

xxxxxxx (Name Withheld) Vs. State represented by Inspector of Police and Others

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Court : Chennai Madurai

Decided On : Oct-16-2015

Judge : N. Kirubakaran

Appeal No. : CrI.O.P.(MD) No. 11735 of 2014 & MP(MD) Nos. 1 to 8 of 2014

Appellant : xxxxxxxx (Name Withheld)

Respondent : State represented by Inspector of Police and Others

Judgement :

(Prayer: This petition is filed under Section 482 Cr.P.C. to call for records relating to C.C.No.121 of 2012 pending on the file of the learned Judicial Magistrate, and quash the same.)

1. CASTRATE CHILD ABUSERS Blood curdling, horrific, sadistic, terrifying, shocking, cruel and brutal gang rapes of toddlers in New Delhi, in October, 2015 would definitely justify this Court to suggest castration as an additional punishment for child abusers ?, especially, child rapists ?. This Court could foresee that the suggestion of castration would be surely condemned, censured and criticised as barbaric, punitive, draconian, cruel, retrograde, stone aged, cannibalistic, inhuman, etc. ?. In spite of many penal laws and the recent POSCO Act, 2012 prescribing severe punishment for crimes against children, the number of such cases has increased from 38,172 in 2012 to 58,224 in 2013 and to 89,423 in 2014. When law is ineffective and incapable of addressing the menace, this Court cannot keep its hands folded and remain a silent spectator, unmoved and oblivious to the recent happenings of horrible blood curdling gang rapes of children in various parts of India. It would not only be injustice done to the child abuse victims, but would also amount to violation of the oath taken by this Court. This Court is sure that additional punishment of castration of child rapists would fetch magical results in preventing and containing child abuses.

2. This Court is aware that there would be a big hue and cry by people, who claim themselves to be Human Rights Activists ?, if the punishment of castration is brought in. But, those activists are mostly concerned with the alleged human rights violation of offenders/culprits/perpetrators of crime, unmindful of physical, psychological and the emotional trauma, suffering, agony and sorrow undergone by the victims in the hands of the culprits. Those activists should first exhibit sympathy and support to the victims of such crimes by visiting and consoling them at the hour of crisis instead of having misplaced sympathy on the perpetrators under the usual banner of Human Rights violation ?. They must remember that Human Rights is not a term restricted and reserved only for offenders.

3. It is shocking to hear that a toddler, aged about 4 years, was brutally gang raped by four devilish perpetrators in New Delhi on 9th October, 2015 and she got injuries all over her body, particularly, on her private parts and had been bleeding profusely.

4. There are a few of the cases of abuse of children, ranging from 11 months to 10 years, reported in the Media in 2015 alone would fortify the existence of inefficient Police Administration and ineffective laws and shock

one and all in the so-called civilized society;

* A 11 month old infant was raped by a 14 year old Jaithari Town, Madhya Pradesh in the first week of September, 2015.

* A 3 year child was raped in Gurgaon on 13.06.2015.

* A 3 year child was raped in Gittikhandar, Nagpur, in 2015,

* A 3 year child was raped in Pillaji Village, South Delhi on 13.06.2015,

* A 4 year child was raped by an autodriver in Palarivattom, Kochi in July, 2015,

* A 4 year child was raped and murdered in Kanpur on 16.05.2015,

* A 5 year child was raped in Panaji, Goa before 1st June, 2015,

* A 6 year child was raped in Mahatmapule Nagar slums in Thane on 01.09.2015,

* A 6 year child was raped in Ahmedabad on 19.08.2015,

* A 6 year child was raped by a 13 year old in Kalamna, Nagpur ;on 12.09.2015.

* A 7 year child was raped and murdered in Elulru, Andhra Pradesh on 16.06.2015.

* A 10 year child was raped by a School Teacher in Mapusa, Goa on 19.08.2015,

* A minor child was raped ;in Dimapur in March, 2015,

* A minor child was raped by three sailors in Navy Nagar, Mumbai, in July, 2015,

* Two minor girls were raped in New Alipore, Kolkatta, on 19.03.2015,

5. Apart from many native Monsters, Foreign Monsters are also stated to be regularly landing in our land to abuse our children. The facts of the case before this Court, is about a Foreign Monster, who is alleged to have abused a child in 2011.

6. The victim of this case is aged about 15 years at the time of alleged incident in 2011 and he was a student studying 9th standard in a School. Due to economic condition, the victim stayed at Trust, which is founded by the petitioner, a British National. The trust is being run under the guidance of the trustees residing near. The petitioner used to visit India to look after the activities of the Trust. One of such visits of the petitioner to India was on 19.3.2011.

7. It is alleged by the Prosecution that while the petitioner was staying in Trust, he tempted, promised and assured for better education to her son, the victim and pressurized her to get transfer certificate from the school, where the victim studied; He also gave money to the victim's mother for her expenses; lured and enticed by the promise and assurance of the petitioner she was constrained to send the minor/child victim with the petitioner on 13.4.2011 and thereby, the victim was kidnapped by train to Delhi.

8. While staying at Room No.154 in YMCA Tourist Hostel, at Shalimar Garden Street in New Delhi on 15.4.2011, in a single room in a single cot, the petitioner made the victim to lay and hugged him and he sat on the cot, shook the private part of the victim and attempted to have sexual intercourse with him in an unnatural way.

9. Subsequently, the petitioner took the minor/child victim on 17.4.2011 and made him to stay in Room No.1 in YMCA Tourist Hostel. Where also, he made the victim to stay along with him in a single room and during night hours, the petitioner/accused hugged the victim, shook the private part of the victim and attempted to have unnatural intercourse with the juvenile. Finally, the petitioner/accused leaving the victim and left for

London.

10. The child victim was brought from YMCA, Tourist Hostel to Chennai. After reaching his village he continued to stay in Trust. The members of Justice and Care Organisation, the de facto-complainant enquired the said victim and lodged a complaint dated 18.8.2011 to the first respondent police accusing the petitioner of the offences which are punishable under Sections 377 and Section 23 of Juvenile Justice Protection Act. After investigation, the first respondent police filed a final report under Sections 342,363,368,377 read with Section 511 of I.P.C. and Section 23 of Juvenile Justice Protection Act on 11.05.2012. The learned Judicial Magistrate, took cognizance of the case on 13.6.2012 in C.C.No.121 of 2012. The said proceedings are challenged by the accused by way of this petition.

11. Mr.R.Shanmugasundaram, learned Senior counsel appearing for the petitioner would submit that no offence is made out against the petitioner and there is no jurisdiction for the Trial Court to try the case, as the alleged offences were said to have been committed at Delhi; The petitioner only assured better studies for the victim and the victim's mother herself sent her son along with the petitioner on 13.4.2011 ; There is no question of kidnapping of the victim as alleged; The essential ingredients of kidnapping punishable under Section 363 or Wrongful restraint punishable under Section 342 I.P.C. are not made out, as the victim was not taken away from the lawful guardian without consent nor the victim was restrained or confined. Only after having been convinced with the assurance given, the victim boy was voluntarily sent by his mother with the petitioner; The alleged sexual acts were said to have been committed at Delhi and therefore, the Trial Court in Tamilnadu has got no territorial jurisdiction. In this regard, judgement of the Apex Court in Y.Abraham Ajith and others vs. Inspector of Police, Chennai and another reported in (2004) 8 SCC 100 has been relied upon.

12. FIR was registered only on 18.8.2011, i.e. four months after the commission of alleged offence and after the accused left the country, based on mere suspicion raised by the second respondent. The second respondent is guilty of suppression of the first complaint made to the Child Welfare Committee on 12.8.2011, and another complaint made on 16.8.2011 with the Superintendent of Police, based on which, all the children studying in Trust were admitted in a home run by Social Welfare Department, known as Asylum. Filing of a number of complaints against the petitioner would only show the malafide intention of the respondents. Therefore, the proceedings initiated out of malafide motive to wreck vengeance has to be quashed as stated by the Hon'ble Supreme Court in State of Haryana and others vs. Bhajanlal and others reported in 1992 Supp (1) SCC 335.

