



NOTES AND COMMENTS

CHILD PAEDOPHILIA AND INTERNATIONAL TRAVEL AND TOURISM: AN UNHOLY NEXUS

TOURISM HAS been seen in developing countries as an opportunity for rapid economic development, bringing in much needed foreign exchange. Stimulating tourism has received precedence over social policies, including the protection of children. The international tourism aims at supporting tourism to contribute to the economic development, international understanding, and promotion of peace, wealth and maintenance of human rights and freedom for all human beings without discrimination of race, sex, language or religion.¹

Sexual exploitation of children² is not a new term for the third world countries. The phenomenon started in a small scale but mushroomed in several third world countries in a wide scale as a result of rapid industrialization and urbanization after the second world war. Visitors from developed countries were encouraged to visit under developed countries to help the latter in the growth of economic development and international understanding. But many foreign visitors were, however, attracted not only for tourist activity but also for the purpose of exploitation of women and children.³ The nexus between child prostitution and the tourism industry is no more a hazy domain.

The World Tourism Organization (WTO) became actively involved in the struggle against organized sex tourism, and particularly the sexual exploitation of children, after being alerted of this phenomenon by various NGO's, notably ECPAT (End Child Prostitution in Asian Tourism), and a number of religious networks operating in tourist destination countries. A few years later, in 1995, the General Assembly of the World Tourism Organization (WTO), adopted its first resolution on – as it was then called – The prevention of “organized sex tourism”, in which it

1. Available at www.world-tourism.org/aboutwto/eng/menu.html. This was conformed by the signing of the charter of the World Tourism Organization. The World Tourism Organization (WTO) a specialized agency of the United Nations is the leading international organization in the field of tourism. With its headquarters in Madrid, Spain, the WTO plays a central and decisive role in promoting the development of responsible, sustainable and universally accessible tourism. In pursuing this aim, the organization pays particular attention to the interests of developing countries in the field of tourism.

2. For the purpose of this paper, the definition of a child is someone under 18 years, in accordance with Art. 1 of the UN Convention on the Rights of the Child.

3. S.K.Ghosh : *The World of Prostitutes* 465 (1996).



denounced and condemned child sex tourism, “considering it a violation of Article 34⁴ of the Convention on the Rights of the Child (CRC) and requiring strict legal action by tourist sending and receiving countries”.⁵

The organized sexual exploitation of children is a worldwide phenomenon, and one that increasingly appears to be taking on an international dimension. Child pornography, often involving the circulation of material produced in developing countries, the trafficking of children across national borders for exploitation, the movement and sexual exploitation of female domestic workers and ‘child brides’ are all features of this transnational exploitation, each of which essentially involves the movement of the child or pornographic material to the consumer.⁶

It has taken a long time for NGOs and other interest groups to point out the negative impact of modern tourism and bring them into focus. It has taken an equally long time for these groups to make the tourism industry acknowledge its impact. It is the product of this relentless pressure on the tourism industry that national associations of travel agents and tour operators within European Union castigated any form of sexual exploitation of children and pledged never to promote tours with paedophile purposes. Many international tourism organizations have passed resolutions and have declared their willingness to cooperate with the authorities in countering child sex abuse at all levels.⁷ While the above resolution remains on paper, over one million children in Asia

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

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

5. Available at www.equitabletourism.org/thelightof.htm

6. Kevin Ireland: “Sexual Exploitation of Children and International Travel and Tourism” 2 *Child Abuse Review* 263 (1993).

7. Some of these Declarations are:

- The Children’s and Travel Agent’s Charter approved by the Universal Federation of Travel Agent’s Association (UFTAA)
- To End Child Prostitution in Asian Tourism Resolution of the International Hotel Association (IHA)
- Resolutions on prostitution in tourism drawn up by the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and allied Worker’s Associations; and
- The International Federation of Tour Operators.



alone are victims of the tourism industry and their clients.⁸

Effort in this paper is made to explore paedophilic behaviours and factors responsible for the proliferation of this horrific evil in the Asian region. Special emphasis has been laid down on child paedophilia in Goa in India and judicial approach for the prosecution and punishment of paedophiles. The paper also talks about the changes that need to be made in Indian law to give a wider connotation to the term child sexual abuse. The role of citizenry is critically assessed.

Paedophilic behaviours

Paedophilia pertains to the manifestations and practices of sexual desire that some adults develop for prepubescent children (13 or under) of both sexes.⁹ Sexual practices between an adult and an adolescent and sexual aggression against young majors do not fall within the confines of paedophilia.

Although, present state of knowledge on the personality of the paedophile is still fragmentary yet, it is important to note that paedophilia is found in all socio-cultural milieus, all social classes, from the poorest to the richest and that a paedophile is not a hirsute, dirty character, lurking in the dark, waiting to pounce. On the contrary, he can be someone who is a friend to all, often well integrated in society, and, sometimes, entirely above suspicion. It is, at most, an indication that he never talks about or openly displays his paedophilic tendencies.

Who is it that uses children sexually when traveling overseas? Although there will be of course some degree of sexual arousal towards children in the vast majority of individuals who sexually offend against children, the strength of this arousal varies between individuals and within an individual over time. One general theory is that some people have early sexual experiences with children that condition them when they become adults to find children to be arousing. Another theory about sexual arousal derives from speculations that some individuals might learn to become aroused to children through exposure to child pornography or other sources of media that project children in an erotic light.

However, the distinction between 'preferential' and 'situational' child molesters is useful in analyzing this situation. The preferential child molester involves sexual deviance regarding prepubescent children acted out in various forms. On the other hand, this situational molester does not have a true sexual preference for children but engages in sex with

8. *Supra* note 5.

