out social aspects for the care, protection, treatment, development and rehabilitation of the young victims, children and girls prostitutes from red light area and get them free from the abuses of prostitution; to amend the existing law or to enact a new law, if so warranted; to prevent sexual exploitation of children and to take various measures for effective enforcement thereof. It is seen that the Committee constituted by this Court under the Chairmanship of Shri V.C. Mahajan travelled far and wide to have a look into the field of operation of the Governmental agencies and has suggested nodal programme for the eradication of the twin facets of prostitution, viz., protection, care and rehabilitation of the fallen women and neglected juveniles, The Committee has opined that the problem of child prostitution does not stand by itself and is a component of overall phenomenon in the country. It highly concentrates on identified red light areas as well as on areas which are not so clearly identified. Though the problem of prostitution is mainly found in large cities, but in the urban areas and some rural areas, the problem gives frequent recurrence. Among the fallen women, the child prostitutes constitute major bulk of the component. Child prostitutes constitute 12 to 15% of prostitutes in any area. On account of the social sanctions, women are exploited by the monstrous customs of Devdasis, jogins and Venkatans known by other names in different parts of the country. The unfounded social and religion based sanctions are only camouflage; their real motive is to exploit the unfortunate women. Most of them belong either to Scheduled Castes or Backward Classes coming from socio-economically lower groups. They are prevalent highly in Karnataka, Maharashtra and Andhra Pradesh. The specific areas in

major cities are identified as red light areas as well as some semi-urban but rural areas. The number of red light areas having increased in recent times, brothel based prostitution is on the vane but there is an increasing trend towards decentralised mode of prostitution. 86% of the fallen women hail from Andhra Pradesh, Karnataka, Tamil Nadu West Bengal, Bihar, Maharashtra, Uttar Pradesh, Assam, Gujarat, Goa, Madhya Pradesh, Kerala, Meghalaya, Orissa, Punjab, Rajasthan and Delhi. Delhi receives prostitutes from about 70 districts in the country; Bombay from 40 districts; Bangalore from 70 districts; Calcutta from 11 districts, Hyderabad from 3 districts etc. There is growing evidence that the minimum number of prostitutes get into flesh trade either voluntarily or by organised gangster force women and girls by offering rosy future to innocent fallen women and trap them often with the connivance of the police.

**21.** The Committee has also identified ten types of prostitutes like Street walkers, religious prostitutes, prostitutes in brothel, singing and dancing girls, bar nude, massage parlour and some are call girls. Comprehensive study conducted by another Committee in six metropolitan cities, viz., Delhi, Bombay, Calcutta, Madras, Hyderabad and Bangalore, reveals the age group of the prostitutes below 20 years of age are 75%, 21 to 30 years are 40%, 30 to 35 years are 18% and above 35 years 12%. At the time of induction into the prostitution, 9% are below 15 years; 24.9% between 16 to 18 years, 27.7% between 19 to 21 years; and 32.9% are above 22 years. At the time of entry, therefore, 15% of the fallen girls are in the category of neglected juveniles, about 25% are minors between the age group of 16 to 18 years. The major reasons for induction of prostitution are poverty and unemployment or lack of appropriate rehabilitation etc. All abhor social stigma; 16% due to family tradition and 9% due to illiteracy. 94.6% prostitutes are Indians while 2.6% are Nepalis and 2.7% are Bangladeshis, 84.36% are Hindus; 18.8% are Muslims and 3.5% are Christians. In terms of caste classification. Dalits and Tribes constitute 36%, Other Backward Classes 24% and others 40%. In terms of marital status, only 10.6% of the prostitutes are married; 34.4% are unmarried and 54.2% are divorcee or widows. In terms of education level; 70% of them are illiterates while 4% only are literates. Only 24% of the prostitutes are educated at primary and secondary level while 1.4% have higher qualifications. Therefore, prostitution is primarily due to ignorance illiteracy, coercive trapping or scare of social stigma. In India, they enter into the prostitution between the age of 16 to 19 years and lose market by the time they became 35 years of age. Thereafter such persons either manage brothels or develop contact with high leads. Recent trend is that ladies from higher levels of income are initiated into the prostitution to sustain sufficient day-to-day luxurious style of life so as to ensure continuous economic support for their well-being.

**22.** The Mahajan Committee report indicates that in two villages in Bihar and some village in West Bengal, parents send their girl children to earn in prostitution and the girls in turn send their earnings for maintenance of their families. It further indicates that certain social organisations have identified the poverty as the cause for sending the children for prostitution in expectation of regular remittance of income from prostitution by the girls who have already gone into the brothels. It is also an inevitable consequence that over years the fallen women are accustomed to certain life-style and in terms of expenditure they need certain amount of money for their upkeep and maintenance. When they bear children, it becomes additional burden for them. They are led or caught in the debt traps. The managers of the brothel are generally ladies. They do not allow the girls to bear children. In case of birth against their wishes, the unfortunate are subjected to cruelty in diverse forms. In the process of maintaining the children, again they land themselves in perpetually growing burden of debt without any scope to get out from the bondage. Thereby, this process lends perpetually to slavery to

the wile of prostitution. To support their children for education etc. 44% of them desire to leave the red light traps and 43% of them express their despondence languishing between hope and despair. Most of those who want to leave, have given the reasons to save their children from prostitution and protection of the future of their children, fear of contacting the venereal diseases, the fear of their children following the path; some of them expressed dislike the profession, social stigma and their yearning is to start new life. Those who want to remain in prostitution have given absence of alternative source of income, their social non-acceptability, family customs, poverty, ill-health and their despondence as the reasons and, thus, they want to continue in the prostitution as the last resort for their livelihood. They do not like to remain in red light area and the profession but lack of alternative source of livelihood is the prime cause of their continuation in the profession.

**23.** If alternatives are available and society is inclined to receive them, they will gladly shed off their past and start with a clean slate as a fresh lease of life with renewed vigorous hope and aspiration to live a normal life, with dignity of person; respect for the personality, equality of status; crave for fraternity and acceptability in the social mainstream. Therefore, it would be imperative to provide a permanent cure to the malady. There would be transition from the liberation from the prostitution to start with fresh lease of life. This period should be taken care of by providing behavioral corrections by constant interaction, counselling, cajoling and coercion as the last resort for assurance of social acceptability inculcating faith in them. An avenue to earn sufficient income for rehabilitation rekindles their resolve to start with fresh lease of life, without which their craving to shed off the past and to start with a new lease of life would remain a distant dream and a futile attempt. Therefore, the rubicon has to be bridged between the past and the hope to make them realise their desire as normal citizenry, by providing opportunity and facilities. Provision of opportunities and facilities is input of the constitutional guarantee to the disadvantaged, deprived and denied people. The directive principles of the Constitution, in particular Articles 38 39; and all relevant related Articles enjoin the State to provide them as impregnable inbuilt right to life guaranteed by Article 21 and equality of opportunities with protective discrimination guaranteed in Article 14 the genus and its species, Articles 15 and 16 and the Preamble, the arch of the Constitution by legislative and administrative measures.

**24.** Therefore, it is the duty of the State and all voluntary non-government organisations and public spirited persons to come in to their aid to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf. Marriage is another object to give them real status in society. Acceptance by the family is also another important input to rekindle the faith of self-respect and self-confidence. Housing, legal aid, free counselling assistance and all other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with four atmosphere. Law is a social engineer. The Courts are part of the State steering by way of judicial review. Judicial statesmanship is required to help regaining social order and stability. Interpretation is effective armoury in its bow to steer clear the social malady, economic reorganisation as effective instruments remove disunity, and prevent frustration of the disadvantaged, deprived and denied social segments in the efficacy of law, and pragmatic direction pave way for social stability, peace and order. This process sustains faith of the people in rule of law and the democracy becomes useful means to the common man to realise his meaningful right to life guaranteed by Article 21.