13. The mother of the victim did not state anything about the alleged offence committed by the petitioner in the writ affidavit in HCP(MD)No.887 of 2011 and she categorically stated that she and her son were coerced and pressurised by the police and others to give statements against the petitioner; Similarly, the Managing Trustees of the Trust also stated in W.P.No.12657 of 2011 that the victim and one another student from the very same hostel, were taken out on 27.8.2011 by the respondents to obtain incriminating evidence and thereafter, they were admitted in Mental Health Ward of Government Medical College Hospital, from 12.9.2011 to 19.9.2011, especially when they were not suffering from any mental illness. Thus, the respondents have committed serious human right violations by admitting the students, namely, juveniles in the mental asylum.

14. The juvenile has become a major and has filed an affidavit before this Court by filing a petition in M.P.No.8 of 2014 in CrI.O.P.(MD)No.11735 of 2014, stating that his mother consented and permitted for further study but due to heavy cold climatic condition, he was not interested in joining the school. He further submitted that the respondent police and the member of Child Welfare Committee visited the school on 16.08.2011 and forcibly got his signature and thereafter was admitted in hospital for psychiatric treatment and no such sexual abuse was committed by the accused/petitioner. In view of the victim's statements, further proceedings is a wasteful exercise and there is no ground for the accused being found guilty of the alleged offence. In this regard, the judgement of Hon'ble Supreme Court in V.D.Ray vs. State of Kerala reported in (2000) 8 SCC 590.

15. The second respondent/defacto-complainant is making wild and grave allegations on suspicion against the accused, based on the statements given under Section 164 (5) Cr.P.C. The learned Senior Counsel submitted that the suspicion cannot take the place of proof in criminal trial and he referred judgements of the Hon'ble Supreme Court in Mohamed Faizan Ahmad alias Kalu vs. State of Bihar reported in (2013) 2 SCC 131 and Raj Kumar Singh alias Raju alias Batya vs. State of Rajasthan reported in (2013) 5 SCC 722.

16. That apart, he would submit that based on the non-ailable warrant issued by the Trial Court, red corner notice was issued by the Interpol Organisation against the petitioner. Even though the warrant issued by the trial court was later withdrawn, the red corner notice is preventing the petitioner from coming to India to defend the case and he is ready to appear before the trial court, if the red corner notice is withdrawn. By making the above submissions, the learned Senior Counsel seeks to quash the proceedings.

17. On the other hand Mrs.Sadhana Abraham, learned counsel appearing for the second respondent would, very authoritatively, defend the prosecution and make the following submissions:

a) Based on reliable information about the commission of sexual offence by the petitioner/accused against the victim, the second respondent, a non-governmental organisation, gave a complaint on 18.8.2011 to the police, who conducted a raid and rescued the minor boy and registered a case for the offence punishable under Section 377 and Section 23 of the Juvenal Justice Act (Care and Protection of Children) Act 2000.

b) The case against the petitioner is prima facie established by the statements of the victim given under Sections 161 and 164 of the Criminal Procedure Code stating that the victim was sexually abused by the accused by staying in single room in a single cot by hugging the victim and shaking victim's private part with an intention to commit unnatural intercourse.

c) The statement of the victim is corroborated by the statement of the victim's mother given to the police that the accused assured better educational prospects to the victim at Delhi and he left for London leaving the victim.

d) The statement of General Secretary of YMCA, Assistant Manager YMCA Tourist Hostel, New Delhi would corroborate the statement of the victim that the victim boy was with the petitioner in the same room on 14.4.2011.

e) Paying of Rs.2000/- per month by the Trust, assurance of better educational prospects and taking away the victim from the lawful guardian would prove the very control of the petitioner/accused over the victim and his family members.

f) The statement of the Child Welfare Committee members are further corroborated by the District Social Welfare Officer about the commission of offence by the petitioner.

g) The very fact that the victim and his mother have now denied the allegations would only prove that the petitioner is tampering with the evidence, and

h) Tampering of evidence by the petitioner can be understood of the fact that the very same counsel appeared before the Trial Court for the victim's mother in HCP.No.887 of 2011 and for the accused in Crl.O.P.No.17199 of 2013.

i) The petitioner never appeared before the Trial Court or any other Forum in this case right from the inception of the case and he is trying to avoid appearing before the Court.

j) Since the petitioner failed to appear before the Trial Court, a non-ailable warrant was issued, based on which the red corner notice has been issued by the Interpol Organisation.

Therefore, she would, strenuously, contend that it is not a case for quashing the proceedings and she would rely upon the Apex Court judgements in Bachpan Bachao Andolan vs. Union of India (UOI) and others,

Employment of children At Circus case reported in JT 2011 (5) SC 68, Childline India Foundation and another vs. Allan John General Waters and others reported in (2011) 6 SCC 261, Prema Lama @ Mama vs. State of Assam reported in 2013 (3) GLT 80 (Gau), Ilyasuddin vs. State reported in MANU/DE/0213/2014 and Werner Wulf Ingo vs. State of Goa reported in MANU/MH/0207/2009. She also filed guidelines for standard of operative procedure in matters relating to sexual offences against the children, the International Child Protection Certificate of United Kingdom, which has comprehensive guidelines, including a certificate, showing the person on criminal record as it was recorded at the time of issue and she seeks suitable guidelines to prevent child abuse.

18. Similarly Mr.A.P.Balasubramanian, G.A Criminal Side would support the prosecution.

19. Mr.G.Rajagopalan, learned Additional Solicitor General categorises what are all the steps taken by the Union Govt. to prevent the foreigners to have access to children taking advantage of the poverty by way of report in response to the queries made by this Court by impleading the third respondent, the Central Government suo motu and the queries are extracted as follows:

1. Whether the details are available with regard to the number of children abused in various parts of our country (if so year wise and state- wise details are to be given)?
2. Whether foreigners are sexually abusing children in the guise of giving good education and adoption ?
3. What are all the steps taken to prevent the foreigners to have access to children taking advantage of their poverty ?

The Additional Solicitor General filed a report stating that 53% of children of India are subjected to sexual abuse, affecting the children physically, sexually and emotionally. It has been stated that there is little research on physical abuse of children. In India, children, mostly, in the age group of 5 to 12 years, are at the risk of abuse and exploitation. That apart, the following studies were made:

- 1) Study on child abuse 2007.
- 2) Human Rights Watch Survey in 2013.
- 3) Child abuse in India 2013 as reported in National Crime Record Bureau 2013.

With regard to second query, the report would only speak about the filing of cases and the contentions and it does not give the details regarding the said query. It has been stated about the judgement of the Hon'ble Supreme Court in Lakshmi Kant Pondey v. Union of India (1984) 2 SCC 244 which gives the guidelines, norms to be followed in case of adoption by foreigners. However, no other measures have been stated in the report. The Additional Solicitor General also gave the details of the steps taken by the Central Government to prevent foreigners to have access to the children. In view of the above, he would state that preventive steps are being taken by the Central Government to prevent the child abuse.

20. Heard the parties and perused the records carefully.

21. The offences alleged against the petitioner are serious namely, kidnapping and wrongful confinement and for having committed un- natural intercourse against the minor/child victim. The petitioner, a foreign national who started the Trust is running a hostel for the poor students. The allegation against the petitioner is that he induced and lured by words namely, assurance to the victim's mother, in such a way to send the victim along with him. The victim was studying 9th standard during the relevant period namely, in 2011. The intention of the petitioner to make the victim's mother to get transfer certificate of the victim from the school when the examination was on the way, is a suspicious one and he could have waited till the examinations were over and thereafter, he could have got the victim admitted in School. The hurried way in which he compelled the victim's mother to send the victim is a suspicious circumstance against the petitioner. When many students

are staying in Trust hostel ?, choosing the victim alone among others is another suspicious circumstance, which has to be gone into, only at the time of Trial.

