

NATIONAL JUDICIAL ACADEMY



WORKSHOP ON HUMAN TRAFFICKING

[National Judicial Academy (NJA) - Federal Judicial Centre (FJC) - CEELI Institute]
VIRTUAL – FACILITATED FROM THE CEELI INSTITUTE

19th to 22nd November, 2021

Programme Report

PROGRAMME CO-ORDINATORS

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SE-08: Workshop on Human Trafficking, November 19-22, 2021

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VIRTUAL – FACILITATED FROM THE CEELI INSTITUTE

The National Judicial Academy (NJA), India in collaboration with the Central and East European Law Initiative (CEELI Institute), Prague and the Federal Judicial Centre (FJC), Washington DC conducted an online workshop on human-trafficking from 19-22 November, 2021. A total of 31 participants including 10 High Court Justices and 21 Principal District & Sessions Judges were nominated from different jurisdictions, out of which 29 judges attended the workshop. The four day workshop was designed to cover nine themes each in a dedicated session.

Pre-recorded session: Artificial Intelligence as Evidence [*Brief of the session is already provided in the report of the workshop on Cybercrimes held from 12-15 November, 2021*]

Friday, November 19

Session 1: Overview: Human Trafficking

Speakers: *Dr. Manfred Dauster, Presiding Judge, Supreme Court of Bavaria (München, Germany) & Barbara A. Martinez, Senior Consultant, Holland & Knight (Miami)*

The introductory session commenced by emphasizing that human trafficking is an inclusive global bane. Worldwide governments are in perpetual struggle towards advance operational law enforcement approaches to perceive, examine, indict, and sanction trafficking related criminal conduct. Certainly, the role of courts is critical in these efforts. The discussion initiated by highlighting the meaning of human trafficking as “exploitation of another person for compelled services”. As per discussion, the three elements of human trafficking that were stressed are vulnerability, exploitation and labour or service. Thereafter, the difference amid trafficking and smuggling was emphasized by underscoring that trafficking is centered around exploitation while smuggling is transportation based. Subsequently, the current state of international sex trafficking and efforts by the United States to bolster its jurisdiction to bring international sex traffickers to justice as discussed in *United States v. Baston* was also put forth. Various manifestations of human

trafficking like- sexual exploitation, child pornography, labour, begging, robberies, shop-lifting and forced marriages were elaborated upon. While discussing challenges faced by judges presiding over human trafficking cases some of the prominent defies that emerged are- vulnerability of victims/ witnesses that includes ensuring witness protection, diverse trafficking modalities (sexual exploitation, forced labor, migrant smuggling), trafficking-related crimes, vulnerable populations, structure of trafficking operations, and the components of a trafficking investigation.

The session further highlighted that human trafficking is not just organized crimes rather they are economically and politically motivated. Sometimes legitimate business organizations also breed human trafficking. While handling human trafficking cases the judges were advised to adopt victim centric approach which is ought to be vibrant and empathetic. Judges were suggested to ensure that the victim is not re-traumatized. It was discoursed that judges should comprehend all elements of such crime so as to put it in context. It is imperative for judges to cognize how the whole business of human trafficking works. Consequently, several types of organizations and entities that extend trafficking trade and the means used to entice victims and obscure criminal conduct also formed an essential part of the session. Subsequently, *United States v. Mozie* 752 F.3d 1271 (11th Cir. 2014) was also discussed.

Session 2 – Human Trafficking Litigation

Speakers: *The Hon. John Blakey, Judge, U.S. District Court for the Northern District of Illinois & Barbara A. Martinez, Partner, Holland & Knight (Miami)*