9. Available at http://www.unesco.org/webworld/child_screen/documents/p_dunaigre_e.rtf.



children for varied reasons. These are often isolated, impulsive acts committed by individuals with pathological personalities. This would include persons of poor self-esteem and coping skills, for whom children substitute for the preferred peer sexual partner, as well as those who display morally or sexually indiscriminate behaviour- a 'why not' approach to sex.¹⁰

Finkelhor stresses the importance of social, as well as psychological factors in contributing to the propensity for child sexual to occur. He proposes that the motivation of the adult to abuse children sexually may be seen as a facilitating factor, which is then constrained by internal inhibitions, external inhibitions and the resistance of the child.¹¹ While internal and external inhibitions, coupled with the resistance of the child may normally act as effective constraint to the expression of such latent attraction, the situation for the tourist in a distant, culturally and racially different environment is very different.¹²

There are extensive references in tourism studies that highlight the reduction of individual and social constraints as part of the touristic experience. When combined with a situation in which easy access is provided to children for sexual purposes, especially if this can be rationalized as a more relaxed cultural attitude to sex, then these factors provide a significantly increased potential for child sexual to occur.¹³

The link between tourism and child sexual has been developed by Hiew,¹⁴ who argues that situational conditions in tourist destinations and the state of anonymity of travelers interact with personality and cognitive factors in tourists to enhance sexual interest and reduce inhibitions to become sexually involved with children. He notes that research provides evidence of a relationship between situational factors and a variety of deviant and anti-social behaviours, through the process of 'deindividuation'.¹⁵

This combination of factors suggests that there is something inherent in the nature of tourism to other countries and cultures that increases the potential for child sexual abuse to take place. Indeed, Ennew¹⁶ reports that at least two studies have suggested that men are more likely to give way to repressed paedophilic tendencies while away from home.

10. See K. Lanning, *Child Molesters : A Behavioral Analysis* (1987).

11. See D Finkelhor, *Sexual Abuse: New Theory and Research* (1984).

12. *Supra* note 6 at 265.

13. *Ibid.*

14. Hiew, "A Conceptual Framework to Deal with Paedophile Tourists" Paper presented to ECPAT Consultation , 11-14 May, 1993, Germany.

15. The term refers to a feeling that one will not be held responsible for his or her behaviour. There is a loss of a person's sense of individuality and a loosening of moral restraints against deviant behaviour.

16. J. Ennew, *The Sexual Exploitation of Children* (1986).



There are few reliable research studies which identify the real scale or nature of the sexual exploitation of children in developing countries, and none which investigates adequately the role of the international tourist in this. However, there is sufficient evidence from organizations working with children, and from governments, to demonstrate that there is extensive and systematic sexual exploitation of children and that international tourist contribute significantly to this.

The Asian scenario

While the international tourism industry has acknowledged the problem of paedophilia to a certain extent, Asian countries such as India, Nepal, Cambodia, Thailand, Bangkok, Sri Lanka wherever poverty exists in its extreme forms, and wherever tourist industry is expanding in order to bring in much needed revenue in the country, the problem is ignored. The number of tourist traveling to Asia¹⁷ for sex with children has risen sharply in recent years, spurred by the effects of the economic crisis and the lax law enforcement.

It was a study by PEACE (Protecting Environment & Children Everywhere), an NGO in Sri Lanka, that shocked Sri Lankan society as a whole into realizing that far from being a heaven for tourists in search of the sun and golden beaches, the country was also attracting an unsavory tribe of tourist- the paedophiles who come solely to gratify their sexual needs on young children.¹⁸

The scenario is similar in other Asian countries as well. All these countries have ratified the Convention on the Rights of the Child adopted by the UN in 1989 (Sri Lanka was one of the first Asian countries to do so incidentally), and child prostitution or the commercial sexual exploitation of children has grown to unprecedented levels in recent years- largely as a result of a developing economy and an expanding tourist industry. So much so, that today, there is an international organization that has been formed called End Child Prostitution in Asian Tourism.¹⁹

17. In 1992, when the subject of paedophilia was still relatively very new in Asia and local newspapers in Sri Lanka first broke the story of a raid conducted in a Stockholm house which found stacks of material and letters shared by paedophilia giving detailed descriptions of sex organs of child victims and pornographic videos, most of them allegedly from Sri Lanka with Sri Lanka being described as a 'Child Sex Paradise', the public was so shocked and outraged that newspaper (*The Observer*) was flooded by letters from readers who expressed their indignation in strong terms and demanded that the government do something to protect these hapless children.

18. Carol Aloysius, "A Journalist's Perspective of the Problem in Asia" *The Observer*, Sri Lanka.

19. Hereinafter written as ECPAT.



Of the number of foreigners arrested for sexual crimes against children in Asia in a two- year period between 1992 and 1994, 25% were from the USA, 18% were Germans, 14% were Australian, 12% British and 6% French, totaling 75%. With child sex accounting for up to 14% of the Gross National Product of certain South- East Asian countries, this is a large business to exploit and too large for which to find an easy solution. In its report “The sex factor: the economic and social bases of prostitution”, the World Labour Organization states that sex involving children involves 800,000 children in Thailand, 100,000 in the Philippines, 500,000 in India and 30,000 boy prostitutes in Sri Lanka and 1,00,000 in Taiwan. However, it is not only in South-East Asia where child prostitution is a problem. The United Nations Organization quoted the USA as having no less than 300,000 child prostitutes. However, in this country, the situation is not related to poverty, but to social chaos.²⁰ There is also a report that in other countries such as Pakistan, Nepal and Vietnam, child prostitution is also widely prevalent, while in Indonesia, Cambodia, Burma and Laos and some provinces in China, children are being trafficked across borders for the purpose of serving in brothels.²¹

Most of the countries concerned, however, have challenged the accuracy of these statistics and have charged that they are exaggerated. However, while these charges may be true to some extent, one thing is certain, that the menace of child sexual abuse is now very much a widespread phenomenon in the Asian region as a whole.

