

PETITIONER:  
GAURAV JAIN

Vs.

RESPONDENT:  
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 09/07/1997

BENCH:  
D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

WITH  
WRIT PETITION (CRL.) NOS. 745-54 of 1990  
O R D E R

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, upto the age of sixteen years to rescue them, from falling into the infernal existence and the same immoral and depraved way of life by inducing in the vice profession of prostitution, dimps, drug-pushers and bootleggers and other hazardous employments:

b) pass my other order/orders which this Hon'ble Court may does fit and proper in the circumstances of the case."

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".

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 1990 Supp. 3CC 709. 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."

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.

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 to 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.

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 Article 142 and 145(5) of the Constitution.