The session deliberated that in a trial relating to human trafficking it is important that the judge is sensitive and is able to understand the abuse and trauma faced by the victim. The judge should develop at least a proletarian understanding of trauma to straightforwardly handle the victims. It was advised that courts should take great care concerning victim and witness protection. It was opined that it is important that the judge understands the elements of crime as well as the criminal narrative. The process of trafficking was elaborated upon which includes grooming process, selection process, exploitation process and disciplinary process. The judges were cautioned and advised to evaluate the testimony and credibility of victims who have become part of the human

trafficking process with great care and caution. It was opined that it is important for a judge to understand the criminal narrative and link together the entire attributes of organized crimes. It was highlighted that usually criminals committing human trafficking violate myriad of laws involving weapons, drugs, immigration, fraud and money laundering because of the nature of their business model. It was advised that the judges should have a wider outlook and should not limit themselves to view the crimes in silos. It was also opined that the judge should undertake active case management. The use of social service providers for helping the witnesses and victims was also recommended. Furthermore, it was opined that in human trafficking cases the hydra - headed organization should be targeted since arresting only the individuals would not have a major impact. Various styles of approaches were discussed which included witness protection programmes, protective detail to witnesses and anonymous testifying. The system followed in U.S.A at the federal level and in Chicago were also discussed. It was cautioned that it is important that the case is built by integrating the electronic evidence and financial transactions and should not be limited to the sole testimony of the victim.

Saturday, November 20

Session 3- Legal Framework: India

Speaker: *The Hon. Joymalya Bagchi, Judge, Calcutta High Court*

The session initiated by emphasizing that forced labor is not a recent phenomenon in fact, the system of slavery and indentured labor has been in practice since time immemorial. The definition of "Trafficking in Persons" as provided by Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) was highlighted. It was stated that human trafficking transcends borders, religion, and ethnicity and is widespread across India. With reference to NCRB data it was highlighted that the major human trafficking is undertaken for sexual exploitation. Thereafter, Article 23 and 24 of the Constitution of India, Section 370,370A 370B of the Indian Penal Code, 1860 were discussed. Other allied offences involved in human trafficking were also discussed which included Section 372,373 and 374. The relevant provisions of the Immoral Traffic (Prevention) Act, 1956 [ITPA] were focused upon. It was deliberated whether an individual undertaking service in a brothel can be considered as an offender under the

ITPA Act, 1956. The compensation regime provided in the Code of Criminal Procedure was briefly discussed. Furthermore, other relevant legislations which govern the field of trafficking and forced labour including Bonded Labour System (Abolition) Act,1976; Child and Adolescent Labour (Prohibition and Regulation) Act, 1986; Protection of Children from Sexual Offences Act,2012 and Juvenile Justice Act,2015 were discussed. The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill of 2018 and 2021 were compared and various salient features were discussed. It was stated that the new bill is not gender specific and includes intersex and transgender individuals within its ambit. Moreover the bill provides for extra – territorial application and mandates the National Investigative Agency (N.I.A.) for investigation. Moreover, various important judgments were highlighted which included *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161, *Vishal Jeet v. Union of India* (1990) 3 SCC 318, *M.C. Mehta v. State of T.N. and Others* (1996) 6 SCC 756, *Budhadev Karmaskar v.State of W.B.*(2011) 11 SCC 538, *Suresh vs State of Haryana* (2015) 2 SCC 227, *Nipun Saxena and Another v. Union of India* (2019) 2 SCC 703, *Mahender Chawla v. Union of India* (2019) 14 SCC 615, *Hori Lal vs Commissioner of Police, Delhi and Ors* 2002 SCC Online SC 37; *State of West Bengal V. Sangita Sahu* (2018) SCC Online Cal 4853. Thereafter, the participants were given a group exercise along with a hypothetical fact sheet associated with human-trafficking that covered issues concerning compensation, witness protection, prosecution and framing of charges.

Session 4 - International Instruments and Standards Addressing Human Trafficking Cases

Speaker: *The Hon. Dr. Manfred Dauster, Presiding Judge, Supreme Court of Bavaria (München, Germany)*

The session provided an overview of the principal international conventions addressing human trafficking, including the Palermo Protocols, a supplement to the United Nations Convention against Transnational Organized Crime. The session commenced by stressing that the gravity of the offence of human trafficking is totally against the concepts of human rights which violates human dignity as well. The elements of human trafficking viz. change of location of victims, no right to self-determination to victim, abrogation of freedom of movement and right to speech and