In order to establish what is — and what is not — known about the sexual exploitation of children by international tourists, the Save the Children Fund (SCF) in London, commissioned a literature study on this subject. The Philippines, Sri Lanka and Thailand were taken as example tourist receiving countries and special attention was given to tourism from the UK.²² The study found that there is extensive evidence of the use of young boys for sex by adult males from the west, which appears to be the predominant feature of the sexual exploitation of children in Sri Lanka. Study further reveals that countries like Philippines and Thailand have an extensive sexual entertainment industry, in which

20. A North American Organization, which fights against the problem of child prostitution, affirmed that: “The economic status of those involved in child prostitution is middle class. They do not run away from poverty, but rather from dysfunctional families in which they suffer from physical, emotional and sexual abuse.” Details available at <http://english.pravda.ru/main/2000/12/12/1415.html> (visited on 2/6/2006).

21. *Supra* note 17.

22. Kevin Ireland, “Wish you weren’t here: The Sexual Exploitation of Children and the Connection with Tourism and International Travel” Overseas Department Working Paper No.7, The Save the Children Fund, 1993.



girls, as well as boys, provide sexual services for foreign visitors (as well as local men). In Thailand especially, it would appear that the sexual exploitation of girls in prostitution is numerically much greater than of boys.²³

As a result of the United Nations World Conference of Women in Nairobi in 1985 the West German news magazine took up the issue. In a series of inequalities and the continuing oppression of women in the developing three continents (Asia, Latin America and Africa), a journalist wrote, “ traffic in persons in the widest, and most certainly in the commercial sense of the word, is in fact a business run by the extremely prosperous branch of the tourist industry which offers, advertises and organizes sex as a service in the same way as it does boarding and lodging.”²⁴

Various promotions and advertisements within the UK and European markets have formerly alluded, if not openly referred, to the availability of sexual entertainment in the countries like Philippines, Sri Lanka and Thailand.²⁵ Police and other sources who work with offenders in Britain consider that the overt promotion of the availability of children for sex is no longer an issue, as this knowledge is already wide spread among paedophiles and the general public.²⁶

Although there may be a certain percentage of tourists who certainly come for paedophile activities, not all tourists who come to Asia are like that. What has happened is that in most Asian countries opening up one’s country to tourists also makes them vulnerable to paedophile rings operating world wide. Closely linked to this is poverty and the desperation to make ends meet that has driven parents to selling their own children to foreign paedophiles in order to keep their home fires burning. The prolific availability of child pornographic material in video parlours and on the Internet is another reason accounting for the flood of paedophiles to Asian countries.

There is no doubt that in Asia and other countries where child prostitution is prevalent, the victims come from the poorest of the poor. They are sold to pimps and peddlers of flesh or induced to sell their bodies against their will, because of their abject poverty. It is no secret that many of the victims are unprotected children, such as street children, for whom quick money, even a negligible amount, and a few luring presents make them easy prey, especially to paedophiles.

23. Quoted by Kevin Ireland in “Sexual Exploitation of Children and International Travel and Tourism” 2 *Child Abuse* 266 (1993).

24. *Ibid.*

25. *Supra* note 22.

26. *Supra* note 23.



The recent growth in the incidence of child prostitution has also been induced by a number of demand considerations. Three factors that have been emphasized within the literature are the AIDS scare, the rise of global tourism and in some nations the impact of military excursions. Fear of AIDS has led to more and more children at a younger age being drawn into prostitution.²⁷ Manila's *Sunday Chronicle*²⁸ described this development as possibly "the darkest twist in Asia's AIDS pandemic." Of the countries considered here Thailand would appear to have the greatest incidence of AIDS.

The World Health Organization claims that there are now 200,000 HIV+ persons in Thailand with 73,000 new cases of AIDS in Thailand each year. The Thai Department of Health states there are 10,000 working prostitutes who are HIV+ so the infection may have now spread to as many as 184,000 clients, many of whom are married or in permanent relationship.²⁹

Observers have noted that there is a widespread misconception that it is safer to have sex with a child prostitute rather than with an adult given the prevalence of the AIDS virus. However, this is not the case for a young child who will commonly suffer physical trauma when having sex with an adult, an event which in fact makes the contraction of AIDS more likely.³⁰ The possibility of contracting AIDS from a child is also made greater by the fact that they are generally less educated and/or experienced than older sex workers and consequently rarely use condoms.

AIDS has also increased the incidence of child prostitution by enhancing the demand of virgins. Indeed, there have been reports from Thailand that children have been surgically adjusted to appear to be virgins for more than one client.³¹ Certainly the price changes radically. In Cambodia the price for a virgin is between 4 and 7 hundred U.S. dollars. After a week the price falls. Thailand is reportedly experiencing a boom in the "virgin trade". Children as young as 10 are being procured in China, Laos, Burma and Vietnam and brought to Thailand to provide "safe sex" for customers. Vietnam is especially carried by this development as cases of HIV infection are still reasonably rare so sex tourists are keen to visit. The Vietnam Women's Union estimates that at

27. "Aids Fears Boost Child Prostitution Trade, Say Experts" *Philippine Star* 6 Mar 1993.

28. "Aids Terror Spurs Demand for Child Sex," *Sunday Chronicle*, Manila 9 May 1993.

29. Berenice Nyland : "Child prostitution, and the New Australian Legislation on Paedophiles in Asia" 25 *Journal of Contemporary Asia* 550 (1995).