**25.** V. C. Mahajan Report states that an organisation by name Prerana, selected Kamathipura red light area. Bombay, where 14 lanes are in the occupation of the Managers of the brothels and has located a center for counselling. Therein, they organise regular counselling and service center for the fallen women and do work for the children. The national plan of action for the girl child in the SAARC Decade of the Girl Child (1991-2000) was launched as a project for the welfare and development of the girl children including adolescent girls and street children in particular. An inter-departmental monitoring committee was also set up under this plan in some of the red light areas. The provisions of Integrated Child Development Services Scheme were extended. A number of voluntary agencies have also been involved in the care, rehabilitation and advocacy to retrieve prostitutes including child prostitutes. The rehabilitation and welfare organization is to be initiated.

**26.** Women found in the flesh trade, should be viewed more as victims of adverse socio-economic circumstances rather than as offenders in our society. Prostitution in five star hotels is a licence given to persons from higher echelons. The commercial exploitation of sex may be regarded as crime but those trapped in custom oriented prostitution and gender oriented prostitution should be viewed as victims of gender oriented vulnerability. That could be arrested by not only law enforcing agencies but by constant counselling and interaction by the NCiOs impressing upon them the need to shed off the path and to start with a new lease of life. The ground realities should be tapped with meaningful action imperatives, apart from the administrative action which aims at arresting immoral traffic of women under ITP Act through inter-State or Interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes. We are concerned in this case more with the rehabilitation aspect than with prevention of the crime. Therefore, we emphasise on the review of the relevant law in this behalf, effective implementation of the scheme to provide self-employment, training in weaving. knitting, painting and other meaningful programmes to provide the fallen women the regular source of income by self-employment or, after vocational education, the appropriate employment generating schemes in governmental, semi-governmental or private organisations.

**27.** The customary initiation of women in the practice of Devdasis Jogins and Venkatasin is prevalent in Andhra Pradesh, Karnataka and Maharashtra areas: in particular the practice of prostitution is notorious. It is an affront to the human dignitary and self-respect but the pursuit of customary beliefs traps the fair sex into this glorified self-sacrifice and ultimately leads to prostitution service in the temples and charitable institutions etc. which is a crime against humanity, violation or human right and obnoxious to Constitution and Human Rights Act. They are void under Article 13 of the Constitution of India and punishable under the law. They are antithetical to the Constitutional scheme. Fundamentalists and proponents of these practices are constitutional criminals. The unfounded customs cannot have legal sanction. On the other hand, penal enactments provide for abolition thereof. Instead of progressive outlook, regressive unfortunate tendency, of late, is raising its ugly head to glorify these ignominious practices which is leading not only to abetment of commission of the crime, but also misleading the unfortunate illiterate and weaker sections of the society, to be taken in seriously by the later by their false promises or false theories such as God's ordain which finds easy acceptance by the poor and illiterate and is acted upon. Every right thinking person should condemn such attempts apart from keeping and helping strict implementation of the law prohibiting initiation of the nasty practice wherein the eldest girl child in particular families, is offered as Devadasi or Jogin or Venkatasin, by whatever local name they are called. They are making the lives of the girl miserable: in the guise of prosperous future and custom, the girl is detained in

prostitution for no fault of her. This is prevalent in particular in six districts of Karnataka. viz. Ruichur, Bijapur. Belgaum, Dharwar. Bellary and Gulbarga where their number is identified as 21.306. In Andhra Pradesh, in five districts, namely, Medak, Karimnagar, Nizamubad, Nalgonda and Warangal, such girls are known as Jogins. Nizamabad District has the largest number of Jogins as per the survey conducted in 1996, as many as 16.300 Jogins were found in that State. Similarly, in Maharashtra, they are found in large number, in particular in Marathawada and Vidarba regions. The common features of such women is that predominantly they are from Scheduled Castes. Scheduled Tribes and other Backward Classes. The eldest girl in every family is being offered as Devadasi. Jogin or Venkatasin. Sometimes, they do redeem the pledge made to the Gods or Goddesses, etc. Original families of these Devadasis, Jogins or Venkatasins were by and large poor. They are primarily agricultural labourers having no access to credit facilities or literacy. The eldest girl in each family is driven to prostitution. The system has been in existence for years as a result of lack of awareness about the exploited segments of the Devadasis etc. Many families which dedicated their girls, do so due to the pursuit of customary practices.

**28.** Economic rehabilitation is one of the factors that prevent the practice of dedication of the young girls to the prostitution as Devadasis, Jogins or Venkatasins. Their economic empowerment and education gives resistance to such exploitation; however, economic programmes are necessary to rehabilitate such victims of customs or practices. They are being rehabilitated with the help of vocational training centers set up in Maharashtra giving preferential admission into educational training institutes; they are admitted into informal adult education. In Maharashtra, educational training centers have been opened for Devadasis. In Karnalaka, Devadasi women have been assisted under DWCRA schemes in various districts, in particular six district, where an extensive devadasi rehabilitation programme is in full force. The Karnataka State Women's Development Corporation and the Karnataka State Scheduled Castes and Scheduled Tribe Development Corporation are implementing this programme in the aforesaid six districts where the phenomena of devadasi system is being observed: training is imparted in hand-weaving, 50% subsidy is given in weaving; good work-shed is given to them free of costs; income assistance like micro-business enterprises, rope and basket making etc. are being provided to devadasi women for rehabilitating them. Training in production of soap. chalk making Khadi and weaving activities is being imparted in Andhra Pradesh. Karnataka State also has taken the lead in forming self-helping group of devadasis; a thrift and saving programme is being implemented in some areas. Social Welfare Departments should undertake these rehabilitation programmes for the fallen victims of social practice so that the foul practice is totally eradicated and the fallen women are redeemed from the plight and are not again trapped into the proposition. In Andhra Pradesh, the State Government is providing housing sites or house facilities to devadasi women; they are gelling free treatment in hospitals. Devadasi women aged about 60 years and above are being given pension. In order to improve literacy, adult literacy programmes are being organised for them. The NGOs in these three States are playing important role in implementation of various programmes and they are largely concentrating on generating awareness among these persons and their economic rehabilitation. It would, therefore, be meaningful if rehabilitation programmes are launched and implementation machinery is set not only to eradicate the fertile source of prostitution but also for successful rehabilitation of the fallen women who are the victims of circumstances to regain their lost respect to the dignity of person to sustain equality of status, economic and their social empowerment.

**29.** Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and

growing. Their future should be shaped in harmony and co-operation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning the children, excluding good foundation of life for them, is a crime against humanity. The children cannot wait till Tomorrow; they grow everyday; along with them grows their sense of awareness about the surroundings. Tomorrow is no answer; the goal of their present care, protection and rehabilitation is the need of the hour. We have already dealt with the rights assured to them by the Constitution, the Directive Principles and the Convention on the Right of the Child. The United Nations Declaration on the Rights of the child made on November 20, 1959, has formulated and given 10 principles in that behalf. Principle No. 1 provides that the child shall enjoy all the rights set fourth in the Declaration. All children, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether himself or of his family. Principle No. 2 postulates that the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. Principle No. 3 postulates that the child shall be entitled from his birth to a name and a nationality. Principle No. 4 postulates among other things that the child shall enjoy the benefits of the social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided to him. Principle No. 5 provides that the child who is physically, mentally or socially handicapped shall be given special treatment, education and care required by that particular condition. This is more relevant for the purpose of this case. Principle 6 postulates that the child for the full and harmonious development of his personality, needs love and understanding. A child of tender years shall not, save in exceptional circumstances, be separated from his/her mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

**30.** Principle No. 7 provides that the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He/She shall be given an education which will promote his/her general culture, and enable him/ her on a basis of equal opportunity to develop his/her abilities, his/her individual judgment, and his/her sense of moral and social responsibility and to become a useful member of the society. The best interests of the child shall be the guiding principles of those responsible for his education and guidance, that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society; and the public authorities shall endeavour to promote the enjoyment of this right. Principle No. 8 postulates that the child shall in all circumstances be among the first to receive protection and relief. Principle 9 is most important in this behalf which provides that the child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical mental or moral development. Principle No. 10 postulates that the child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and fallates should be devoted to the service of his fellow men.

