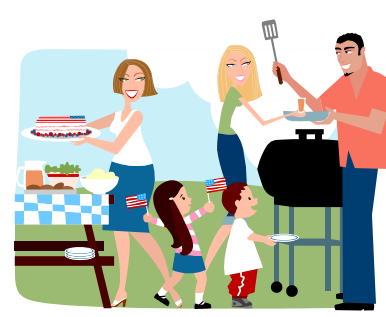


# Human Trafficking



Roshan Dalvi  
Former Judge,  
Bombay High Court



Children are little people

Who need **big rights**

- Dr. Klaus Kankel

# Victims of Human Rights violations

Trafficked

Children

Women

Child Labourer

Bonded  
Labourer

Scavengers

Immigrants

Camel  
jockeys

Poor

People

Sex Workers

MIGRANTS

Prisoners

Accused

Domestic workers

# Offences infringing Human Rights

Foeticide

Traffic

Domestic  
Violence

R  
a  
p  
e

sodomy

Battery

Bonded  
labour

Aggravated Rape

Outraging Modesty

Child Labour

Forced  
marriage

I  
n  
c  
e  
s  
t

Pornography

Paedophilia

Organ

Transplant

Sexual Abuse

# The Two Tests

- Lesser numbers, Greater attention
  - At Home
  - In School
  - In Countries
  - In Courts
- The 3 Rs
  - Recognize
  - Resist
  - Report

**The trouble is too many people grow up.**

**They don't remember what it's like to be a 12 year old!**

# Partners of the System

- Parents
- Teachers
- Friends
- NGOs (Community Service Providers)
- Medical Officers
- Police Officers
- Legal Officers
- Judicial Officers
- Criminal Justice Agencies

Your children will see you by what you live  
Than by what you say

# Objects of the partnership

- Culture Change
- Talking to men by men (*MAVAW*) (*VAWA, 1994 USA*)
- Anti-violence messages for -
  - Government
  - Faith-based organizations
  - Community groups
  - Work places



Your Attitude determines  
Your *Altitude*



# Rights of Children

- ✓ Right against exploitation
- ✓ Right to information
- ✓ Right to representation and hearing
- ✓ Right to assistance
- ✓ Right to privacy and confidentiality
- ✓ Right to protection and safety
- ✓ Right to speedy trial
- ✓ Right to rehabilitation / voluntary repatriation
- ✓ Right to compensation
- ✓ Right against forceful deportation
- ✓ Right to sue for traffickers for compensation

# Legal provisions

- International covenants
  - Universal Declaration of Human Rights
  - Covenant for the Rights of the Child (CRC)
  - Convention for Elimination of all kinds of Discrimination Against Women (CEDAW)
  - Convention on the Elimination of all forms of Racial Discrimination (CERD)
  - Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (CAT)
  - International Covenant on Civil & Political Rights (ICCPR)
  - International Covenant on Economic, Social & Cultural Rights (ICESCR)

# Legal provisions (Contd...)

- National laws
  - Constitution of India
  - Indian Penal Code (IPC)
  - Immoral Traffic Prevention Act (PITA)
  - Bonded Labour (Prohibition) Act
  - Domestic Violence Act (DV Act)
  - Child Labour (Prohibition) Act
  - POCSO Act
  - Juvenile Justice Act (JJA)

# Causes for trafficking

- Poverty
- Vulnerability
- Lack of education
- Lack of employment opportunities
- Lack of care and protection
- Low female ratio
- Demand + profit
- Poor law enforcement

# Vulnerability

- Street / homeless
- Migrant / missing
- Orphaned / abandoned / destitute
- Working
- Differently abled
- HIV / AIDS affected
- Substance abuse affected
- Beggars
- Abused
- Trafficked
- Children of prostitutes

# Impact of abuse / violence

- Destroying psychology
- Devastating life
- Bitter shock
- Disgust
- Disbelief
- Suspicion
- Helplessness
- Frustration
- Anxiety
- Loss of security
- Feeling of guilt
- Fear of disclosure
- Confusion

*I hold that the more helpless a creature,  
the more entitled it is to protection by men,  
from the cruelty of men - Mahatma Gandhi*

# Re-victimization / Secondary victimization

- Police investigation
- Medical examination
- **Court trial** - Order of re-examination of witnesses  
“India’s Other Daughter re-victimized by law(pla)yers”

Justice without force is powerless;  
Force without Justice is tyranny.