30. *Ibid.*

31. *Ibid.*



least 10% of the countries prostitutes are now children.³² The Vietnamese government is already alarmed at the increase in child prostitution which has tripled since 1989 to an estimated 3,800.³³ This has been blamed on growing tourism and cases of kidnapping of young girls to sell to brothels have also been detected by authorities. The government is worried that AIDS may begin to flourish in that country and are stepping up campaigns to try to deal with growing prostitution.³⁴ However, many paedophiles are already moving to Vietnam in the belief they will be safer and there will be more ready supply of virgins. The Vietnam Women's Union claims "the rising demand for child sex workers has spawned a vicious child trafficking industry".³⁵

The above description makes it clear that so far as the sexual exploitation of children by tourists is concerned, Asian scenario is frightening and alarming and therefore, needs immediate not only preventive measures but also stern and strict punitive measures to stem the growth of this horrendous evil.

Indian scenario

Tourism has been given the status of an industry in India. Tourism is seen to be a prime source of foreign exchange and a panacea to all the economic ills of a developing country. Most of the states have incorporated tourism in their development strategies. Beaches are being thrown open to tourism. Special tourism areas are being demarcated in the most environmentally sensitive region - the coastal region of India. The economic arguments in favour of tourism development have led policy makers into ignoring the social costs associated with tourism.³⁶

The National Women's Commission has found that Bangalore is one of the five major cities, which supplies 80 percent of the child prostitutes in the country. Based upon this finding, when the Karnataka State Commission for Women tried to investigate it further, they stumbled upon a major smuggling gang whereby girls from impoverished rural families were lured to Goa and pushed into flesh trade. Tourist industry agrees that there are between 15,000 and 20,000 people in the season which enters Goa during the tourist season. A large proportion of this group consists of children under the age of 14 years. They are easy targets for paedophiles since they are, emotionally needy and materially

32. "Vietnam: Government Alarmed Over Rise in Child Prostitution" *Philippine Star* 13 March 1993.

33. *Ibid.*

34. *Ibid.*

35. *Supra* note 29.

36. Details available at <http://www.equitabletourism.org/thelightof.htm>.



deprived. Disturbingly there is a huge increase in the amount of young girls traveling into Goa from Andhra Pradesh. Kovalam in Kerala, and Mahabalipuram in Tamilnadu are also following in the same footsteps. Information has been given from a number of sources about the trafficking of girls and boys.³⁷

According to the Tehelka, “hundreds of Europeans- British, German, Dutch, French, Swiss and Swedish- visit Goa to seek children for sexual gratification. They come to Goa because it is easy and cheap to sexually abuse a child here. On the run after crackdowns on cheap child sex tourism in Thailand and Sri-lanka, the paedophile bus has rolled into Goa”.³⁸

The recent trial in Stockholm, Sweden, is one indication of how Goa is fast outrivaling Bangkok the new sex capital for paedophiles when Lena Perved and her lover were put on trial along with 18 others, most of them disclosed that they had chosen Goa over Bangkok because the Thai capital has become ‘Too Hot’.³⁹

Indian cases

The issue of paedophilia gained prominence in India only after the arrest of Freddy Peats in 1991. Till this time, 71 year old Peat was considered to be a philanthropist. With his arrest 2,305 photographs were seized from his residence, depicting young boys in various homosexual acts with elderly male foreigners. In spite of such evidence the police released him on bail within 45 days on grounds of ‘insufficient evidence’.⁴⁰ After which he freely roamed in the state of Goa till he was convicted to life imprisonment in 1996, the first paedophilia conviction in Asia.⁴¹ The Peat was the first to expose the possibility of the organized sexual abuse of both male and female children. The Indian National Social Action Front (INSAF), in a working paper on paedophilia in Goa states that there is reason to believe that “ the growth in the demand for male children is the same, if not higher than the demand for female children”.⁴² In several other cases offenders were let off on grounds of insufficient evidence.⁴³

37. See <http://www.ioda.com/info/company/overseas/india/childprotection.html>

38. ‘Tehelka’ exposes Goa as haven for child molesters : *News Headlines India*, 3 Oct. 2005.

39. Extracts from the National Consultation on Child Prostitution, ‘Child Prostitution the Ultimate Abuse’ organized by YMCA, ECPAT and UNICEF.

40. *Lawyers Collective*, 22 May 1997.

41. *Ibid.*

42. *Ibid.*

43. Details available at- NWMI >law >commentary > prosecution of paedophiles.



Child rights activists all over the country were heartened by the news of the conviction of Wilhelm and Lily Martin⁴⁴ by the Bombay sessions court to seven years sentence on 29th March 2003, on the ground of using street children for child pornography. The Bombay High Court on appeal commuted the seven – year sentence of the couple to three years and three months that was the time they had already spent in jail-increased the compensation amount for the six victims from Rs. 5,000 to Rs.1 lakh and ordered the release of the couple. While setting the couple free, the judge said it was essential to ensure that they do not repeat their “nefarious activities”. The couple had admitted they came as tourists to Mumbai and obtained pornographic material and created porno pictures using minors.

However, before the Martin’s could leave the country, the Maharashtra Government acted swiftly in response to a plea from child rights groups and appealed first in the High Court, where the appeal was dismissed, and thereafter in the Supreme Court. The Supreme Court stayed the order of the Bombay High Court that had reduced by half the seven year sentence of a Swiss couple Wilhem Martin and Lily Marie Martin but released them on bail.⁴⁵ On 16th August 2005 the Supreme Court cancelled bail of Swiss paedophiles at the instance of child rights activists.

It is indeed surprising that the Supreme Court overlooked the heinous nature of crime committed by Swiss couple and let them off on bai! Is it the job of child rights activist groups only to be sensitive to the issues of children? Are they not aware how easy it is to bribe your way into getting a new passport? The Indian judicial system is either too naïve or blissfully ignorant.

Given the difficulties involved in prosecuting sex offenders in general and foreign paedophiles in particular, state government demonstrated what could be done if the state decided to move and recognize the seriousness of the offence and its long term implications.