22. Even in paragraph-7 of the petition, the petitioner stated that the victim was handed over to him by his mother and he took him for higher studies with the consent of victim's mother and the petitioner had not induced the victim and his mother. Petitioner's inducement was to such a level that the victim's mother was made to believe the assurance given by the petitioner that the victim would be given better education even though the petitioner is a stranger. Hence, a case is made out that there was inducement of the victim's mother, by deceitful means, with the object of taking away the minor/child victim from the custody of lawful guardian, namely, the victim's mother. Therefore, the ingredients of kidnapping from lawful guardianship are clearly made out.

23. When the petitioner took the victim on 13.4.2011 to Delhi and thereafter the victim had been under the custody of the petitioner, the minor/child victim could not have gone any where and even during night time, the petitioner is stated to have made the victim to stay in the same room in the same cot. That apart, given the new place and circumstances, without any money, the victim could not go away, even if he had wished, but had to remain with the petitioner. Therefore, the ingredients of wrongful restraint are clearly attracted.

24. The case of the prosecution is that the petitioner took the victim to Delhi and made him to stay in the same room in the same cot, where he shook the victim's private part and attempted to have unnatural intercourse with the juvenile and the same was continued. The very act making the victim to stay in the same room in the same cot, hugging him, shaking the private part of the minor/child victim and committing unnatural intercourse with the victim, who was a minor, against his wishes, clearly attracts Section 377 Cr.P.C. and 511 I.P.C. Similarly, the ingredients of Section 23 of the Juvenile Justice Protection Act also are complied with.

25. Though it is the case of the petitioner that the victim's mother stated in HCP.No.887 of 2011 that she was coerced to make allegations against the petitioner, she voluntarily gave statement under Section 161(3) of the Cr.P.C. against the petitioner that he took his son to Delhi and forced him for unnatural intercourse. Therefore, only during Trial, based on evidence to be adduced, it can be decided as to whether petitioner committed offences or not. In view of that, making out a case to quash the FIR based on the affidavit of the victim and his mother has to be rejected. Getting an affidavit or making victim's mother or the victim to file an affidavit denying the offence only proves that the petitioner meddles with the witnesses and he is in a position to have influence over the victim and other witnesses. Therefore, this is also a factor which has to be considered by this Court.

26. The victim himself gave statement under Section 164 of the Criminal Procedure Code before the learned Magistrates, stating that he was sexually abused by the accused by staying in a single room in single cot and the petitioner touched his private part and shook it when it was resisted by him. The relevant portion of the victim recorded before the Judicial Magistrate, is extracted as follows:

(Tamil ?)

(Emphasis supplied)

When such statements were made by the victim, the petitioner cannot take advantage of the statement made by the victim by filing impleading petition in M.P.No.8 of 2014 stating that he was not abused. It is for the Trial Court to appreciate the evidence to be adduced in this regard.

The Hon'ble Supreme Court in Rachapalli Abbulu and Ors. vs. State of A.P. reported in 2002 (3) Supreme 172 deprecated the practice of getting affidavit from the victim or witness by the accused. It has been stated in paragraph-11 of the said judgement, which is usefully extracted as follows:

10. The defence side examined DW 1, a notary public who gave evidence to the effect that PW 1 to PW 10 had

visited his office and sworn to affidavits, the contents of which were read out by him to these witnesses and that those affidavits were filed before the Sessions Court. DW 2 was a Municipal Councillor, who claimed to have identified these witnesses before DW 1. DW 3 is a fingerprint expert who was examined to prove the thumb impression of these witnesses in the various affidavits filed before the court. In these affidavits, PW 1 to PW 10 had stated that they did not see the occurrence. However, when confronted with the affidavits, these witnesses denied them and chose to depose before the court. The practice adopted by the defence side in getting the affidavits of these witnesses in advance is to be deprecated. That, in a way, amounts to an attempt aimed at dissuading the witnesses from speaking the truth before the court. The trial Judge as well as the High Court rightly rejected the defence contention. These witnesses appear to be illiterate persons. Their so-called affidavits must have been either cooked up or obtained by playing a fraud on them. This type of interference in criminal justice shall not be encouraged and is to be viewed seriously. ?

(Emphasis supplied)

Hence, getting an affidavit from the victim and his family cannot be accepted for quashing the proceedings.

27. There are statements made by the Members of Child Welfare Committee under Section 161(3) of the Cr.P.C. to support the prosecution case. Similarly, District Social Welfare Officer, also made the similar statement. When a statutory Child Welfare Committee members have given 161 statement and the District Social Welfare Officer also made similar statement definitely it is a case for trial and the proceedings cannot be quashed. The petitioner cannot seek quashing of the proceedings stating that when the witnesses have denied their statements, continuation of proceedings is a wasteful exercise and meaningless. However, as explained above, when a case has been made out for trial, it cannot be termed as a wasteful exercise and meaningless. Therefore, the judgement cited in V.D.Ray vs. State of Kerala reported in (2000) 8 SCC 590 is not useful to the petitioner.

28. An offence is a crime against the society and it never dies and anybody can set criminal law in motion by filing appropriate complaint before the police. After coming to know about commission of alleged offences said to have been committed by the petitioner against the victim and after visiting Trust and enquiring the victim only, the second respondent lodged a complaint against the petitioner. In that process, it took about four months. Though it may appear as if the complaint of the second respondent was a hear say, it is revealed that after ascertaining from the victim only, the complaint was given by the second respondent. The victim was enquired by the Child Welfare Committee, which was convinced with the statements made by the victim about the commission of the offence and thereafter only, the victim was taken and admitted in a Home called Asylum which is not a mental asylum. Therefore, it cannot be said that based on suspicion alone, the case has been initiated. In view of abundant materials found by way of statements given by the victim, the victim's mother and the members of Child Social Welfare Committee, by no stretch of imagination, it could be stated that the proceedings are based on suspicion. Hence, the judgements relied upon by the learned counsel appearing for the petitioner namely, Mohamed Faizan Ahmad alias Kalu vs. State of Bihar reported in (2013) 2 SCC 131 and Raj Kumar Singh alias Raju alias Batya vs. State of Rajasthan reported in (2013) 5 SCC 722 are of no use. Merely because, the second respondent had not given the details of the original complaint filed before the Child Welfare Committee and before the Superintendent of Police, it cannot be a ground to quash the proceedings.

29. According to the petitioner, there is no territorial jurisdiction for the Trial Court, as the alleged offence is said to have been committed at Delhi. First of all, the alleged luring and the inducements were made by the petitioner, in a deceitful manner, to the victim's mother, and paying money to her to hand over the custody of the minor to the petitioner for better education and she was made to get the T.C. in the midst of the examination conducted by the school. Hence, the commission of offences started and continued.

The Hon'ble Supreme Court in Naresh Kavarchand Khatri vs. State of Gujarat and another reported in (2008) 8 SCC 300 held whether an officer incharge of the police station has the requisite jurisdiction to make

investigation or not, will depend upon a large number of factors including those contained in Sections 177, 178 and 181 of the Code of Criminal Procedure and in a case where a trial can be held in any of the places falling within the purview of the afore mentioned provisions, investigation can be conducted by the officer in charge of the station concerned which has jurisdiction to investigate in relation thereto. Paragraph-8 of the judgement reads as follows:

8. Whether an officer in charge of a police station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178 and 181 of the Code of Criminal Procedure. In a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the officer in charge of the police station concerned which has jurisdiction to investigate in relation thereto. Sub- section (4) of Section 181 of the Code of Criminal Procedure would also be relevant therefor. We need not dilate more on analyses of the aforementioned provisions as the said question has been gone into by this Court on more than one occasion.