**31.** The Government of India has adopted the National Policy for Children by Resolution No. 1-14/74-CDD dated August 22, 1974. The main purpose of the policy is that the nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children prow up to become robust citizens, physically fit, mentally alert and morally healthy, endorse with the skills and motivations needed by the society. They participate in equal measure in democratic governance of the State of useful citizens. Equal opportunities for development to all children during the period of growth should be our aim; for this we would serve our larger purpose of reducing inequality and ensuring social justice. To care for, plan out needs of the children and successful implementation is, therefore, our duty, as citizen, be an Administrator, a Magistrate or a Judge.

**32.** Among the diverse programmes, Programme No. 4 of India for children postulates that the children of the weaker sections of the society needs special protection. The programme of informal education for pre-school children from such sections will also be taken up. Programme No. 5 postulates that children who are not able to take full advantage of formal school education shall be provided other forms of education suited to their requirements. Programme No. 7 directs to ensure equality of opportunity; special assistance shall be provided to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas. Programme No. 8 envisages that children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizens. Programme No. 10 provides that no child under 14 years of age shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work. Programme No. 11 postulates that facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded. Programme No. 13 provides that special programmes shall be formulated to spot out and encourage and assist gifted children, particularly those belonging to the weaker sections of society. Programme No. 14 envisages that existing laws should be amended so that in all legal disputes, whether between parents or institutions, the interest of children are given paramount consideration. Programme No. 15 provides that in organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment. Priority sectors have been provided in this behalf and paragraph 4(c) provides maintenance, education and training of orphan and destitute children. They require special care, education, training and rehabilitation of handicapped children, in Clause (e) thereof, role of voluntary organisations is emphasised. Paragraph 6 thereof postulates that the Government shall endeavour that adequate resources are provided for child welfare programmes and appropriate schemes are undertaken.

**33.** India has a tradition of voluntary action which shall be the endeavour of the State to encourage and strengthen voluntary actions so that State and NGOs complement each other. Paragraph 7 postulates legislative and administrative action in that behalf and paragraph 8 emphasises people's participation in implementation of this programme. It would, thus, be seen that the constitutional imperatives of the national policy of the children and the international principles for the development of children are of the paramount need and consideration is for the child development. The handicapped children and those from weaker sections are given special attention by the State and voluntary agencies.

**34.** The question, therefore, is: What action is to be taken to rescue, rehabilitate and bring the children of fallen women into the mainstream of the society? As stated earlier, three Cs (CCC) are necessary for successful implementation, to rescue and rehabilitate the children of the fallen women living in the red light area. Counselling, Cajoling by persuasion and Coercion, as the last resort, are the three Cs for successful . implementation of them: 65.3% of the fallen women have children and usually they are in the age group of one to ten years. Generally, they prefer to keep their children away from them while they are in the act of intercourse except those children who are very young. Out of 71% children of illiterate fallen women 39% are literate while 58% of the total have had primary or secondary or higher education. They show keen interest to educate their children. The children tend to spend their time at study or leisure; though girl children tend to be engaged in house hold jobs as is usual among poorer classes. The children face the problems mainly due to (i) lack of father figure to provide security, care and guidance; (ii) increased responsibilities of mother; (iii) economic hardships (iv) lack of facilities to meet basic needs; (v) unhealthy social environment; (vi) mal-nutrition (vii) coercive attempts by managers of brothels; (viii) tauntings. due to dislike, by surrounders; and (ix) lack of proper counselling and guidance; motivation and opportunity gaps.

**35.** Many a prostitute themselves are child prostitutes (for short, the 'CP'); they and the children of the prostitutes (for short, the COP') need to be removed from the red light area. Generally, the police resort to IPC and ITP Act in this behalf but the forceful rescue of CP or COP in reality is not successful in their rehabilitation. In this behalf, it is necessary to lake aid of the definition of "neglected child" defined in JJ Act. It is already seen and is reiterated for continuity that "neglected juvenile' means one found in begging; or found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; or has a parent who is unfit or incapacitated to exercise control over the juvenile; or lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads, an immoral, drunken or depraved life or who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain, The JJ Act makes distinction between 'delinquent juvenile" and 'neglected juvenile' attributing to a delinquent juvenile an act or omission punishable by law to identify him as a delinquent juvenile. A neglected juvenile is one who is of the age of 16 years in the case of a boy and 18 years in the case of a girl, or whose parents are unfit because of being living in prostitution, or the child born to a prostitute, or one who frequents or associates with prostitution becomes a neglected juvenile. A child brought to associate with a prostitute or is engaged in the prostitution or the profession of prostitution or another juvenile who leads an immoral or depraved life or one who is likely to be abused or exploited for immoral or illegal purposes for unconscionable gain is also a juvenile. The crime is not attached for identifying him/her as neglected juvenile; it is so in the case of a delinquent juvenile under the Act. They are to be kept in the juvenile home as a place of safety.

**36.** An institution established or certified by a State Government under Section 9 of the JJ Act is a juvenile home. The object of the Act is not to punish the juvenile but to rehabilitate him/ her, be it a delinquent juvenile or neglected juvenile. In the latter case, it is one of obligations of the State to provide for care and concern of the State to establish a juvenile home under Section 9 of the JJ Act. Section 4 of the JJ Act enjoins the State to constitute, by a notification, for any area specified in the notification, one or more Juvenile Welfare Boards for exercise of the powers and discharging the duties conferred or imposed, under the JJ Act. on such Board in relation to neglected

juveniles.

**37.** The Board shall consists of a Chairman and such other members as the State Government thinks fit to appoint, of whom not less than one shall be a woman and; every such member shall be vested with the powers of a Magistrate under the Cr.P.C. The Board shall function as a Bench of Magistrates and shall have the powers conferred by the Cr.P.C. as the case may be on a judicial Magistrate of the first class or Metropolitan Magistrate in Metropolitan cities. Even, in certain cases a delinquent juvenile who commits an offence like begging, being the neglected juvenile, is covered as a neglected juvenile and should not be treated as delinquent juvenile since he began begging due to destitution or was forced to beg by organised gangsters. Therefore, all the types of juveniles defined within the ambit of neglected juvenile, though attached with certain acts or omission, are punishable under law they still remain to be neglected juvenile and should be dealt with by the Welfare Board and he brought within the protective umbrella of the juvenile home established under Section 9, Establishment of juvenile home. thus, is a mandatory duty of the State to provide teeth to the provisions of the Constitution, the Directive Principles, the Convention on the Right of the Child read with principles of United Nations Declaration and National Policy of the Government of India referred to hereinbefore, and are protected by the JJ Act.

**38.** Every child who is found to be neglected juvenile should be dealt by the Board and should be brought within the protective umbrella of the juvenile home. The attribution as 'neglected children' is not social stigma; the purpose is to identify the children as juveniles to be dealt with under the JJ Act which is more a reformative and rehabilitated center rather than for punishing the child as criminal; and mend their behavior and conduct. In an appropriate case, where the treatment of bringing the neglected juvenile into the national mainstream takes long time, the definition coupled with age prescription, should not be strictly interpreted to deny the ameliorative care, consideration and rehabilitation of the neglected juveniles. The benefit of reformation, rehabilitation and bringing them into the mainstream after the passing of the age prescription under the Act, is the goal sought to be achieved. Lest, it has the effect of throwing the neglected juvenile into the vile of prostitution or exploitation him for organised crimes by the organised gangsters taking advantage of his immaturity and despondence; that would be deleterious to the child's development and would widen the deep gap between hope and reality in the operation of the provisions hereinbefore referred to. The definition of 'neglected juvenile', therefore, should be interpreted broadly which is an important function for the purpose of identifying the groups of children who need care and attention and protection for rehabilitation. Their withdrawal from the protective umbrella of the JJ Act foils the goals set out; besides all measures to bring the neglected juvenile into the mainstream of the social status end up in failure and frustration.