44. *The Times of India* 14 Feb. 2005. The Malad police arrested the couple in Dec. 2000 after being caught red handed with a minor girl in a five star hotel room. Though the maximum punishment under the law was ten years imprisonment, the couple was given a seven-year sentence. They were twice refused bail and after their conviction did not seek bail.

45. *Ibid.* The judge directed the state to forfeit the computers, tape recorders and cameras seized from them. The judge continued to say that though offenders were shelling out the compensation amount from their pockets, it should not mean that their sentence should be reduced especially since they are also accused of sexually exploiting children in other countries. Commuting the sentence without reasonable grounds set a bad precedent in law domestically and sent out the wrong message internationally- that in India such abuse could go unchecked.



A Mumbai sessions Court on 18th March 2006⁴⁶ found two British Navy Officers guilty of sexually abusing boys and engaging in unnatural acts at a children's Shelter Home that one of them had set up for street children in Mumbai. Both of them were sentenced to six years rigorous imprisonment and ordered to pay 20,000/ pounds to their victims. Their Indian accomplice who managed the home got three years imprisonment. P.S. Paranjape, J said, "Let paedophiles around the world know that India should not be their destination in future."

Thus an Indian judge acted to 'wipe the name of India from the map of sexual tourism' by awarding severe punishment to British navy officers. The severity and certainty of punishment is to be communicated to all paedophiles either operating in India or intending to visit India to satisfy their sexual urges.

From the above cases it becomes evident that serious attention is required to be given to protect children and prosecute paedophiles. There is a need for the state and judicial authorities - be it the police, the prosecutors or the judiciary- to address the issue of paedophilia in a determined and decisive manner. Although police were informed of many cases of paedophilia but no attempt was made to investigate the matter. The lack of response on the part of the police could be accounted for by their desire to adhere to the official position that paedophilia does not exist in an alarming scale in Goa. Any positive action taken by them would mean an acknowledgment of the existence of paedophilia, which otherwise is ignored by the functionaries of the state Government.

Law and paedophilia in India

The Indian Government ratified and accepted the UN Convention on the Rights of the Child on December 1992. Under Article 34⁴⁷ of the Convention it is imperative upon States Parties to protect the child from all forms of sexual exploitation and sexual abuse and take all appropriate national, bilateral and multilateral measures to prevent exploitative use of children in prostitution and pornographic performances. Under Article 35⁴⁸ all measures have to be taken by the State Parties to prevent the abduction of, the sale of or traffic in children. This protection is most clearly awarded in the Optional Protocol on the Sale of Children, Child Prostitution and Pornography of 2002. However, despite new legislation and ratification of such conventions the global

46. *Hindustan Times* 19th March 2006.

47. *Supra* note 4.

48. States parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.



rise of Child Sex Tourism and the trafficking of children raise serious concerns for the safety of children and the detrimental long- term affects. The convention also states that all children must receive the opportunity to discover their identity and realize self worth in a safe and supportive environment.

The law dealing with sexual offences does not specifically address child sexual abuse. It is disconcerting but true, that Indian Penal Code 1860 does not recognize any kind of a child abuse. The law is silent on the rape of a male child. Only rape⁴⁹ and sodomy can lead to criminal conviction. Anything less than rape, as defined by the law, amounts to 'outraging the modesty' under section 354⁵⁰ IPC. An offence under section 354 IPC is a cognizable and bailable offence, which allows foreigners to simply leave the country before prosecutions begin.

While Section 376 IPC seeks to provide women redress against rape, it is rarely interpreted to cover the broad range of sexual abuses, particularly of children that actually takes place. Section 376(2)(f) provides stringent punishment for committing rape on a woman when she is under the age of 12 years of age for ten years or for life with fine. The narrow understanding and application of rape under sections 375/376 IPC only to cases of penile/vaginal penetration runs contrary to the understanding of rape as intent to humiliate, violate and degrade child

49. S. 375 IPC—Rape—A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances failing under any of the six following descriptions: —

First—Against her will.

Secondly—Without her consent

Thirdly—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly —With her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly—With or without her consent, when she is under sixteen years of age.

Explanation—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

50. Section 354 IPC lays down as: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.



sexually. Section 377⁵¹ has largely been used in prosecuting cases where anal and / or oral intercourse with children was involved. The punishment provided under section 377 is imprisonment for life or imprisonment of either description for a term which may extend to 10 years and, shall also be liable to fine. Although it has been somewhat successful in penalizing child sexual abuse and complementing the lacunas of the rape law, but it is woefully lacking in both scope of definition and implementation. Child sex abuse should be included as an independent category of sexual offence. There is a dire need to evolve more effective legal formulations as well as procedures to ensure that sexually abused children are offered the protection of the law and perpetrators are punished severely and unflinching. The provisions relating to evidence and criminal procedure are not suited to deal with child sexual abuse.

In the recent Supreme Court judgment in *Sakshi v. Union of India & others*,⁵² Hon'ble Justice G.P.Mathur held as:

There is absolutely no doubt or confusion regarding the interpretation of provisions of sec.375 IPC and the law is very well settled. Giving a wider meaning to section 375 IPC will lead to a serious confusion in the minds of prosecuting agency and the courts which instead of achieving the object of expeditiously bringing a criminal to book may unnecessarily prolong the legal proceedings and would have an adverse impact on the society as a whole. Therefore, it will not be in the larger interest of the state or the people to alter the definition of "rape" as contained in section 375 IPC by a process of judicial interpretation as is sought to be done by means of the present writ petition.

However, the judgment sought to reduce the trauma of the victim of child sex abuse or rape by laying some directions for the protection of the child victim of sex abuse or a witness to such an incident.⁵³

51. S.377 IPC—Unnatural Offences—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term that may extend to ten years, and shall also be liable to fine.

Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

52. (2004) 2 JCC 892. This judgement was given in a Public Interest Litigation filed by a Social Organization "Sakshi". The relief claimed in the said petition was primarily in regard to the enlargement of the definition of "sexual intercourse" as contained in section 375 of the Indian Penal Code.

53. (i) a screen, or some such arrangement may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused; (ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a



The Juvenile Justice Act was amended and rewritten in 2000, but it makes no attempt to identify sexual abuse on children. Section 23⁵⁴ lays down that if any person is having the actual charge of a juvenile or a child and assaults, abandons, exposes or willfully neglects him then he shall be imprisoned for a term of just 6 months or fine or both. Section 5 of the Immoral Traffic Prevention Act 1956 prescribes punishment for a term of not less than 7 years but may extend to life for inducing a child into prostitution, but does not directly address child abuse.

The intent of the UN Convention on the Rights of the Child has been reiterated in National Charter for Children, 2003.⁵⁵ But the question is what has changed since the ratification of the Convention on the Rights of the Child or more recently since 2003 when national policy for children was adopted. India is not immune to the problems of tourism related development. Existing State mechanism have to acknowledge the enormity of the problem and the shortage of applicable laws addressing trafficking in girls and boys and other abuses typical of the sex industry. Greater political will, more effective enforcement and adequate allocation of resources are needed to give effect to the spirit and letter of existing laws and conventions, policies and programmes. If the Government is not implementing these, and then it is covertly abetting the exploitation of the child.

What is lacking is a central law on the subject? Recently Parliament has come up with a new bill, Offences Against Children Act, 2006⁵⁶

language which is clear and is not embarrassing; (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

54. S.23, The Juvenile Justice (Care and Protection of Children) Act, 2000.

Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

55. 9(a) All children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.

10(a) The State shall take strict measures to ensure that children are not used in the conduct of any illegal activity, namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence. The State in partnership with the community shall ensure that such children are rescued and immediately placed under appropriate care and protection.

56. *Hindustan Times* 28th March 2006. Any type of penetration or manipulation of child's body for penetration will be punishable. For sexual assault, the minimum punishment will be 12 years RI with a fine or life imprisonment. For sexual abuse, the maximum punishment is ten years simple imprisonment with fine and the minimum punishment will depend on the child's age. Abusive parents and teachers can be jailed for five years and fine.



proposed by the Ministry of Women and Child Development and has been circulated among the states for their comments. The bill outlines the intent to crack down on those who sexually assault or abuse children. It, for the first time, brings oral sex within the purview of law.

The Goa Children's Act, 2003

A stumbling block in the prosecution of paedophiles has been the absence of laws that would comprehensively deal with the specific problem of paedophilia. In 2002, the state government along with few individuals, sincerely and genuinely committed to the cause of the children, identified various measures needed to be taken to create a child friendly society. To ensure that every child has his childhood, Goa Children's Act, 2003 came into force from July 2003 and Children's Court started on December, 2004.

The Goa Children Act, 2003 is a legislation against child sexual abuse, especially those related to tourism. In section 2, which deals with definitions, sexual offences are classified into 'grave sexual assault',⁵⁷ 'sexual assault'⁵⁸ and 'incest'. The legislation has specifically made any such cases of abuse non-bailable offences under section 2(a) of the Criminal Procedure Code, 1973. The punishment⁵⁹ prescribed is even up to ten years and a fine of rupees two lakhs.

By including a wide range of possible activities that an offender may engage in, the focus will shift from the present one point programme of detecting semen in vagina/anus of the child, to the investigation of child sexual abuse. Moreover, it also seeks to establish child-friendly court procedures, which will help to ensure that children are able to give evidence without being in the presence of the perpetrators of the crime. The setting up of a Children's Court to try all offences against children is a bold step prescribed by this law. A child-friendly court will help to minimize the double trauma that abused children are subject to in courts, which even adults find awesome and terrifying.⁶⁰

57. 'Grave Sexual Assault' covers all form of sexual intercourse including oral sex and anal sex as well as offences such as making children pose for pornographic films, making children have sex with each other and deliberately causing injury to the sexual organs of a child.

58. 'Sexual Assault' includes showing children pornographic pictures and exhibitionism.

59. The punishment under s. 8 (2) , Goa Children's Act, 2003 prescribed for grave sexual assault is 7 to 10 years imprisonment and a fine of Rs 2,00,000. The punishment for sexual assault is a sentence up to three years and a fine of Rs 1,00,000. The punishment for incest is imprisonment for a period of one year and a fine of Rs 1,00,000. This fine is in addition to the sentence for the sexual assault or grave sexual assault that is committed by the offender

60. S. 8 (27), Goa Children's Act, 2003



The Goa Children's Act is unusual because it does not merely recommend punitive measures against offenders. Instead, in dealing with child sexual abuse it attempts to place responsibility on different sections of society to play a role in protecting all children and preventing the abuse of any child. The hotel owners, the photo studios, cyber café operators, the police, the tourism department and all those involved in the travel and tourism trade are expected to keep their eyes open and fulfill their duties, be sensitive to the situation of any child they may come across in the performance of their duties.⁶¹

Three years later, the activists and lawyers are disillusioned with the Goa Children's Act and Children's Court. Goa is the first state in the country to enact legislation that intended to give every child, a childhood, but in reality innocent children still continue to be raped, molested and drifted into prostitution. It took state Government one and a half year to establish children's court, which was supposed to be different from other courts. Surprisingly Children's court only meets once a week. Many now refuse to register a case of molestation or rape against a minor due to delay in justice. While the accused is released on bail, the victim child suffers continuous mental tension for long.