Similarly, the Hon'ble Supreme Court in Vishwanath Gupta vs. State of Uttaranchal reported in 2007 AIR SCW 2184 held that when the offence is committed in various places, all the Courts of those places have jurisdiction to try the offences. Paragraph-8 of the judgement is extracted as follows:

The expression local jurisdiction means the local area within which the court or Magistrate may exercise all or any of its or his powers under this Code and such local area may comprise the whole of the State or any part of the State as the State Government may by notification specify. Normally, the State issues the notification wherein the local limits of each Magistrate is defined and Section 7 CrPC says about the territorial divisions. Section 9 defines about the Court of Session. Section 9 further states that the State Government shall establish a Court of Session for every sessions division. Every Court of Session shall be presided over by a Judge, to be appointed by the High Court and the High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session. The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct. Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application. Therefore, for the administrative convenience of the State the aforesaid sessions divisions have been defined and their local limits are also earmarked. Section 11 deals with the Courts of Judicial Magistrates and Courts of Magistrates are constituted like first class or second class at such places as the State Government after consultation by the High Court by notification specify and that Magistrate will have local area and wherein he will exercise his jurisdiction of the class of cases specified therein. In this hierarchy of the courts if any offence is committed in the local area of particular police station then the Magistrate concerned of that area alone will have power to entertain the case and if the offence is triable by the Court of Session then that Magistrate will commit the case to the Sessions Court. Section 178 deals with the place of inquiry or trial. When there is uncertainty as to in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas. Therefore, Section 178 has to be construed liberally and it has to be inquired into how the offence has been committed. In case the offence has been committed in two local areas then it can be tried by any of them. Section 179 deals with the offence triable where act is done or consequence ensues. When an act is an offence by reason of anything which has been done and consequence of which has ensued in another area, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. Section 181 deals with the place of trial in case of certain offences. Under Section 181 various offences have been characterised and specially it has been meant that

where the offence has been committed that court will have jurisdiction to try that offence. We are concerned with sub-section (2) of Section 181 of the Code of Criminal Procedure, which reads as under:

181. (2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained. ?

Any offence of kidnapping or abduction may be inquired or tried by a court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained. In case of kidnapping and abduction the local jurisdiction shall be where the person concerned has been abducted or kidnapped or was conveyed or concealed or detained. It is likely that a person has been kidnapped from one part of the country and kept in another part of the State. For example, if a person is kidnapped from Rajasthan and is kept in the State of Haryana, then both the Magistrates and Sessions Judge will have jurisdiction to try the offences. As regards the completion of Section 364-A is concerned, something more is required for that offence. Section 364-A was introduced in IPC by the Criminal Amendment Act (42 of 1993) which came into effect from 22-5-1993 because of the increasing number of cases where the victim is abducted and a demand for money is raised with a threat perception or danger to the life of that person and that person is ultimately put to death. Such kind of offences are not covered under sub-section (2) of Section 181. It is not simply abduction or kidnapping. It is something more than ordinary case of abduction or kidnapping as defined in Sections 359 and 362. They are offences simpliciter of kidnapping and abduction. But here, in the case of Section 364-A something more is there, that is, that a person was abducted from Lucknow and demand has been raised at Haldwani, Nainital with threat. If the amount is not paid to the abductor then the victim is likely to be put to death. In order to constitute an offence under Section 364-A, all the ingredients have not taken place at Lucknow or Unnao. The two incidents took place in the State of Uttar Pradesh, that is, abduction and death of the victims but one of the ingredient took place, that is, threat was given at the house of the victims at Haldwani, Nainital demanding the ransom money otherwise the victim will be put to death. Therefore, one of the ingredients has taken place within the territorial jurisdiction of Haldwani, Nainital. Therefore, it is a case wherein the offence has taken place at three places i.e. at Haldwani, Nainital, where the threat to the life of the victim was given and demand of money was raised, the victim was abducted from Lucknow and he was ultimately put to death at Unnao. Therefore, the trial could be conducted in any of the local jurisdiction that is Haldwani, Nainital, in the State of Uttaranchal, Lucknow or Unnao, within the State of Uttar Pradesh. But in the present case the case was registered at Police Station Haldwani, and the investigation started at Haldwani therefore the local jurisdiction to try the offence shall be at Haldwani/Nainital. If the investigation agency wants to prosecute or file a challan at Haldwani/Nainital Court, then District Nainital will have jurisdiction to try the matter. It is wrong to say that Additional Sessions Judge, Third Fast Track Court, Nainital has no jurisdiction. The view taken by the Additional Sessions Judge, Third Fast Track Court, Nainital is wrong and we set aside the same though the High Court has set aside but for wrong reasons. In this view of the matter, we are not inclined to interfere with this matter. We dismiss the special leave petition and direct that Additional Sessions Judge, Nainital will have jurisdiction to try the offence. ?

Therefore, it cannot be stated that the learned Judicial Magistrate, has no jurisdiction. In this case, the inducement was made and consequently, the victim's mother took the victim and handed over the victim. Hence, the commission of offence commenced within the jurisdiction of Judicial Magistrate. Hence, the judgement in *Y.Abraham Ajith and others vs. Inspector of Police, Chennai* and another reported in (2004) 8 SCC 100, 2004 8 SCC 100 relied on by the petitioner is not useful to the petitioner.

30. There is no material produced by the petitioner to come to the conclusion that in the proceedings produced by the petitioner, there is a malafide on the part of the second respondent. Only after having been convinced with materials collected during investigation, the police filed the charge sheet as offences were made out. A perusal of the charge sheet would disclose a triable case and therefore, it cannot be stated that the investigation was with malafide motive under the pressure of the second respondent.

31. One more factor which has to be considered by this court is that the petitioner had not appeared before

the Trial Court at any point of time and therefore, the non-bailable warrant had been issued, resulting in issuance of red corner notice. Though the warrant has been recalled, the red corner notice is still in force. It is pointed out by the learned senior counsel appearing for the petitioner that because of the red corner notice, the petitioner is unable to appear before this court. Taking into consideration of the said fact and also considering the fact that the petitioner is a foreign national, it is appropriate to stay the red corner notice to such an extent to enable the petitioner to visit India only to face the Trial. Therefore, this Court stays only the read corner notice issued against the petitioner to enable him to visit India only to appear before the Trial Court and face the trial.

32. As stated above, the charge sheet makes out a triable case. The petitioner cannot take advantage of subsequent affidavits filed by the victim and his mother to seek quashing of the proceedings. Therefore, this court finds that there are enough materials to proceed with the case against the petitioner and the proceedings cannot be quashed and the petition is liable to be dismissed. .

33. Justice V.R.Krishna Iyer said as follows:

The hallmark of culture and advance of civilisation consist in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise of its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole ?.

Mr.Kofi A.Annan, Secretary General of the United Nations, in his Foreword The State of the Worlds' children, 2000 ?, had observed that ----

There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.. ?

When such is the importance of the children, how the children are abused in our country is best explained by the allegations made against the petitioner. As the victim of alleged sexual abuse is a child ?, as per Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 and the incidence of child abuse is dangerously increasing from year to year, becoming a very big menace, this Court attempts to go into the details of abuse, the reasons behind and connected issues.

When such is the importance of children, how the children are treated ?.

The Hon'ble Supreme Court of India in Child Line India Foundation vs. Allan John Waters reported in 2011 (6) SCC 261, sentenced three foreign citizens to under go six year rigorous imprisonment in 2006 for sexually exploiting a minor boy at the shelter house, run by them in Mumbai and neighbouring areas.