expression of victim etc. Since international conventions as well as model laws and principles promote effective practices and accountability for courts and the global legal community and for the reason that trafficking-related crimes occur within national borders as well as transnationally therefore, participants were apprised with various international conventions and significant treaties and documents relating to human trafficking which included- United Nations Convention against Transnational Organized Crime, Palermo Protocol, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances etc. Reference was made to various documents of the United Nations viz. United Nations Charter, Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) etc. highlighting the importance of these documents and rights contained therein. The role of UN International Labour Office at Geneva in preventing economic exploitation of victims of human trafficking was also discussed. The role of Mutual Legal Assistance Treaties (MLATs) in combating the menace of human trafficking was stressed upon. It was emphasized that whenever a judge is dealing with cases of human trafficking, along with the local laws, they should always take into account the international documents and treaties into account wherever feasible and necessary. The provisions of Palermo Protocol were dwelt with in great detail along with its importance in dealing with the menace of human trafficking at the international level. The rights of victim vis-à-vis rights of accused in human trafficking cases, need of protection to victim and witnesses, fair trial etc. were elaborately discussed. The participants also discussed various facets of international cooperation, refugee movements, Palermo Protocol etc.

Session 5 - Vulnerable Victims/Survivors and Witnesses

Speakers: *The Hon. Dr. Manfred Dauster, Presiding Judge, Supreme Court of Bavaria (München, Germany) ; Barbara A. Martinez, Partner, Holland & Knight (Miami) & Dr. Pravin Patkar, Director and Founder, Prerana (Mumbai)*

The session provided human perspective to the legal and procedural concerns that were addressed in the preceding sessions. The discourse went into the causes of why testimony in trafficking cases is distinctive. Thereafter, tools that can be used by courts to safeguard reluctant and fragile

witnesses were discussed. It was accentuated that human traffickers target the defenseless, whether it is children, the deprived, and the undocumented, or vulnerable women. The role of a judge in preserving the dignity of trafficking survivors was emphasized. Some public interest litigations [PIL] that have been able to seek guidelines from the Supreme Court of India and High Courts on issues of re-trafficking, living conditions in brothels, rehabilitation models for human trafficking victims were elaborated with the help of relevant PILs - *Prerana vs. State of Maharashtra* 2002 ALL MR (Cri) 2400, *Prerna vs. State of Maharashtra* Cr.WP No. 1694 of 2003, *Prerana vs. State of Maharashtra* WP No. 1332 of 1999. The session further highlighted that the profound impact of human trafficking on survivors and their families. Scientifically it has been proven that victims of human trafficking are subject to trauma which leads to coping difficulties in them. This is one of the main reason why such victims are defensive and do not trust in law enforcement. Unsurprisingly, witness testimony in trafficking cases may be incomplete, inconsistent, and lacking the traditional indicia of reliability. It was advised that a judge should create an environment in the court which enables the victims/survivors feel more confident. For instance, this may include ensuring safe and proper commutation to court without being bullied by the media. Most of the survivors/victims are unaware of their legal rights. It is the utmost duty of judges to inform them about their rights at the initial stage of the case. Conversely, some victims are aware of their rights but unfortunately do not have any clue on how to exhaust the available rights. Therefore, providing legal aid is another essential that the judges should ensure. Psychological rehabilitation and addressing the economic needs of the victims and survivors is yet another significant facet. Once the victims/survivors have given their evidence and testimonies judges should ensure that they are taken care of. With respect to case management of human trafficking cases it was underscored that judges should be cautious in not stretching the trail or pressurizing the witnesses. The victims should be given a chance to assign witnesses. Participants were also advised to show empathy towards victims as well as witnesses by giving them space and by respecting their cultural and societal backgrounds. In short, all efforts should be to make the victim and witnesses feel comfortable. Subsequently, testimonies from experts or trauma specialists should be taken into consideration so that the victim is in a better position to testify and does not get re-traumatized. Trust deficit among the victims and witnesses is required to be addressed. It was highlighted that taking care of witnesses post trial is one of the most difficult part of human trafficking cases. Preserving and pooling of evidences in trafficking cases is another

significant aspect which was discussed at length. Integration of social institutions with judicial institutions for the support of victims post trial was suggested. Such integration will ensure that human trafficking victims do not fall prey to re-trafficking. The participants were suggested that the dichotomy of mentality needs be changed.