It took Tehelka⁶² five months to do the sting operation in Goa to investigate the story of paedophilia. The most shocking thing that came out of the sting operation was that police, bureaucrats working in the Directorate of Women and Child Welfare are not even following basic rules to protect children as laid down in Goa Children's Act, 2003. So nothing has changed because right from Chief Minister of the State to all people down the line are more concerned about the tourism revenue than child molestation.

The intent and content of bill "Offences Against Children Act, 2006" and the Goa's Children Act are different. It has to be seen which Act will prevail in Goa after Central Act is passed by the parliament. There is no doubt that two are to fulfill the deficiency in law regarding sexual assault and sexual abuse of children, but Goa's Children Act has been designed primarily to come down heavily on child sex tourists, to make punishment as deterrent as possible, together with a heavy fine to be imposed in case found guilty. On the other hand, Central Act is meant not only for child sex tourists but people in general who abuse or assault children sexually. Many questions will arise which will be solved only when the Act is passed.

61. Available at http://www.nwmindia.org/Law/Commentary/provisions_child_sexual_abuse.htm.

62. For details see "Goa CM is more concerned about tourism than child abuse: Harinder Baweja. Available at http://www.hindustantimes.com/news/181_931546_0020.htm (visited on 2/16/2006).



Role of citizenry and media

The UN Convention on the Rights of the Child⁶³ clearly sets out the responsibilities of adults towards children, their own and all others, and also states that the rights of the child are not dissociate from Human Rights. The convention considers these rights from the point of the view of the best interests of the child recognized as a holder of vested rights. The government of India in National Charter for Children, 2003 reaffirmed its commitment to the best interest of the child through combined action of the State, civil society, communities and families in their obligations in fulfilling children's basic needs .Therefore, the role of the family, educational institutions, local governance and media, particularly in the tourist areas where children are vulnerable to this abuse can not be ignored. The family is the most effective initial agent to address the issue. Therefore it becomes important for the parents and elders to be sufficiently sensitized to understand the problem and act accordingly with sympathy and compassion. More than protecting them, our duty is to help our children, to give them the means of defending themselves, give them pointers for distinguishing between a normal and desirable display of affection and protectiveness by an adult towards a child from a more ambiguous attitude, which often causes discomfort in the child for reasons that he/ she is not always able to identify.⁶⁴

Parents are supposed to create friendly equations with children, so that child confides in them. Believe your child if he narrates any such unbelievable happening. Children won't lie about such horrific events. Give them support both physical and psychological to prevent its damaging impact. Make them comfortable, console them and take all necessary measures to prevent the recurrence of the incident. Show the same concern, if you witness any such incident happening to anybody's child. Efforts from all sections of the society are needed to show zero tolerance to sexual exploitation of children. They are our future and future of the country.

Teachers and educational institutions should be sensitized and equipped to handle the problem. Educational institutions should create a friendly atmosphere for the students to feel free to speak of any aberrant behaviour they experience outside or inside the campus. They should be assured of the confidentiality of any such revelation made to the teacher.

Since the vast majority of children used for such pornographic material are from developing countries in Asia, the role of the mass

63. For details see " Preamble" of the Convention on the Rights of the Child.

64. Mme Elisabeth Auclair: "Paedophilia: The Work of Associations, The Role of the Media and Research", Chairperson of the Committee on the Rights of the Child of the League for Human Rights.



media in this respect assumes a greater potential and significance. The media should not shrug away from its responsibility of providing a platform for advocacy.

The role of media in raising awareness of this growing phenomenon in Sri Lanka has been a positive one. The media has used various strategies to halt widespread abuse of children. One very effective strategy has been an awareness raising campaign to alert the public of the number of young boys (and girls), some as young as eight and nine, who are being used as models to pose for pornographic films that invokes the sexual appetite of paedophiles looking for new prey.⁶⁵

Although the internet is a recent phenomenon in the Asian region still, in the new millennium it is likely to spread to every corner of the Asian region. Media has to be extraordinarily vigilant of any pornographic material on the internet and caution parents of high risk children, used for making pornographic material. Child pornography on the Internet is a problem that has come to light recently because the Internet itself is expanding so rapidly in the last decade that it has gone from being an obscure resource used occasionally by academics, to being a mass medium used approximately by more than 100 million people in the world. The figure is growing every day. Worse still, it has become a place where sex perverts, such as paedophiles and child pornographers go to look for their victims.

It is significant to note that the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, cited the report of the Committee on the Rights of the Child, on the issue of the child and the media in October 1996. Her report expressed the view that “the press and other media have essential functions in promoting and protecting the fundamental rights of the child and in helping to make reality of the principles and standards of the Convention on the Rights of the Child. As a result of the discussions three main areas have been identified: child participation in the media; protection of the child against harmful influences through the media; and respect for the integrity of the child in media reporting.”⁶⁶

There is, however, some negative factors to consider with regard to Asian media. The Asian media have however been sometimes accused of not being sensitive to child abuse issues. The issues relating to child abuse are covered in an irresponsible manner, thereby, jeopardizing the child victim rather than protecting him or her. It is thus up to media to be alert when reporting child sexual abuse cases and guard against

65. Carol Aloysius: “ A Journalist’s perspective of the problem in Asia”, *The Observer Sri Lanka*.

66. Sexual Abuse of Children, Child Pornography and Paedophilia on the Internet: An International Challenge — Expert Meeting, UNESCO, Paris, 18-19 January.



vested interests. They must try to infuse balance and objectivity into their reporting. We need to reflect on whether under the guise of first-hand accounts we are not, in fact acting detrimental to the real interests of the child. Care must be taken not to make accusations without proof and not to see paedophiles around every corner. True vigilance means being responsive and truly attentive to the needs of others. In defending Human Rights and the Rights of the Child, we must also remember that the right to dignity, to the presumption of innocence and to a fair trial is shared rights that are equal for all.