CHILD ABUSE

34. Child abuse is morbid and it is prevalent universally. World Health Organisation (WHO) defines Child Sex Abuse (CSA) as the involvement of child in sexual activity that he or she does not fully comprehend and is unable to give consent or for which the child is not developmentally prepared or else that violates laws or social taboos of society. The term of CSA includes the range of activities like intercourse, attempt to intercourse and oral genital contact, fondling of genital directly or through clothing, exhibition or exposing children to attempt sexual activity or pornography and the use of child for prostitution or pornography. It is reported by WHO that, in 2002, 73 million boys and 150 million girls under the age of 18 years had experienced various forms of sexual violations. The highest prevalence rate of CSA was seen in Africa (34.4 %). In India 19% of children were abused.

35. A summary of Study of Child Abuse in India, 2007 reported by Ministry of Women and Child Development reads as follows:

Summary of 'Study on Child Abuse in India, 2007 ?

Report by Ministry of Women and Child Development Government of India.

Dr.L.Kacker (IAS), Srinivas Varadan, Pravesh Kumar

Supported by: Save The Children and UNICEF

BACKGROUND INFORMATION; CHILD ABUSE IN INDIA

19% of the world's children live in India. 42% of India's total population are aged below eighteen. India is home to almost 19 percent of the world's children. Child protection has remained largely un-addressed.

.....

. 44,476 children were missing in India;

. India major source and destination country for trafficking children from within India and adjoining countries.

. Three to five lakh girl children in commercial sex and organized prostitution.

BACKGROUND OF STUDY ON CHILD ABUSE 2007

According to the researchers the only data on child abuse in India that are rather trustworthy are the data of the National Crime Records Bureau (NCRB), The numbers of NCRB show a steep rise in the total number of crimes against children (this rise is interpreted as indicative for a rise in crimes against children, while it could also mean a rise in reporting crimes-JB) But a look at the data shows that many forms of child abuse are not included. Besides that there is gross under-reporting of crimes of children. The lack of data was a main reason for this study.

Aim of the study:

To develop a comprehensive understanding of the phenomenon of child abuse, with a view to facilitate the formulation of appropriate policies and programmes meant to effectively curb and control the problem of child abuse in India.

MAJOR FINDINGS

Across different kinds of abuse, it is the young children, in the 5-12 year group, who are most at risk of abuse and exploitation.

Physical abuse

There is very little research on physical abuse in India. Only two earlier studies are mentioned.

Sexual Abuse

1. 53.22% children reported having faced one or more forms of sexual abuse,
2. Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls.
3. 21.90% child respondents facing severe forms of sexual abuse and 50.76% other forms of sexual abuse.
4. Out of the children respondents, 5.69% reported being sexually assaulted.
5. Children in Assam, Andhra Pradesh, Bihar and Delhi reported the highest incidence of sexual assault.

6. Children on street, children at work and children in institutional care reported the highest incidence of sexual assault.

7. 50% abuses are persons known to the child or in a position of trust and responsibility.

8. Most Children did not report the matter to anyone.

Recommendations

The report sums up recommendations on policy and legislation, protocols, scheme on child protection, outreach and support services, tracking missing children, share responsibility for all stakeholders involved, capacity building, gender equality, advocacy and awareness, research and documentation and gives specific recommendations on the different evidence groups (children in school, at work etc.) .

36. A Survey by United Nations Children Education Fund (UNICEF-I) was conducted in India from 2005 to 2013 which reported that 10% of Indian girls might have experienced sexual violation, when they were 10 to 14 years of age and 30% during 15 to 19 years of age. Overall, nearly 42% of Indian girls have gone through trauma of sexual violence before teenage. Children, who do not know the sex, might have faced some form of sexual abuse, within or outside from family. In most of the child abuse cases, the perpetrator is known to the child viz. relatives, neighbours, step parents, servants and highly trusted people.

37. A report by the Asian Centre for Human Rights states that India saw an increase of 36% of child rape cases from 2001 (2,113 cases) to 2011 (7,112 cases). As per 2001 census, about 440 million individuals in India were below 18 years of age and constitutes 42% of total population. A total of 33098 cases of child sex abuse were recorded in India during 2011, when compared to 26694 reported in 2010. For every 155 minutes a child, less than 16 years is raped, for every 13th hour a child under 10 year is sexually abused. At any point of time, it is estimated by the Government that 40% of Indian children are susceptible to threats and like being homeless trafficking, drug abuse, forced labour. In India, every second, a child is being exposed to one or other form of sexual abuse and the child faces critical form of it.

38. The issue of child abuse is still a taboo in India and majority of cases are not brought out, due to fear, denial from the community, social stigma and communication gap between parents and children. It is stated that for one reported case, there would be hundred unreported cases. It is reported that majority of Health care professionals in our country do not have abilities to manage the cases of CSA. There is no proper monitoring of various juvenile institutions, orphanages, schools etc..

39. India is a signatory to various universal conventions and declarations including United Nations Convention on the rights of the Child, 1989 and United Nations Declaration on the rights of the Child in 1959. India guarantees certain rights to its children including the right to protection from abuse, exploitation and neglect among others. However, it is a stark reality, the promised rights are not given to the children, who constitute more than 40% of Indian population. Making sex education compulsory in High School Level and educating as to what constitutes abuse to high school students would clear doubts and unnecessary views about anatomy of the human body and hormonal changes as per age and its effects. As per the NCRB Report 2014, the total Indian population of children is 44,58,00,000 (44.58 crores). The issues concerning children and their development are very many, especially, child abuses affecting 42% of the Indian population and their families and creating very many social problems. Therefore, there should be a separate Ministry in Central Government to take care of issues of children. Hence, Ministry of Women and Child Development is necessarily required to be bifurcated as Ministry of Women Affairs and Ministry of Child Development. The above suggestion by this Court is in consonance with the problems faced by women in all fields, right from home to office. Children should be sensitised about the values of family, advantages of Joint Family System and disadvantages of Nuclear Family System. Making Moral Science compulsory in syllabus and teaching moral values, ethics and social values in schools is essential, in the interest of children for their overall personality development, to make them as good citizens.

TO INCLUDE COLUMN ABOUT CRIMINAL BACKGROUND IN INDIAN VISA FORM, TO PREVENT CHILD ABUSE BY FOREIGNERS.

40. A number of cases of foreigners abusing children have been widely reported in the Media. Even though cases were registered against them, they were, somehow, able to go out of country and take jobs in foreign countries or return to their countries. It is reported in Media on 19.11.2014 that, one V.K.Paul Micckin of Bangalore, a School Principal, was arrested for sending lewd message to a student in January, 2012 and later, it was found that he holidayed with a child and abused the student. He was found to have faked Ph.D. Degree and wanted in a similar case for child abuse in Thailand. After arrest, he was granted bail and was reported, to have, left India and now, he is teaching in Kwait, even though, NBW is pending against him.

41. Similarly, one Austral Paul Allen posing as God man and Healer in Odisha was arrested for child sexual abuse and thereafter, he started a charitable home for children in Andhrapradesh, where again, he abused the children. He jumped bail and his whereabouts are not known. One Raymond Varley, a part of the International Ring of Paedophiles, who preyed on young children in Goa, was arrested in 2012 in Thailand and CBI is fighting to bring him to India. Ms.Vidya Reddy, Director of NGO Tulir-Center for Prevention and Healing of child sex abuse, Chennai, said that foreigners are pretending to be educators, social workers, godmen, healers, religious preachers for having access to Orphanages, children homes, where they prey on children. According to her, several such cases are surfacing from Goa, Kerala, Tamilnadu, Orisa and Karnataka. Chirstine Beddoe, former Director of ECPAT, UK, an organisation working for eradication of child trafficking globally (End child prostitution pornography and Trafficking) spoke on seventh annual lectures of Thulir Centre stating in 2011-2012 alone, there were 66 recorded cases of Britons arrested for child sexual abuse.