**39.** Even if the economic capacity of the mother of neglected juvenile in the red light area to educate and to bring him up would not relieve the child from social trauma: it would always be adverse to keep the neglected juvenile in the custody of the mother or the manager of the brothel; thus, the child prostitute is unsafe and insecure. So, they should be rescued, cared for and rehabilitated. As stated earlier, the three C's, namely, counselling, cajoling and coercion of the fallen women to part with the child or child prostitute herself from the manager of the brothel is more effective, efficacious and meaningful method to rescue the child prostitute or the neglected juvenile. The income criteria, therefore, is not a factor not to rescue the child prostitute or the neglected juvenile for rehabilitation.

**40.** It is of necessity to remember that the arms of law are long enough to mould the law to operate on the even keel. The coercive power with the law enforcement agency to rescue the child prostitute or the neglected juvenile, may not necessarily end up as a successful means. It would be last resort when all avenues fail. On the other hand, involvement of the nongovernmental organisations in particular women organisations which are more resourceful for counselling and cautioning, would make deep dent into the thinking mould of the fallen victims and would be a source of success for their retrieval from the prostitution or sending the neglected juvenile to the juvenile homes for initial treatment, psychologically and mentally, and will yield place to voluntaries to surrender guardianship of the child prostitute or neglected juvenile to the Welfare Board or to the NGOs to take custody of a child prostitute or the neglected juvenile for, care, protection and rehabilitation.

**41.** The V. C. Mahajan Committee report states that the resort to Sections 14 and 17 of JJ Act has met with resistance by the mothers and in the case of child prostitute, by the managers of the brothels. The coercive method adopted on one occasion by the Delhi Police pursuant to a complaint under Section 13 of the JJ Act on March 7, 1990, led to frustration of the entire operation, when on an early morning, the prostitutes were taken by surprise by tap on the doors and children were taken into custody, on the pretext of being examined by the doctOrs. Total 450 juvenile were taken into custody but no prior arrangement was made with the doctors for their examination. The children were not given custody immediately. The children were taken into custody; 112 children below 16 years were kept in the custody of the police. Their examination went on upto March 23, 1990 by which time, the agitated mothers and the managers of the brothels resorted to pressure technics. Ultimately, it all ended in a fiasco. All were released by managers of juvenile home. This would indicate apathy on the party of police in proper implementation and lack of prior planning, understanding and concerted action between the law enforcement agency, the NGOs and public spirited persons and doctOrs. Instead of doing good, it does harm. It, therefore, gives a stark lesson that until proper arrangements are made and concerted action taken ad hoc attempt to enforce law results in defeat of the purpose of the JJ Act. On the other hand, if the NGOs in particular women members of the NGOs pursue and counsel the mothers of the children or managers of child prostitutes to have them into custody and if proper care and treatment is given, rehabilitation is the sure road to the successful results; it would be a success rather than frustration of the enforcement of the JJ Act. It is, therefore, clear imperative that proper planning, constant counselling and persuation are the appropriate means, rather than abrupt to ad hoc coercive steps, unless it becomes the last resort, for successful enforcement of the scheme.

**42.** The question then is: what is the proper method required to rehabilitate the neglected juvenile or child prostitute taken into custody under the JJ Act for enduring results? It is rather unfortunate that the juvenile homes established and being run by the Government are not effectively been managed and YIELDING expected results. They become ornament for the statistical purpose defeating the constitutional objectives and international Conventions which are part of the municipal law. This Court on May 2, 1990 had directed the enforcement agencies to bring the prostitute, neglected juveniles for the rehabilitation in the juvenile homes manned by well qualified and trained social workers. The child prostitutes rescued from the red light areas should be shifted into the juvenile homes. They should ensure their protection in the homes. The officers in charge of the juvenile homes, the welfare officers and the probation officers should coordinate the operation and enforce it successfully. They should be made responsible for the protection of the child prostitutes or the neglected juveniles kept in the juvenile homes for psychological treatment in the first instance relieving them from the trauma

under which they were subjected to while in the brothels and red light areas. The special police authorities should be established to coordinate with the social welfare officers of the State Government and public spirited persons, NGOs locally available, and see that the juvenile homes are entrusted to efficient and effective management, the child prostitutes or neglected juveniles are properly protected and psychologically treated, education imparted and rehabilitation succeeded. They should also be provided with proper accommodation maintenance facilities for education and other rehabilitation facilities.

**43.** V. C. Mahajan Committee's report specifies at page 31 that since its inception till November 1989, 102 boys and 34 girls were admitted by a responsible institute, a non-statutory body in Pune run on voluntary basis to impart education to the destitute children in general and neglected juveniles and child prostitutes in particular, with all facilities; it is run by Bal Sangopan center run by Shreemant Dagausheth Halwai Ganpat Trust which gets fund from the Ministry of Welfare, Government of India under the scheme for children in need of care and protection. Similar homes are also being run for 75 children at Kolhapur and Bombay. As a policy, the Trust does not keep girls above 12 years in the institute. On the other hand, it has tied up with Hinge Shree Sikshan Sansthan at Pune for placement of the girls above 12 years into their custody but the Trust continues to be the parent institution, paying their fees and holding the overall responsibility to bring up the girls above 12 years. The report also states that the mothers are allowed to visit the children once in a month and they are allowed to take them home for brief spells during festivals and other special occasions. There is another institution, viz., 'Nihar' run by 'Vanchit Vikas' institute at Pune. It is founded on the basis of the felt needs of the neglected juvenile. Social workers of Pune Corporation co-operate with them. There are special health reforms available to prostitutes, the workers come into frequent contact with the prostitute mothers and their children. Gradually, they are getting acquainted with the situation and awareness is generated of the disadvantages to keep the children with them while remaining in red light area. The motivation yielded positive results in helping the children rescued from the mothers and their placement in the home. The institute is run through donations. It is being run for the past 15 years. Much progress has been made in the struggle to rehabilitate the neglected juveniles. Therein, they have established a school for 23 children being used in that 'Nihar'. Most of the children are in the age group of 5 to 10 years. They take only female children with the female staff to attend to the needs of the children. Their basic requirements of food, clothing and shelter are taken care of by 'Nihar'. Health, education and overall development is also taken care of. The children are enrolled in Zila Parishad Schools. Residential staff help them to take them to the schools and bring them home. On Saturdays, teachers spend their time in 'Nihar' teaching music and playing games with the children. On Sundays, teachers come from Pune and spend time with the children and keep them in their studies. The mothers of the children visit once in a month. The management does not allow the mothers to take the children except for short duration. The prostitute mothers themselves have realised the advantage to keep their children away from vile environment and are happy with educational progress of their children. Similarly, "Devadasi Niradhar Mukti Kendra, Ganghiganj" is running a center by name "Devadasi Chhatra Vasti Graha" at Pune from October 1986. It is a residential institution for the children of the Devadasis. 80% of them are the Devadasi children while 20% are children from socio-economic backward classes. Funds for this institution are granted by the Department (contd. on col. 2), of Social Welfare, Government of Maharashtra. It has on its roll, 75 boys and girls. As on the date of the visit by the Committee on July 7, 1990, 57 boys and 8 girls (total 65) were found in the institute. Similar institutions are being run elsewhere; the details of which are not material. They have been elaborated in the Report of V. C. Mahajan Committee.