Sunday, November 21

Session 6- Judicial Management of Complex Criminal Cases

Speaker: *The Hon. Timothy Burgess, Chief Judge, U.S. District Court for the District of Alaska*

The session commenced by seeking insights from the participants on the challenges faced by them while managing human trafficking cases. Some of the challenges that were put forth are - problems of language in cross-border trafficking, prosecutorial support etc. It was stressed that effective case management strategies are always important but when it comes to human trafficking cases it becomes all the more significant to have a robust case management strategies due to the complexities involved in human trafficking cases. Judges were advised to be more actively engaged in these cases right from the initial stage of the cases when the charges are framed and should continue being involved through the proceedings and trial. The session elaborately discussed various challenges arising in human trafficking cases like - difficult and novel legal issues, multiple jurisdictions, multiple defendants, victims and witnesses, large number of documents (some in foreign languages), various kinds of digital and forensic evidences etc. The participants were informed that at times it is very difficult for victims to narrate their story in an open court or witness box. Here the duty of a judge is all the significant in ensuring a comfortable atmosphere and trust building in the victims so that they have the confidence to open up and speak about the incidents. Many victims require medical and mental help and enormous amount of counselling to overcome the trauma that they have faced during the course of trafficking. The large number of documents, many foreign documents, emails etc. are required to be dealt with by judges. It may involve various admissibility and authenticity related issues. The participants were apprised that many human trafficking cases which are high profile have a continuous attention of the media and society. In such cases, identity of victims needs to be protected. Apart from identity, the safety and security of

victims and witnesses also need to be taken care of by the courts. Some practical experiences while dealing with difficult lawyers in human trafficking cases and the strategies to ensure fair trial were shared and discussed. The 'Speedy Trials Act' of USA, which is a very handy tool for judges to dispose-off cases of human trafficking within timelines was referred. Some of the goals and objectives of judicial case management as summarized during the session are - to enable fair, timely and effective justice, to eliminate or reduce delay, to eliminate or reduce excessive expenses, manage judicial workload by setting deadlines for each stage, early and consistent judicial involvement in managing the pace of litigation, effective use of court technology and pre-trial conferences etc. Many participants raised their concerns with respect to the effectiveness of pre-trial conferences and effective case managements citing Indian circumstances like- heavy workload, pendency etc.

Session 7 - International Cooperation: MLATs and Other Evidentiary Issues

Speaker: *The Hon. John Tunheim, Chief Judge, U.S. District Court for the District of Minnesota*

The session initiated by delineating different types of international judicial cooperation like- treaty based cooperation among law enforcement and prosecutors, letters rogatory and informal contact that is between investigators, prosecutors and sometimes between judges of different countries. Thereafter, challenges in international judicial cooperation were highlighted that includes- difference in legal traditions viz., a crime in one country may not be a crime in another country. The biggest challenge of 'delays in the processes was underscored. Subsequently, the UN Convention against Organized Crime was emphasized as being the most important document for international cooperation. It is basically a treaty that came into force in 2003. The treaty was developed to encourage and facilitate international cooperation in the prevention, detection, and prosecution of transnational crime. This treaty is a global agreement which is addressed primarily to organized crime that goes across borders. It was underscored that the convention itself is not specifically addressed to trafficking, but its provisions and requirements apply to trafficking and can categorically assist countries in prosecution of criminals engaged in trafficking. One of the three protocols in the treaty is specifically addressed to preventing and punishing trafficking in persons especially women and children. Thereafter, Mutual Legal Assistance [hereinafter, MLATs] was highlighted. MLATs is an agreement between two or more countries for the express

purpose of gathering and exchanging information in an effort to enforce public or criminal laws. In short, it is the basis for modern exchange of information. India has MLATs with many countries. Subsequently, extradition was discussed. It was highlighted that extradition is an action in which one jurisdiction delivers the person who is accused or convicted of committing a crime in another jurisdiction or the requesting country's law enforcement. It all depends upon the arrangements made between the countries. These arrangements may be treaty based or non-treaty based requests. Further, the session brainstormed, what information a judge must consider before granting extradition request from a foreign country. The discussion highlighted that a judge must consider – nature of the case (serious or not), whether there is an extradition treaty with the requesting country or not, whether the human rights of the accused will be protected, whether the request falls within the parameters laid down in the concerned treaty etc. Additionally, letters rogatory which are formal requests from a court in which an action is pending, to a foreign court to perform some judicial act along with relevant examples was briefly discussed. The session further highlighted that informal judicial cooperation is possible by direct contact with law enforcement or other counterparts. Later part of the discussion identified best practices of mutual legal assistance like-mutual cooperation within legal framework to achieve the ends of justice, synchronization between different stakeholders of the justice delivery system, inclination towards cooperation to ensure fair trial, ease of accessibility to various criminal database, lessening of procedural altercations, sharing of technological know-how and advancements for investigations etc. Apropos the letters rogatory, participants were advised to be precise and should not ask for too much information.