42. National Commission for Protection of Child Rights NCPDR, in an enquiry done in 2010 found that foreign tourists came to India blended with the community by offering service of teaching English and children were adopted through local mediators and enticed them by gifts. In view of the above position, Central Government has to get details of criminal background of the foreign nationals applying for Indian Visa including pending criminal cases, convictions, cautions, acquittals, warnings etc.

43. The United Kingdom developed International Child Protection Certificate (ICPC) to help, better and protect children from UK nationals or anyone, who has spent time living in UK, would seek to transfer and work overseas to sexually abuse them. The ICPC issued the following check made against the police information and in its data base, in the UK, lists of all of the applicants' convictions. The certificate can provide assurance with the staff employee in schools voluntary association do not have criminal record in UK to make them unsuitable to work with children. ICPC has been produced by the Association of Chief Police Officer Criminal records Office (ACRO) in conjunction with National Crime Agency (NCA) child exploitation and online protection command, the UKS National Law Enforcement Agency for child protection. The following details are available in ICPC with regard to the applicants:

Subject Access	Police Certificate for Immigration Purposes	International Child Protection Certificate			
		Checks completed			
		Police National Computer (England and Wales)	/	/	/
		CHS (Scotland)			
		Causeway (Northern Ireland)	.	/	/

Red Cap	.	_ /	_ /
Police National Database	.	_ /	_ /
CETS (Child Exploitation Tracking Service)	.		_ /
Certificate Data			
Arrest/Not guilty/No Further Action	_ /	.	.
Impending Prosecutions	_ /	_ /	_ /
Cautions	_ /	_ /	_ /
Reprimands	_ /	_ /	_ /
Warnings	_ /	_ /	_ /
Convictions	_ /	_ /	_ /
Includes both 'Spent' and Unspent records as defined by 'Rehabilitation of Offenders Act 1974'	_ /	.	_ /
Includes ONLY records that have not 'Stepped Down' under the 'ACPO Guidelines for Nominal Records held on the Police National Computer'	.	_ /	.
Security Protected Certificate Paper	.	_ /	_ /
Photograph of the applicant	.	_ /	_ /
Passport Details.	.	_ /	_ /

Turnaround Time	40 days	2 or 10 days	10 days.
(excluding			

dates of receipt and dispatch)		(Premium vs standard)	10 days
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Taking into account the above details, the visa form issued by the Indian Embassy has to be amended by providing a column requiring the applicants to give the details about convictions, actions, warranting reprimands and impending cases. If the details of the applicants regarding criminal antecedents are obtained at the time of visa application, it will be useful for the Indian Embassies to decide about the desirability of giving visa to the applicant (Foreign National) with criminal cases. Children protection and prevention of abuse in India by foreigners is important than attracting foreign nationals for the sake of foreign exchange. It is common knowledge that even if a foreign national is deported from India for violation of visa conditions, violation of laws or for commission of offences, the very same person is able to travel to India under a different visa. This only proves that in the Visa Regime, the process of issuing visas is not properly done by the Foreign Ministry.

44. Children are voiceless, vulnerable and they can easily be over powered with little resistance and that is the reason why the perpetrators aim at children. One serial rapist-cum-murderer, Ravindrakumar, 23 year old, was recently arrested by the Delhi Police. He confessed that he was drawn only to little children and when he was drunk, he would strangle most of the victims, all aged between 2 to 12 years before having sex with their lifeless bodies. He stated as follows:

I would kill them so that they did not cry and scream when I raped them, killing them, first, save me being caught. ?

According to him, vulnerable children, who are too helpless to fight back, he killed and raped, ranging from 25 to 30 little girls or boys and there could be 5 to 6 more. The above shocking details of the report from the murderer have been published in the Hindu on 22 July 2015.

45. The Vatican's former Ambassador to Dominican republican has been indicted on charges that he sexually abused young boys in Caribbean country and having child pornography on his computer and he stands trial in Vatican's Court in August, 2015. It is reported in Times of India dated 21.5.2015 that British police, which is investigating allegations of child sex abuse said that more than 1400 people had been named as suspects including 261 described as people of Public Prominence including 76 politicians, 43 from music industry , 7 from the World of Sports and 135 from TV, Film or Radio Industries.

46. INTERPOL reports that crimes against the children tend to be local crimes with vast majority taking place within the home or family circle. There are, however, a number of areas where there is an international angle, namely Internet crimes, travelling sex offenders, crimes against the children are facilitated by Internet, increased use of which in the recent years, has led to huge rise in offending. Similarly, travelling sex offenders also learn as sex tourism involves the abuse of children in developing countries by people who travel there and the relative wealth of offenders coupled with lack of understanding or effective legislation means that the abuse of children is easier in these countries. The case on hand is one such case.

47. Interpol on 14.4.2015 stated that it is to integrate Microsoft's photo-DNA technology into its international child sexual exploitation 'ICSE' data base as part of world police body's efforts to identify the victims of child abuse world wide ICSE also user sophisticated image comparison software to make connections between victims and places and by the end of March, 2015, the data base had assisted in the identification of more than 6300 child abuse victims and the arrest of more than 3200 offenders. Thus it is evident that international police is taking all efforts to prevent child abuse and also track such abusers.

Therefore, it is evident child abuse is prevalent through out the world and irrespective of boy or girl, committed by people of their own country or by foreigners. In this case, a foreigner, the petitioner herein, is said to have sexually abused a child, a 14 year old boy , by kidnapping him from his lawful guardian's custody.

When child sex abuse is universal and many innocent children are becoming victims, the fight against child abuse has to be fought with the cooperation of all countries by unified action.

48. India is considering tourism as a trade. However, it does not pay required attention to the problem of pedophilia, if reported to the police. As usual, the culprit gets bail and leaves the country and will not return to face the trial. Similarly, right from the inception of this case, the petitioner, so far, has not appeared before the Court even once. Therefore, the Union Government officials should be careful while issuing visa.

49. It is the duty of the State as per Article 39 (e) (f) to see that children are not abused and are given opportunity and facilities to develop in a health manner and condition of freedom and ability, which reads as follows:

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions ;of freedom and dignity and that childhood and youth are protected against exploitation and against moral and abandonment. ?

Similarly Article 45 speaks State's duty to provide absolute care and education to all children and until they complete six years most importantly. Article 15(3) enables the State to make special provision for Women and Children. Apart from rights conferred by the constitution, in an endeavor to protect children from offences of sexual assault, sexual harassment and pornography and for establishment of special courts for trial of such offences and for matters therewith or incidentally thereto, Parliament enacted Act viz. Protection of Children from Sexual Offence Act 2012 ?. In spite of the above special law, reality is that, as per NCRB reports, crimes against children are day by day dangerously increasing from 58,224 in 2013 to 89,423, an increase of 53.58%, affecting the children and their families.

NECESSITY FOR COMPULSORY SEX EDUCATION

50. Sex is considered to be taboo and it is immoral and unethical in our society. In the name of culture, value, tradition, morality, many of us view and consider the sex education as improper and unwarranted as it would lead to dangerous consequences. However, young people are naturally curious about the sex and sexuality and they should be provided with adequate education to receive information about the sexuality, growth of human body, changes according to age, providing scientific information and knowledge about the age related problems, gender, awareness about sexual abuse, hygiene, about their body, their urges, correct marriage age, reasons behind menstrual cycle etc. Denying the youngsters, the correct and scientific information, would lead to acquire half backed and incorrect knowledge from other sources, like, Internet, friends, movies, creating misconception and doubts. Every human being is born with body and everybody is supposed to know about the mechanism of the body, since many teen agers as stated in paragraph-3 committed sexual offences and all the victims of child abuse are children.