**44.** The above facts do indicate that the NGOs are actively involved in the field of rehabilitating and educating the children of the fallen women as neglected juveniles not brought within the net of JJ Act. The mothers have their legitimate aspirations to bring their children into the mainstream of the nation. What needs to be done is proper, efficient and effective co-ordination and management in particular entrustment to the NGOs which would yield better results than the management solely by the Governmental agencies. The motivation by the NGOs makes a deeper dent into the mind of the prostitute mothers or child prostitutes to retrieve them from the flesh trade and rehabilitate the children as useful citizens in the mainstream of the society. V. C. Mahajan Committee has given details of the Child Development and Care centers (for short, the 'CDCC') in Annexure IV to the Report. It states how the management needs to be done, as under:

> CHILD DEVELOPMENT AND CARE centerS (for brevity CDCC)
>
> (A scheme for Children of Prostitutes & Children Associating with Prostitutes and Prostitution)
>
> Various factors have led to the perpetuation of prostitution which in turn has given rise to a large population of prostitutes' children. Their mothers' nature of work, status, income, etc. often leave the children wanting in attention and care for their overall development. However, it is not enough to perceive them as more victims of neglect. Their cause has to be taken up to prevent them from taking to prostitution or its promotion and curbing their proneness to delinquency. It is believed that children's energies have to be tapped and channelised. The Child Development and Care centers are envisaged to provide Localised services through which the larger interests of these children can be attended to. Such centers are to be situated in:
>
> (i) the vicinity of red light areas
>
> (ii) the vicinity of other areas identified as having a concentration of prostitutes
>
> (iii) those areas where there is a concentration of communities among whom prostitution is the traditional occupation of the women and girls.
>
> These centers will be run by voluntary organisation with government fund and have Advisory and Monitoring Committees at Central. State and Local levels.
>
> (Emphasis supplied)
>
> OBJECTIVES
>
> The scheme would
>
> (i) provide welfare and developmental services for children of prostitutes and other children associating with prostitutes and prostitution by making them socially productive beings;
>
> (ii) try to wean them away from their surroundings by referring them to suitable residential institutions as and when necessary;
>
> ((iii) try to reach out to the mothers (through their children) and

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counsel them on different issues related to their personal lives, their occupational lives and their children; and

(iv) operate as an information dissemination and conscientious point, particularly for the higher age group (12 - 18 years).

Services/Facilities

Keeping in view the total care and development of the child, the following services/facilities would be provided.

| | |
|---|---|
| (i) creach (day and night) | |
| (ii) pre-school education (Balwad) | The objective of pre-school education, besides the physical emotional and social development of the children, is to prepare them mentally to attend formal schools in future. This, it is hoped will increase the enrolment in schools. |
| (iii) non-formal education/ functional literacy<br>(iv) counselling (personal and career)<br>(v) nutritional inputs<br>(vi) health care<br>(vii) library<br>(viii) toy-bank<br>(ix) recreation<br>(x) outings and educational trips<br>(xi) skill development | |
| (xii) 'save for the child' scheme | Mothers are anticipated to be spending Rs. 100/- (at least per child per month when the child stays with her. When the child is placed in the custody of a residential institution, she no longer has to spend on the child. She should, therefore, start an account in the name of the child in any nationalised bank and deposit Rs. 100/- every month. If at the end of one year it is found that she has been regular in depositing the amount, the CDCC will start contributing an equal share. By the time the child is out of the institution he/she will have some immediate financial support. |
| Note : Suggestion by the Court : | The Government of India should extend the Thrift Scheme of Women for these fallen women as well. |
| (xiii) after school educational help | help the children complete their homework and prepare lessons for schools. Teachers would also help them with any difficulties faced in school. By this measure, the rate of school dropout can be checked. |
| Suggestions and Directions of the Court : | Special coaching should be arranged for these children. |
| (xiv) de-institutionalised help | Some of the mothers may be agreeable to part with their children or have different priorities for the children. Money may not be their problem. In such cases the CDCC may enlist their children as recipients of de-institutionalised care services. It would ensure that the minimum needs of the child are met by the mother and his/her development is in no way impeded. It would be binding on the mother to provide the child with the basic minimum facilities for the child's overall growth and development. This would be a means of getting the mother to provide for the child instead of institutionalising him/her. Here, in the process, the CDCC would operate as a catalytic and monitoring agency.<br>The CDCC will also follow up the cases of those children whose mothers are placed in Protective Homes. In case they are endangered in any way by separation from mother, the CDCC will adopt necessary steps to help them.<br>The CDCC would be paid a nominal sum for its services and also for spending on some of the items required by the child for its growth, in case the mother is unable to meet such expenditure. The mother will be liable to make regular reports to the CDCC to facilitate its monitoring function. |
| Suggestions and Directions of the Court: | All necessary funds should be provided by the appropriate Government i.e., either the Central Government or the State Government, as the case may be. |

(Note: This arrangement will work for the traditional communities, with either a

CDCC or any other voluntary organisation functioning as a catalytic and monitoring agent.

The CDCC would function as a nodal agency in the field and would co-ordinate with Government departments to bring as many programmes to its group of beneficiaries as possible. Further, they would arrange referral services in the following areas as and when the need is felt for the benefit of a child:

(i) Institutionalised care - arrange sponsorship foster care

(ii) skill development

(iii) health

(iv) on the job training

(v) training for entrepreneur-ship

Eligibility of Beneficiaries

Children of any age between 0-18 years who are either-

(i) children of prostitutes, or

(ii) children associated with prostitution or prostitute, may be benefited from this scheme.

In all deserving cases the scheme should extend services to those children above 18 years, only if it is clearly seen that they are not yet able to feed for themselves and would be benefited by further support. Those older than 18 years would be assisted as special cases.

Coverage

There would be no limit to the number of children being covered by the center. Being a service oriented center it is likely that only groups of children will come to the center during the day asking for any of the services.

Only in the case of creches and balwadis there would be regular attendance where not more than 25-30 children should be enrolled at any given time and when the member increases separate groups be formed and benefit of service extended.

Organisation

The following are some of the general conditions for eligibility for applying for the scheme:

(i) The applicant should be a voluntary, non-governmental organisation, registered under an appropriate Act or a regularly constituted branch of a registered welfare organisation.

(ii) The organisation seeking assistance should be a non-profit and secular organisation in a way that its services would be open to all without any discrimination of religion, caste, creed, language or sex. .

(iii) The organisation should have a regularly constituted managing committee with its functions and their responsibilities clearly laid down in its Bye-laws.

(iv) the organisation should preferably have had some experience in managing child development programmes or experience of working on the issues related to prostitution.

Programme

Though it is viewed as a localised service center, its community outreach aspect must be active. By reaching the prospective target group and acquainting them with the services available, the utilisation of the CDCC can be availed.

The staff at the center would organise health camps and awareness generation camps from time to time.

While providing the services of the children, efforts of the staff at the center would be to counsel the mothers and children and encourage the latter to join educational institutions. It should assist them in getting admitted into the educational institutions. Teachers attached to the CDCC would help the school going children in completing their homework and coping with other difficulties. During school hours the teacher would hold functional literacy classes for the elder children who are uneducated.

By way of extending further support to this group of uneducated and unskilled children, the center's staff will have to counsel them regularly.

As it is advisable to remove the children from the vicinity of the red light area by about 6 years of age, the staff will have to convince the mothers and arrange for their placement in residential institutions. Regular meetings are to be held with the mothers to discuss about the health and nutritional needs of their children and to make them conscious about the environment. Efforts should be directed towards making them interested in the activities of the CDCC. They must be kept informed about the progress of their children and of their current activities, problem and future plans. They must be allowed to participate in planning and execution of programmes.

The center must follow up cases of women who are placed in Protective Homes. Their children must be immediately enlisted in the list of beneficiaries at the center. Depending upon their situation care and protection must be extended to them such that the separation from mother does not:

(i) hamper their education

(ii) make them emotionally and physically insecure

(iii) render them neglected and uncared for

(iv) expose them to greater risks of delinquency.