Session 8- Trafficking: Cybercrime Related Issues

Speaker: *The Hon. John Tunheim, Chief Judge, U.S. District Court for the District of Minnesota*

The session initiated by emphasizing that cybercrimes have developed as an essential fragment of several human trafficking arrangements, particularly those with transnational elements. It was stated that currently, cybercrime issues are an integral part of most human trafficking cases. The electronic evidence generated provides insight into the various incidents, modus operandi and the business models employed by the offenders. The session highlighted how traffickers use the internet, computer networks and digital devices to accelerate trafficking, use of social media, online fraud and the emerging cyber-sex trade by referring to some cases laws. The factual matrix

and the judgment in the case of *United States v. Baston*; *United States v. Mozie* ; *United States v. Atkins* and *United States v. Glenn* were discussed to portray the nature and complexity of the human trafficking crime and the cyber trail and electronic evidence generated in these cases. It was stated that these cases generate a large amount of electronic evidence due to the nature of the business model. In response to a query it was discussed that although there is no set pattern but a number of human trafficking incidents occur in broken families wherein the young members are vulnerable. Moreover, a number of human trafficking happen in foster/shelter homes and vulnerable individuals like drug addicts are targeted.

Monday, November 22

Session 9 - Electronic Evidence and Digital Forensics

Speaker: *Ovie Carroll, Director, U.S. Dept. of Justice Computer Crime and Intellectual Property Section Cybercrime Lab*

The session discussed the impact of digital forensics on criminal litigation and the evidentiary implications of a cyber-investigation. It was highlighted that evidence relevant to a trafficking investigation may be stored not only on computers, but also on handheld devices, videogames, and even “smart” household appliances. Digital evidence easily crosses international borders and can be manipulated and destroyed, often in ways that require courts to rule on expedited motions. The growing range and complexity of human trafficking has required law enforcement agencies to develop expertise in the field of digital forensics. Therefore, it was suggested that as an investigator one should be progressive enough to be able to identify extents from where such evidence could be retrieved. For instance, it may be through mobile phone call details, text messages, emails, accounts, chats, various apps and websites used on the mobile handset, tower locations etc. It may also be through desktop or laptops like website cookies, email addresses, IP addresses, internet connection details, etc. it was highlighted that in USA the “Money Trail” model of investigation is followed. That is to say, as an investigator you follow the trail of money as it is being transferred from one account to other and one bank to other and one country to other. By following the money you can get closer to the target and then you can look for other available evidence which may be electronic

as well as physical. It was suggested that modelling websites and human trafficking website and their advertisements and cookies do provide very crucial evidences at times. The pictures and photographs on such websites or in phones seized provide very good information in its “metadata” like the device used to take photograph, location, date and time of photograph, alterations if any done after photo is taken, which software and hardware used to edit the photograph etc. It can be used to further the investigation and also as evidence in courts. The text message and emails also provide very vital information like the clients, girls, path of trafficking, locations, money trails etc. Login data and headers of such emails also provide crucial information which can be used as evidence. Banking data and money trail viz. bank login, transfer details, transferor and transferee account details, email accounts attached to banks, addresses, primary sources of money etc. is also very vital evidence. Social media accounts and logs, search history of particular person, Microsoft and other company’s synchronized data, jump lists, applications, other internet activities may provide important evidence. It was emphasized that “there is always more digital evidence available than you can find and even think of.” The working of the DARK WEB or DARK NET, incognito mode searches, RAM data etc. and its intricacies with examples were cited. The process and technology part of computers as to how computer saves data and what happens when it is deleted, and how can it be retrieved was also elaborated. The participants were given some important safety tips while using mobiles and other digital devices and log in related issues.