It is appropriate for the Government after thorough deliberations to take a decision with regard to sex education. In the days of globalisation, every information is pouring from Internet, youngsters naturally are curious to know about the sex and they tend to see pornsites leading to sexual arousal and commission of sexual offence against the children. In view of the above situation, children should be taught about sexual advances, inappropriate touches and sexual abuses. Lack of knowledge alone leads to this kind of grave situation, which has to be necessarily addressed. In the era of globalisation, we should not misdirect ourselves or our children in the name of culture, values and moral and traditions. Though we are shy and reluctant to talk about the sex and consider the sex as shame, we are second thickly populated country in the world, next to China. Therefore, the Government is to take appropriate decision with regard to introduction of compulsory comprehensive sexuality education to adolescent and young people. It has to be remembered that at the 1994, United Nations, International Conference on Population and Development (ICPD) and its Five

year Review Member States of the UN including India affirm the Sexual and Reproductive Rights (SRRs) of adolescents and young people.

REPORT TO THE UNITED NATIONS, HUMAN RIGHTS COUNCIL FOR THE UNIVERSAL PERIODIC REVIEW OF THE REPUBLIC OF INDIA speaks about the lack of comprehensive sexuality education in India, leading to children suffering sex abuses. Paragraphs 2,11, 12,13 and 14 of the reports reads as follows:

II. SEXUALITY EDUCATION AND YOUNG PEOPLE'S SRRs

2. At the 1994 United Nations International Conference on Population and Development (ICPD) and its Five Year Review member states of the UN including India affirmed the Sexual and Reproductive Rights (SRRs) of adolescents and young people. It is understood that in order for adolescents and young people to freely make informed decisions on all matters relating to their sexuality and reproduction, they require comprehensive sexuality education. Therefore, as a part of their commitments under the ICPD agenda, governments are obliged to provide for free and compulsory comprehensive sexuality education for adolescents and young people.

III. Sexuality Education and the Rights of the Child 11. The 1989 United Nations Convention on the Rights of the Child (hereinafter CRC) obliges state parties to protect the best interests of children (Article 3), to protect children 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 in whose care they are (Article 19) and to undertake to protect children from all forms of sexual exploitation and sexual abuse (Article 34). The CRC was ratified by India in 1992. 12. The reality of India's 440 million children is far from ideal. Recently, a study commissioned by the Indian Ministry of Women and Children Development and carried out by UNICEF and Prayas, a non-governmental organization, interviewed 12,247 children and 2324 young adults in 13 Indian states. The study revealed that a shocking 53% of children between the ages of 5 and 12 have been sexually abused. Most often this abuse was perpetrated by parents, legal guardians or close members of the family. Further, the study disturbingly notes that more than half of all cases of sexual abuse and rape go unreported.

13. Educating children about their bodies and sexuality in an age-appropriate way can go a long way in helping them understand the difference between sexual and non-sexual touch. Such education can help children escape the guilt and fear that often accompanies sexual abuse and empower them to report previous or ongoing abuse.

14. In light of overwhelming evidence that there is rampant sexual abuse of children in India and strong suggestions that age-appropriate sexuality education for children can reduce the incidence and severity of sexual abuse, the failure on the part of the Indian state to provide for compulsory sexuality education for children in all schools amounts to negligence and thereby a violation of its commitments under the CRC.

In view of the above report also, comprehensive sexuality education to the adolescence and young people.

CASTRATION AS ADDITIONAL PUNISHMENT FOR CHILD ABUSERS

51. National Crime Records Bureau report, 2014 states that crime against children in Delhi got doubled within two years. A total of 21,011 cases of crime against children were reported between 2012 and 2014 and in or about 10% of the cases are all rapes. It is reported in NCRB reports most of the crimes in India have fallen from 2001 to 2011 except rape which got increased by 50.6%. According to NCRB reports, 364 rape cases of girl child of 10 years of age below are reported in 2013 and 2014 and the crime rate against toddlers is on the rise. In view of constant increase in child abuse cases, to protect children from sexual abuses, a Special Act has been enacted by the Parliament viz. Protection of Children against the Sexual Offence Act, 2012. From November, 2012 to March 2015, 6816 cases were registered under POSCO Act. Out of 6816 cases, 556 cases only went for trial, 166 cases alone got convicted, and 389 cases ended in acquittal and the conviction rate is

2.4%. Rajasthan has maximum of 936 cases followed by Maharastra-926, U.P. 869, M.P. 829 and Kerala-596. Every second, child in India is facing some form of abuse, irrespective of whether it is a girl or a boy. Since there is a dangerous increase in child rape cases, decrease in the incidence of these types of cases is possible only by means of severe conviction. Until there is fear of law, such incidents would not stop.

52. The number of reported crimes against children have been year after year. The following data about crimes against children would show steep increase in number of crimes against children.

Year	No of Offences
2008	22500
2009	24201
2010	26694
2011	33098
2012	38172
2013	58224
2014	89423

Between 2008 and 2014, the crimes against children shockingly increased by 400%. Therefore, traditional and existing laws are not stringent enough. Majority of child rape cases are not reported to Police. Reform in laws are a must as on date.

53. As traditional laws are not stringent enough to yield any defined positive result and in view of that, though the suggestion of castration looks barbaric, but barbaric crimes should definitely attract barbaric model of punishment. Many may not agree with this. Still, everyone needs to understand the stark reality in the Society and appreciate the punishment suggested. Otherwise, there cannot be any deterrence which punishment should bring in the minds of the culprits. The very thought of punishment to be imposed should frighten and deter the culprit from committing the offence. This Court hopes and expects that our policy makers after exhaustive deliberation, with consultation debates and taking views of people from various sections of the society would bring in necessary laws or amendments in the existing laws incorporating castration as additional punishment instead of shying away from taking a decision in the name of Human Rights ?.

54. The aim of the castration as a punishment is to tinker with offenders libidos to control behaviour resulting in taking away the sex drive which motivates the commission of offence aroused by alcohols and pornography. Castration has been imposed against child sex offenders in Polland, Russia, Estonia and nine States including California, Florida, Oregon, Texas and Washington in United State of America. South Korea was the first Asian country to make castration as punishment.

(i) It is reported on 27.8.2015 a new Government task force in New South Wales, Australia is considering whether to force the child sex offenders to undergo chemical castration because of the high recidivism amongst sex offenders. The Government announced establishment of new task force in order to examine and inform the Government how to impart the child protection through increased use of anti-libinal treatment.

Guam Legislature of United State of America passed a bill dated 3.9.2015 called chemical castration for sex offenders Act ?.

Russian Parliament approved mandatory chemical castration punishment for commission of sex crime against the children in 2011 itself.

Mr.Robert Mugabe, President of Zimbabwe in a news report dated 15.9.2015 said that the Government is seriously considering the castration for rapists, especially those who violate children.

55. Taking into increase in number of child abuse cases, abuse by foreigners, this Court has to pass

appropriate directions. This Court cannot mechanically decide the issue involved in this case alone. As a Constitutional Court, being the guardian of rights of the citizens, this Court is required to understand the present situation in the society based on the facts of the case and various other details, and issue necessary directions. It is an extraordinary case demanding extraordinary ordinary directions. This Court under Section 482 has got powers to pass orders to prevent miscarriage of justice to protect justice delivery system and to make such orders as may be necessary as held by the Apex Court in State of Haryana vs. Bajan Lal reported in 1991 SCJ 106 SC 703.