In case a child is affected in any of these ways, the center must step in and to give him/her emotional support and to place him/her in a residential institution. The mother must be involved in the process and the center must be in touch with her at the Protective Home.

The CDCC will involve the local level youth club or any other organisations and with support from the-

(i) mobilise the local community,

(ii) organise activities for the beneficiary group.

Working Hours of the CDCC

| | | |
|---|---|---|
| 1. | Creche (day and night) ..... | as per decision of the Local committee |
| 2. | Balwadi ..... | 9.00 a.m. to 1.00 p.m. |
| 3. | Non-formal Education ..... | 1.00 p.m. to 4.00 p.m. |
| 4. | After School Education ..... | 4.00 p.m. to 6.00 p.m. |

Timings of the other facilities to be fixed according to local situation. Staff

| | | |
|---|---|---|
| 1. | Programme Co-ordinator | 1 |
| 2. | Special Worker-cum-Counseller | 2 |
| 3. | Teacher | 1 |
| 4. | Balwadi Teacher | 1 |
| 5. | Helper-cum-Office Assistant | 1 |
| 6. | Ayah-cum-Cook | 2 |
| 7. | Chowkidar | 1 |

Advisory and Monitoring Committees

To ensure effective implementation of the scheme advisory and Monitoring Committees will be set up at various levels. There would be a Central Committee with State and Local Committees under it. While there will be a State Committee in every State, there may be as many Local Committees as the number of CDCCs operative in the respective State. A single Committee may be adequate in case there are more than one CDCC in the same city/town. Members of the Committees Central Committee (Seven Members)

(i) Chairperson, Central Social Welfare Board

(ii) Representative of the Department of Women and Child Development

(iii) Representative of the Ministry of Welfare

(iv) Retired police officer.

(v) Three social workers.

State Committee (Seven members)

(i) Chairperson, State Social Welfare Advisory Board.

(ii) Representative of the Department of Women and Child Development

(iii) Representative of the Department of Social Welfare

(iv) Retired Police Officer.

(v) Three Social Workers.

Local Committee (Seven Members)

(i) Programme Co-ordinator CDCC.

(ii) Representative of mothers

(iii) Representative of community

(iv) Representative of local club, if any

(v) Secretary or representative of the voluntary organisation implementing the scheme

(vi) Two Social Workers.

These Committees will run the scheme with the assistance from the government. No separate office need to be maintained. The necessary office work can be done at the offices of the Chairperson.

CSWB (in the case of the Central Committee) and Chairperson SSWAB (in the case of the State Committee). The CDCC would help in the office work of the Local Committee. For this, the respective organisations will receive a token Administrative Assistance grant.

Meeting of the Committee can be organised by the respective organisations. There must be quarterly meetings of the Central and State Committees. The Local Committees must, however, meet once in every month. The Local Committee is to send its minutes of meeting held and reports of activities to the State and Central Committees.

The Central Committee will function as the central co-ordinating body, with regular feedback from the State and Local Committees. Besides regular meetings, the Committee may call emergent meetings to discuss any urgent matter.

These Committees will co-ordinate the functioning of any ICDS centers Being run in lieu of the CDCC (in case a voluntary organisation is not available to run and manage a CDCC) and execute the same functions as it does in the case of CDCC.

**45.** We are of the view that the suggestions require earnest examination to give force and content to them. The rescue and rehabilitation of the child prostitutes and children should be kept under the nodal Department, namely, Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India. It would devise suitable schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the JJ Act. They should not be left to themselves, but should be rehabilitated through self-employment schemes or such measures as are indicated hereinbefore. The juvenile homers should be used only for a short stay to relieve the child prostitutes and neglected juveniles from the trauma they would have suffered; they need to be rehabilitated in the appropriate manner. The details are required to be worked out by ' meaningful procedure and programmes. In the light of the directions already given by this Court from time to time to the Central Government, State Governments and Union Territory Administrators, adequate steps should be taken to

rescue the prostitutes, child prostitutes and the neglected juveniles as indicated hereinabove; they should take measures to provide them adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or State Government concerned. A nodal Committee with the public spirited NGOs, in particular women organizations/woman members should be involved in the management. Adequate encouragement may be given to them; the needed funds should be provided and timely payments disbursed so that the scheme would be implemented effectively and fruitfully.

**46.** The Minister of Welfare, Government of India will constitute a Committee consisting of the Secretary in charge of Department of Women and Child Development as the chairperson and three or four Secretaries from the concerned State Governments, to be nominated by the Minister of Welfare. They would make an in-depth study into these problems and evolve such suitable schemes as are appropriate and consistent with the directions given above. The Committee should be constituted within one month from the date of the receipt of this judgment. The Committee should finalise the report within three months thereafter. As soon as the report is submitted, the same may be communicated to all the State Governments and the concerned Ministries for their examination. Within two months from date of the communication, the Minister of Welfare, Government of India, in coordination with the Prime Minister Officer should convene a meeting presided over by the Prime Minister, with Minister of Welfare, Home Minister, Human Resource Minister, the concerned Ministers of the State Governments and their Secretaries as well to discuss the problem and take decisions. The Committee should finalise the report with further suggestions or amendments, if suggested in the conference. Thereafter, the report should be finalised and then direction would be given to the State Governments for effective implementation of the schemes. The nodal Department would enforce and regularly be supervised by the Ministry of Welfare, Government of India. A permanent Committee of Secretaries should be constituted 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. Periodical progress as to funding and enforcement of the scheme should be-submitted to the Registry of this Court. If further directions would be needed, liberty is given to the parties to approach this Court. In that view of the matter, it is believed and hoped that the above law and 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 the equality of opportunity and of status, with dignity of person which are the arch of the Constitution.

**47.** My learned brother D. P. Wadhwa, J. has disagreed to the directions given to the Union of India etc. In the first part of the Order on the ground, as seems to me, that in view of the relief sought for in the writ petitions and the directions given by this Court on the earlier occasions there is no scope for the relief being granted now and directions given in the concluding part of the Order. Brother Wadhwa, J. thus agrees with the directions given at pages 78 to 81 relating to the prostitute children and the children of the fallen women. Directions at pages 38-39 and 43 to 45 of this Order pertain to the prevention of induction of women, in various forms, into prostitution; their rescue from the vile flesh trade; and rehabilitation through various welfare measures so as to provide them with dignity of person, means of livelihood and socio-economic empowerment. In that behalf, my learned brother has not concurred for the reasons given in the separate Order proposed to be delivered by him. That has necessitated me to have a re-look into the precedents on Public Interest Litigation vis-a-

vis the scope, ambit and power of the Court to grant reliefs in matters arising from real and true public interest litigation in which the condition of locus standi has been relaxed and public-spirited persons, not motivated by pressure tactics for ultimate ends, are encouraged to work for the poor, under-privileged or weaker segments of the society who are otherwise unable to avail of judicial process for grant of general reliefs to such a group of persons.