Now that the media in the Asian region are gaining more freedom to express opinions freely with the proliferation of independent non government newspapers and television and broadcasting stations, this is the time for both the print and electronic media to engage in some real soul searching, on how best they can use their resources to achieve that goal. If on the other hand the media simply sits back and does nothing, they would be passive perpetrators of a grievous wrong to hundreds of hapless child victims, who are already trapped in this evil.

Global action to combat child sex tourism

The First World Congress against Commercial Sexual Exploitation of Children was held in Stockholm in 1996, in which co-operation between the public and private sector, between governments, the tourism industry and the civil society actually began. The Stockholm Congress urged participants to “mobilize the business, including the tourism industry, against the use of its networks and establishments for the commercial sexual exploitation of children” and to “promote better cooperation and encourage the establishment of national and international coalition to this effect.”⁶⁷

As a response to the Stockholm Congress, the WTO established an open-ended network in 1997 known as “Task Force to Protect Children from Sexual Exploitation in Tourism.” Its mission is, to “prevent, uncover, isolate and eradicate the exploitation of children in tourism.”

WTO holds the view that the development of tourism cannot take place outside a moral framework. From its inception WTO has always been active, not only in promoting the development of tourism, but promoting responsible and socially sustainable tourism. It is against this background that the *Global Code of Ethics for Tourism* was developed and adopted in 1999 by the WTO General Assembly as a basic set of rules that should guide the behaviour of all the stakeholders in the industry, including tourists and local communities.

67. Details available at <http://www.ecpat.net/eng/csec/worldcongress/index.asp>.



The Second World Congress on Commercial Sexual Exploitation of Children, took place in Yokohama, Japan in December 2001. The Congress re-committed itself to the *Stockholm Agenda for Action in the Yokohama Global Commitment 2001*.⁶⁸

Conclusion

There is a saying that childhood is coated with “sugar and spice and everything nice.” It is a period of joy, sports, games and unbound growth. But in poignant third world reality, an estimated 250 million children have to bear the burden of survival almost from the day they learn to walk.⁶⁹ The sexual exploitation of children is a sad reality of the world in which we live, and tourism is not immune. However, it took some time for the tourism industry to realize that in fact tourism could be a means to aggravate the problem and that it was necessary to assume its part of the responsibility. After realizing the magnitude of the problem, The World Tourism Organisation (WTO) became actively involved in the struggle against organized sex tourism.

Destinations of child sex tourists appear to be changing. As prevention and protection efforts are stepped up in one country, child sex tourists choose neighboring country as their destination. This move of the paedophiles is apparent when they prefer Cambodia and Vietnam and more recently Goa in India as compared to the traditional choice of Thailand. Destinations also change to a new region of the world, and may be a result of the quest for the exotic or mere convenience. Costa Rica is presented as “Thailand in the background” in the United States, and leads are given through the internet to places where one can get a prostituted child cheaply.⁷⁰

It is brutal, inhuman and unethical to sexually abuse children or to involve children in pornography and acts of paedophilia. Instead of imbuing ethical and moral values in children, sexual exploitation of children damages them physically and psychologically. The UN’s Economic and Social Commission for Asia and the Pacific (ESCAP)

68. By virtue of this re-commitment, coupled with the attendance of representatives of 35 states who did not participate in the first congress, the number of states committed under the Agenda for Action now totals 159. UN ESCAP, UNICEF and ECPAT have started working together to monitor the implementation of the Stockholm Agenda for Action in East Asia and Pacific region.

69. *In the Light of Child Rights* Vol.V Issue 2 April 1999. Available at <http://www.equitabletourism.org/thelightof.htm>.

70. It is estimated that Costa Rica received 5000 tourists with one specific intention of exploiting children in 1999 alone. Americans account for 80% of the arrest involving child sex tourism.



highlights the failure of social services in countries like Thailand, Cambodia and Vietnam to provide adequate psychological support for child victims of rape and incest, or for those used as prostitutes or in pornography. While the physical health of the child victims is sometimes dealt with, psychological assistance to help them overcome the trauma of sexual abuse and exploitation is virtually non-existent. The State Governments along with NGO's should take the responsibility to promote physical and psychological recovery and social integration of the child victim. The Government of India needs not only law but also a political will and political commitment to enforce law strictly and sternly. Strong cooperation from police and other law enforcement agencies is needed to control the sex trade.

Notwithstanding its unquestionably dissuasive effect, paedophilia is a fact about which every society has 'unwittingly' created wall of silence. This veil of silence has to break, with the active cooperation and coordination of parents, schools, NGO's, governmental organizations and society at large.

Asia as a whole and India in particular has to be determined in its resolve to protect and prevent child abuse sexually, psychologically, physically or pornographically.

The problem of sexual abuse by tourists is internationally widespread. The solution must also be international, enjoining the resources and forces of all concerned. Concerted action is needed at the local, national, regional and international levels to bring an end to the phenomenon. World organizations should communicate in clear terms to all paedophiles that rigorous penalty awaits all those found guilty of abusing children.

Every child is entitled to full protection from all forms of sexual exploitation and sexual abuse, which is reaffirmed by the Convention on the Rights of the Child, an international legal instrument of universal significance and 1st and 2nd World Congress against Commercial Sexual Exploitation of Children. There are no excuses for sexually abusing children at any time, in any place and under any circumstances.

Paedophilia is a crime that has to be tackled politically, legally and socially. This is an issue of today not of tomorrow, tomorrow will be late. Let us not forget, the future of the world is in the hands of tomorrow's adults who are today's children. They are the most precious commodity that the world has. They not only deserve, but have a right to all the protection which we can afford.

*Usha Razdan**

* Professor of Law, University of Delhi, Delhi.