A three Judges' bench of the Hon'ble Apex Court held in Shivaji Rao Nilan Gekar Patil vs. Dr.Mohes Madhar Gasavi and others reported in 1987 1 SCC 227, when situations cry out the Court for necessary orders, the court cannot remain mute and dumb and paragraph-51 reads as follows:

51. This Court cannot be oblivious that there has been a decline of public standards or public morals and public morals. It is necessary to cleanse life in this country along with or even before cleaning the physical atmosphere. The pollution has values and standards in (Sic is) an equally grave menace as the pollution of the environment. Where of as the situations cry out the Courts should not and cannot remain mute and dumb. ?

Similarly extraordinary situation demands extraordinary remedies as stated by the Hon'ble Supreme Court in Prithipal Singh vs. State of Punjab reported in 2012 1 SCC 10. As per the above judgement, Court has to bear in mind, the peculiar facts of the case and has to innovate the law and pass unconventional order, keeping in mind the extraordinary situation. In this case, the extraordinary situation is that, steep increase in child abuse cases year by year as given below.

In the view of the above position only, this Court is compelled to suggest castration for child abuse. However, the Government should also take into consideration foisting false case by the police as it is alleged many cases are foisted against the citizen falsely.

56. When law is incapable of preventing and containing more and more child abuses, this Court cannot be a silent spectator folding its hands, which would be not only doing injustice to the victims, but also violating the oath taken by this Court. It is shocking to hear a toddler aged 4 years was brutally gang raped by four devilish perpetrators in New Delhi on 9.10.2015 and .she got injuries on private parts and had been bleeding profusely and many toddlers are gang raped. In spite of many Acts and recently POSCO Act 2012, there is no sign of dwindling of lakhs of child abuse cases. This Court is sure that additional punishment of castration of culprits would fetch magical results in preventing and containing child abuses specifically child rape

57. This Court is aware of hue and cry would be made against the suggestion of castrations made by this Court by people who claim themselves as Human Right Activities . When those persons are usually concerned with the alleged violations of human rights of the offenders/culprits/perpetrations unmindful and scan respect for sustaining of violation of human rights by the victims. It is very unfortunate to note that common good is driven to margin due to the din made by those Human Right Activities ?. If they are really bothered about human right violations, should show sympathy and apathy to the victims and visit them and console them, when the victims child abuse suffer physical, emotional psychological injuries which would damage their personality throughout their lives.

SUGGESTIONS

59. In the facts and circumstances of the case, this Court makes the following suggestions:

1. Parents and family members should interact with children regularly creating awareness about safety and abuses including sexual abuses being inflicted on them and how to avoid and to raise alarm in case of any attempt to abuse.
2. The parents should interact regularly with the children so that if any abuse is made which can be found out even if the child does not voluntarily report.

3. School authorities should create awareness about the child abuses. If any behavioral change in the student is noted the same should be brought to the notice of the parents and enquire the child in a conducive atmosphere to find out any abuse has been inflicted.
4. Media should also play active role in educating and sensitising the society about child abuses and sex offences by giving required publicity about the existing laws against sexual offences especially child sexual offences.
5. People should be educated to note the behavioral changes of the children and find out the reasons for abuses to save the child from trauma which may be prolonged.
6. The investigating agencies should coordinate with NGOs, who are working for the welfare of children and prevention of child abuse by foreign nationals.
7. Since both the parents are working and there is no elderly people, namely, grand parents in the family, the children are left with custody of third parties namely, servants, neighbours etc. resulting in abuse of children. Therefore, atleast one parent should be available in the family to look after the children.
8. There should be efforts by all to revive the disintegrated joint family system for more benefits including safety of children.
9. Children should be taught to be careful with the strangers.
10. Since liquor is one of the basic main reasons for commission of more and more crimes especially child sexual abuses affecting the entire society day by day, the Central Government and State Governments may consider introduction prohibition IN CONSONANCE with Article 47 of the Constitution of India and as per wishes of the father of our nation, Mahatma Gandhi and other great leaders.

DIRECTIONS

58. Therefore, this Court gives the following directions:

1. Central Government is to consider the suggestion of castration to child abusers, particularly, child rapists, as an additional punishment apart from other punishments under POSCO Act, I.P.C. JJ.Act etc., in view of abnormal increase in child abuse cases.
2. Central Government may consider constituting a commission headed by a retired Supreme Court Judge with experts from various fields namely jurists, psychiatrists, especially child psychiatrists, psychologists, neurologists, academicians, police officers, social workers child right activists, NGOs working for Welfare of children, etc. to collect informations and to get views and opinions from various sections of the society about physical child abuse as the Central Government in its report filed before this Court, stated that there is little research on physical abuse of children in India.
3. Central Government is to take a decision with regard to introduction of Free and Compulsory Comprehensive Sexuality Education in High School level to enable the students to understand gender identity, their sexuality, age related physical changes and problems, to protect themselves from sex advances and abuses etc., as India has its commitment under United Nations, International Conference on Population and Development (ICPD) agenda 1994 affirming the Sexual and Reproductive Rights (SRRs) of adolescents and young people as per Article 253 of the Constitution of India.
4. The Union Government shall incorporate columns in Indian Visa forms issued to foreign nationals to give the details of their pending cases, cases of conviction etc. as provided in UK, Visa form.
5. Union Government shall permit the foreign nationals to start home, orphanages, shelters for children and orphans etc. after thoroughly verifying their antecedents from their respective country and INTERPOL.

6. Central Government as well as every State Government shall conduct massive awareness programme about a crimes against children as per Section as per Section 43 of the Act by way of films, documentaries, televisions, radio and print media, stage dramas, circulating pamphlets and conducting meetings and seminars in schools and colleges regularly as public awareness about POSCO Act has not been created so far.

7. Central Government shall direct all the State Governments to include moral science in the syllabus as a part of the curriculum to inculcate moral, cultural and social values in children, insisting about the importance of the family and relationship to mould them as good citizens.

8. Central Government as well as State Governments are directed to provide counselling to the students at the school level itself to find out any disorder or negative attitude and the same could be informed to the parents and proper counselling can be given to make all the children to grow as well-groomed citizens.

9. The Central Government shall direct all the State Governments to give special training to medical practitioners to deal with and manage victims of child abusers as the medical professionals mostly do not have required training in this regard.

59. Child Abuse especially sexual abuse in India is shaming the entire nation. It is stated that capital of our country is capital of child abuse ?. Even toddlers are not spared by notorious, cruel minded wicked species, as this Court does not want to term them as humans ?. If this Court wishes to term the child abusers as animals ?, it would amount to degrading and insulting animals, as the animals are grateful, useful and have got their own way of channelised life, having pattern of behaviours. No animal would sexually abuse cubs/kids. Reacting to a report about a 5 year old gudiya in April, 2013, in New Delhi, our President Mr.Pranab Mukerjee asked the people to introspect at the erosion of values and our repeated failure to ensure security of our women and children. ?

60. Child is the father of man ?, - wrote William Wordsworth. 42% of our population is children. If the children are not properly groomed by protecting them from any kind of abuse, assault etc. the fate of our future society will be a question mark. Children's welfare and protection are essential for bright future of India. Infamous Nirbhaya's cruel gang rape and murder in December, 2012 at New Delhi created unprecedented human waves of protests against sex crimes and amendments were brought in IPC as per the recommendations of Justice J.S.Verma Committee. In spite of that, number of sexual crimes especially child sexual abuses are dangerously increasing making the country in the grip of child sexual crimes. What is necessary, is a clear policy road map creating massive awareness and sensitisation. Political parties instead of trying to take political mileage out of the situation trading allegations against each other, should unite and fight against the dangerous menace of sexual crimes especially child sexual abuse by Indian as well as by foreigners.

61. Therefore, the petition is dismissed. However the red corner notice issued to the petitioner by INTERPOL is stayed, so as to enable him to visit India only to appear before the Trial Court and face the trial. No costs. Consequently the M.P.Nos.1 to 8 of 2014 are closed.

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