**48.** In Labourers working on Salal Hydro Project v. State of Jammu & Kashmir MANU/SC/0243/1983 : (1983) I LLJ 494 SC offspring of a letter addressed to this Court enclosing a clipping of the newspaper "Indian Express" dated August 26, 1982 - it was brought to the notice of this Court that a large number of migrant workmen were subjected to exploitation and violation of various welfare laws made for them. Intervention was sought to prohibit exploitation and to grant different reliefs to them. The letter was treated by this Court as a writ petition under Article 32. Directions were issued to the Labour Commissioner (center) to enquire into and submit a report; the Central Government was also directed to file their affidavit. After receipt of the report and filing of the counter-affidavits, this Court found, as a fact, from the evidence that the workmen were denied of the minimum wages and other welfare benefits. Accordingly, directions were given. This decision, therefore, is an authority for the proposition that a Public Interest Litigation is not of adversary character but one of performance of the constitutional duty; therein new procedure was adopted for collecting evidence from acceptable source. In Dr. Upendra Baxi (II) v. State of U.P. MANU/SC/0075/1986 : AIR 1987 SC 191 , Dr. Upendra Baxi, a noted humanist and champion of Human Rights, had addressed a letter to this Court that a writ petition may be entertained in public interest to protect the girls living in the Government Protective Homes at Agra who were being denied right to live with basic human dignity by the State of Uttar Pradesh which was running the Home. In that case, it was held that the public interest litigation is not a litigation of an adversary undertaken for the purpose of holding the State Government or its officers responsible for making reparation. Public interest litigation involves a collaborative and cooperative efforts by the State Government and its officers, the lawyers appearing in the case and the Bench for the purpose of making Human Rights meaningful for the weaker sections of the community in ensuring the socio-economic justice to the deprived and vulnerable sections of the humanity in the country. Directions, therefore, were accordingly issued; details thereof are, however, not material for the purpose of this case. What is material is that the power of this Court is wide to grapple with new situations; it can get the evidence collected with cooperation of the counsel for the parties and the State and mete out justice to protect the constitutional rights guaranteed to all the citizens in particular, the vulnerable weaker segments of the society. Vincent Panikurlangara v. Union of India : [1987]2SCR468 , related to manufacture of drugs and involved examination of evidence to determine the character of the action taken by the Government on the basis of advice tendered to it to prohibit the manufacture and trade of drugs in the interest of patients who required the drugs for that treatment. This Court pointed out that the statutory bodies and the Government are bound to respond and join the proceedings pending before the Court. They are not litigants; yet they do not have the choice of keeping away from the Court like private parties in ordinary litigations opting to go ex parte. Since the matter involves technical aspects vis-a-vis health of the public and is of national importance, this Court ensured co-operation of all the parties and suo motu extended the opportunity of hearing and inviting the named statutory authorities to assist the Court. In that behalf, it was held that the public interest litigation is not a normal litigation with adversaries fitted against one another.

**49.** As already seen, in Bandhua Mukti Morcha case , this Court has evolved a new

procedure supplementing the existing procedure to meet the new situation and to render justice in public interest litigations. It directed the Commissioner Labour (Central) to investigate into and collect the evidence and submit the report to the Court, as dealt with at pages 189-90 (of SCC): (at pp. 815-816 of AIR). In Rural Litigation and Entitlement Kendra v. State of U.P. MANU/SC/0415/1988 : AIR 1988 SC 2187 this Court dealt with a public interest litigation relating to ecological imbalances created due to mining operations and denudation of forest. In paragraphs 16 & 17, this Court at pages 515-16 (of (Supp) SCC): (at p. 2195 of AIR) had pointed out that the writ petitions before the Court were not inter parts disputes and had been raised by way of public interest litigation and the controversy before the Court was as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. This Court had directed stoppage of twining activity since it created ecological imbalance and denudation of the forest. In M. C. Mehta v. Union of India MANU/SC/0092/1986 : [1987] 1 SCR 819 , a Constitution Bench of this Court was to consider the scope of the public interest litigation to grant compensation to the victims of hazardous or dangerous activities when deaths or injuries were caused to them on account of the accident during the operation of such activities. This Court had held that the law should keep pace with changing socio-economic norms; where a law of the past does not fit in the present context, the Court should evolve new law in a public interest litigation. The power of this Court is very wide to devise appropriate procedure and to issue directions, orders or rules. This Court is competent to grant a remedial assistance by way of compensation in exceptional cases. The Court has incidental and ancillary power in exercise of which it can devise new methods and strategy in securing enforcement of fundamental rights particularly in public interest litigation or social action cases. Directions were accordingly granted in that case. In Bandhua Mukti Morcha v. Union of India MANU/SC/0051/1983 : [1984] 2 SCR 67 the writ petition under Article 32 was filed to release bonded labourers in the country by way of letter addressed to this Court. In that behalf, this Court had taken assistance of the parties, got the evidence collected and then issued appropriate directions for release of the bonded labour. In this behalf, it was held at page 169 (of SCC) : (at p. 815 of AIR) that when the poor come before the Court, particularly for enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the Court for the purpose of securing enforcement of their fundamental rights. It must be remembered that the problems of the poor which are now coming before the Court are qualitatively different from those which have hitherto occupied the attention of the Court and they need a different kind of layering skill and a different kind of judicial approach. If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution. We have, therefore, to abandon the laissez faire approach in the judicial process particularly where it involves a question of enforcement of fundamental rights; we should forge new tools, devise new methods and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of the people. And this is clearly permissible by the language of Clause (2) of Article 32 because the Constitution makers while enacting that clause, have deliberately and advisedly not used any words restricting the power of the Court to adopt any procedure which it considers appropriate in the circumstances of a given case for enforcing the fundamental right. In Santhal Pargana Antyodaya Ashram v. State of Bihar MANU/SC/0577/1986 : 1987 (1) SCALE 679 in a public interest litigation, this Court obtained a report of the Committee appointed by the Court, accepted the report and gave directions to release and rehabilitate the bonded labours identified by the Committee and to implement the

Committee's recommendations, as far as possible, were issued to the State Government. The State Governments were directed to carry out the statutory obligations under the Bonded Labour System Act, 1976.

**50.** It would, thus, be the established procedure of this Court under Article 32 that the public interest litigation is not adversarial. It is one of collaboration and cooperation between the State and the Court. This Court as the sentinel on the qui vive, is constitutionally obligated to enforce the fundamental rights of all the citizens of the country and to protect them from exploitation and to provide guidance and direction for facilities and opportunities to them for securing socio-economic justice, empowerment and to free the handicapped persons from the disabilities with which they suffer from and to make them realise and enjoy the fundamental rights ensured to them under the Constitution. In that behalf, this Court is entitled and empowered under Article 32 to adopt such procedure as is expedient in a given fact situation and deal with the matter appropriately. Therefore, the rigour of the pleadings or the relief's sought for in adversarial litigation, has been softened; new methods, tools and procedures were evolved to mete out justice and to enforce the fundamental rights. Obviously, therefore, when a limited relief to establish separate schools for the children of the fallen women was sought for by the petitioner-Gaurav Jain, this Court did not confine to the same. It, instead, enlarged the scope and directed the authorities as an interim measure to have those children admitted in the general schools to make the children overcome the disabilities had from foul atmosphere and to generate the feeling of oneness and dissegregation. In addition, this Court appointed V. C. Mahajan Committee to enquire into and submit a report. The report was accordingly submitted after extensive travelling to far and wide parts of the country; it studied not only the problem of the children of the fallen women but also the route cause of the menace of child prostitution and the prostitution as such and the need for its eradication. The prevailing conditions have been pointed out in the Report and beneficial actions already taken by some of the Social Action Groups have been pointed and also noted as illustrated hereinabove. They have also dealt with the problems of the children. The State Governments and the Central Government were supplied with the copies of the Report and they have not even objected to the recommendations; in fact, they cannot be objected to since it is a fact prevailing, unfortunately, in the country. Therefore, the relief cannot be restricted to the pleadings or to the scope of the directions earlier issued; the Court can take cognisance from indisputable or the undisputed facts from the Report of V. C. Mahajan Committee and other reports and articles published in recognised Journals and act upon it. Placing reliance thereon, the directions given in the Order, aim not only at giving benefits to the children but also to root out the very source of the problem as has been pointed out in the first part of the Order, it is for the Government to evolve suitable programme of action. My learned brother has very graciously agreed to the second part of the order relating to the setting up of juvenile homes for the prostitute children and children of fallen women.

**51.** By operation of Article 145(6), to the extent both of us have agreed, the Order constitutes as binding precedent. It is to remember that this Court being composed of large number of Judges has evolved its own procedure to transact Court management of its judicial work and to decide cases/causes sitting in appropriate Division Benches constituted by the Chief Justice of India as per the Supreme Court Rules. Any observation made by one of the Judges has persuasive obiter. When there is a dissent, the majority of opinion forms a binding precedent. Any difference of opinion between a Bench composed of two Judges, in an adversarial litigation requires resolution by a larger Bench of three Judges and/or if further reference is made to a Constitution Bench, it is to deal with the controversy and majority opinion forms precedent. As

stated earlier, public interest litigation is not adversarial in nature but is one of cooperation and coordination between the three wings of the State and the coordination and it is the constitutional duty of this Court to ensure enjoyment of the fundamental rights by all citizens and in particular the poor and deprived social segments and in case of violation thereof, to prevent the same by giving appropriate directions in that behalf. In aid thereof, this Court has been armed by Article 142 to pass such orders as may be necessary for doing complete justice in a cause or pending matter before it. An order so made shall be enforceable throughout the Territory of India. Normally, if it were an adversarial dispute, we would have referred the matter to three Judge Bench in respect of the first part of the directions, namely, to prevent prostitution; to rehabilitate fallen women and to provide them facilities and opportunities by evolving suitable measures by all the Governments for enforcement of their economic empowerment and social integration with dignity of person which are fundamental rights to the unfortunate fallen women, i.e., the victims of circumstances. It is seen that this matter is pending for nearly a decade. If a reference is made to a three Judge Bench, it may further be delayed. Since "delay defeats justice" it may amount to everyday denial of the fundamental rights to large number of fallen women.

**52.** I put a caveat upon myself and I am aware that Article 142 would be used to enforce final judgment or order which, in given special or exceptional circumstances, would include directions of this type to mitigate injustice and to elongate enforcement of fundamental and human rights. Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to reach injustice wherever it is found and to mete out justice. Denial of the constitutional rights to the unfortunate fallen women outrage's the quest for justice and pragmatism of constitutional ethos which constrain me to avail Article 142 of the Constitution of India to direct the Union of India as well as all State Governments to evolve, after indepth discussion at Ministerial level conference, such procedures and principles or programmes, as indicated in this Order, as guidance would help rescue and rehabilitate the fallen women. Otherwise, the fundamental and human rights remain pious platitudes to these miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives. Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversarial litigation and in a keenly contested matters of even public interest litigation, in particular , of recent type cases. However, in the cases of the type in hand, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. Society is responsible for a woman's becoming victim of circumstances. The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice, is the constitutional duty of the State. Their economic empowerment and social justice with dignity of person, are the fundamental rights and the Court and the Government should positively endeavour to ensure them. The State in a democratic polity includes its three constitutional organs - the Legislature, the Executive and the Judiciary. Legislature has already done its duty. The Executive and the Judiciary are required to act in union to ensure enforcement of fundamental and human rights of the fallen women. I am also conscience that (sic) Union of India as well as the State Governments are sensitive to the conscience of their constitutional duty under Article 23 and are desirous to have the prostitution eradicated from the root with the aid of ITP Act, IPC and other appropriate legislative or executive actions. Sequential rehabilitation of the fallen women rescued from the red light areas and other areas requires

enforcement. The observations made in this Order, the constitutional provisions, the human rights and other International Conventions referred to in the Order and the national policy would aid the Union of India and the State Governments as foundation and guide them to discuss the problems in Ministerial and Secretarial level Conferences and as suggested in this Order to evolve procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights mentioned in the Order.

**53.** Before parting with the case, we place on record the valuable assistance and yeoman's service rendered by V. C. Mahajan Committee.

**54.** The directions are accordingly given. The writ petitions are directed to be posted after the compliance report as regards the action taken in that behalf, is furnished by the Union of India for appropriate orders.

**D.P. Wadhwa, J.**

**55.** This writ petition under Article 32 of the Constitution was filed by Mr. Gaurav Jain, advocate of this Court as public interest litigation after he had read a report appearing in the 'India Today.' a national magazine of July 11, 1988. The petitioner had prayed as under:

> In the circumstances, it is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:
>
> > (a) issue an appropriate writ, in the nature of mandamus. Order or direction, directing the respondents to provide separate schools with vocational training, hostels with the medical check-up facilities in each respondent State and union territory and such other places where this Hon'ble Court may direct, for the children of prostitutes, up to the age of sixteen years to rescue them, from falling into the infernal existence and the same immoral and deprived way of life by indulging in the vice profession of prostitution, pimps, drug-pushers and bootleggers and other hazardous employments:
> >
> > (b) pass any other order/orders which this Hon'ble Court may deem fit and proper in the circumstances of the case.

**56.** By order dated February 20, 1989 the petitioner was directed "to suitably amend the writ petition and confine claim in the petition to the relief of setting up of juvenile homes as provided under Section 9 of the Juvenile Justice Act, 1986." Then on the next date, that is, March 13, 1989 the prayer for amendment was allowed and it was directed that prayer in the writ petition shall stand substituted "by what has now been indicated in the application for amendment".

**57.** By order dated November 15, 1989 while the Court noted submission of Mr. V. C. Mahajan, advocate of the petitioner that separate schools and hostels be provided for the children of the prostitutes, the Court did not find itself inclined to accept such a submission. The Court was of the view that segregating prostitutes children by locating separate schools and providing separate hostels would not be in the interest of such children. The Court by this very order constituted a Committee headed by Mr. V. C. Mahajan, Senior Advocate to consider the problems faced by the children of the prostitutes. This order of the Court is reported in MANU/SC/0190/1989 : AIR 1990 SC 292 . This Committee examined the matter keeping the following objects in view

(i) Viability of having separate schools and hostels.

(ii) existing laws relating to the target group, and

(iii) possibility of evolving a scheme for these children, workable at the national level.

**58.** The Committee has since submitted its report. In its report the Committee has made various recommendations for the rehabilitation of the children of prostitutes. I do not find that the question of eradication of prostitution was an issue involved in these proceedings or subject matter of Committee's deliberations. The Committee in its report which runs into over 100 pages has only referred in two paragraphs, while examining target group, as to who are the prostitutes. Apart from this I do not find there is any discussion in the report of the Committee towards eradication of prostitution. As to what should be the scheme to be evolved to eradicate prostitution, i.e. the source itself; the basics; and what succour and sustenance can be provided to the fallen victims of flesh trade was not a question agitated in the proceedings. Certainly no one can dispute that evil of prostitution must be curbed. It is the mandate of the Constitution which prohibits traffic in human beings. Keeping that object in view and in pursuance to International Conventions for the Suppression of Traffic in persons and of the Exploitation of the Prostitution of others signed at New York on May 9, 1950, the Parliament enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Act was amended in 1978 to make good some inadequacies in the implementation of the Act and in the light of the experience gained during the period the Act was being implemented. Despite the amendments of the Act it was felt that enforcement of the Act had not been effective enough to deal with the problems of immoral traffic in all its dimensions. Suggestions had been made to Government by voluntary organisations working for women, advocacy groups and various individuals urging the enlargement of the scope of the Act, to make penal provisions more stringent and to provide for certain minimum standards for correctional treatment and rehabilitation of the victims. The Act was, therefore, further amended in 1986 making it more wide based. The Act is now called as Immoral Traffic (Prevention) Act, 1956. I need not detail other objects of the Act as all the discussions would not be relevant in these proceedings.

**59.** I am not entering into the scope and width of public interest litigation but when the issue has not been squarely raised, concerned parties not informed, pleadings being not there, it may not be correct to embark upon that task and to give interpretation of the law applicable thereto and that too without hearing the parties when the issue is so profound certainly involving hearing of the Union of India and State Governments with respect to their problems.

**60.** Thus considering the substratum of the judgment prepared by my learned brother relating to children of the prostitutes and establishment of the juvenile homes I would concur with the directions being issued by him in his order. I would, however, record my respectful dissent on the question of prostitution and the directions proposed to be issued on that account and also, in the circumstances of the case, what my learned brother has to say on the directions proposed to be issued referring to the provisions of Articles 142 and 145(5) of the Constitution.

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