# The child / victim dilemma

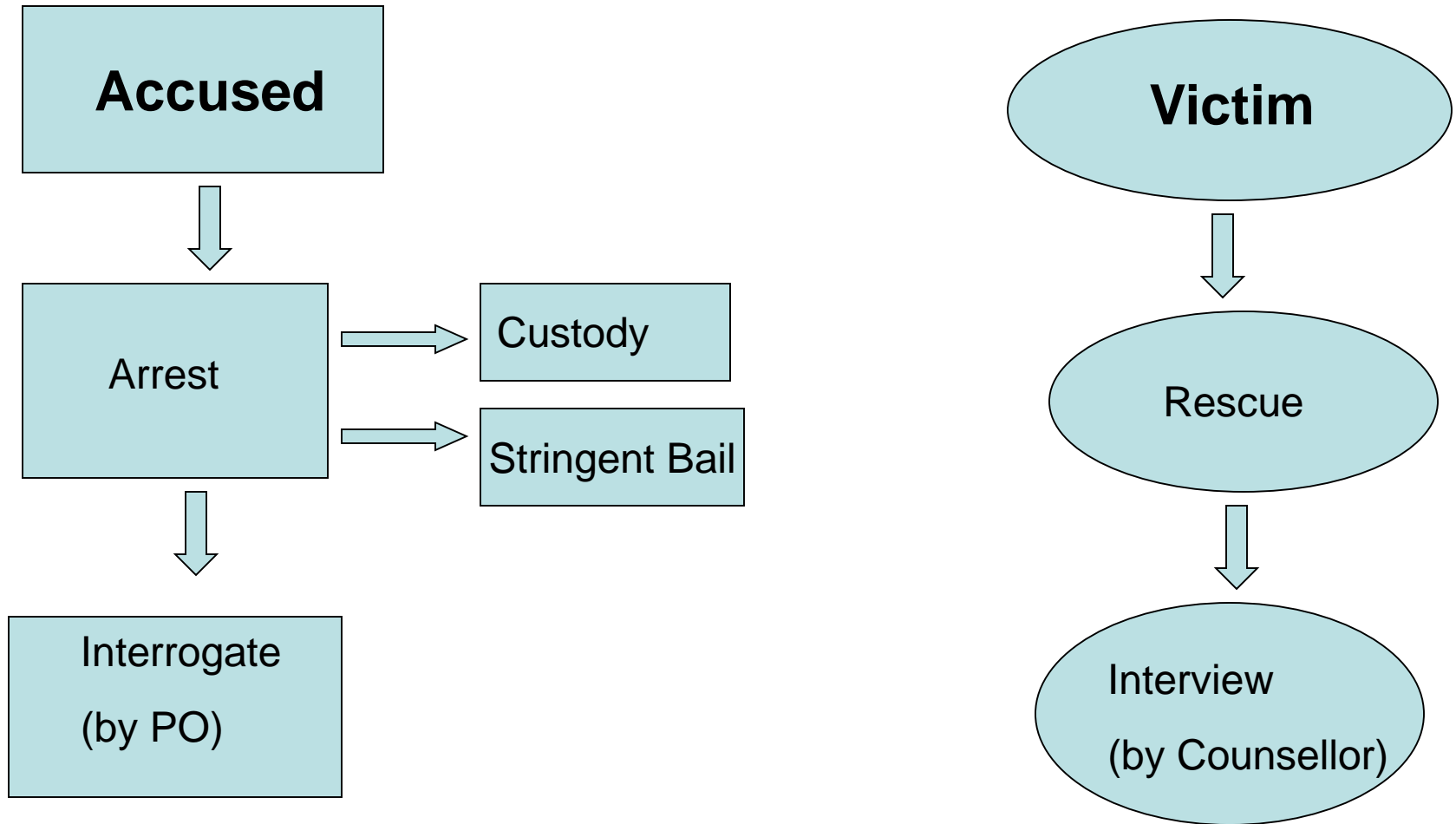
- Child v/s. adult syndrome
  - Child friendly atmosphere
- Victim v/s. accused syndrome
  - Victim representation
  - Victim support
  - Victim participation

The concept of fairness to the accused must not be stretched till it is narrowed to a filament

– Justice Benjamin Cardozo,  
US Supreme Court



# Accused v/s. Victim



# Kinds of victims

- Verified minors – below 18 years
- Possible minors – might or might not be a minor, but prima facie, a minor
- Verified majors – above 18 years

## Proof of Age:

Birth Certificate

School Leaving Certificate

Medical opinion

# Trafficking v/s. migrant smuggling

- Trafficking – Forceful movement of women/children for crimes
  - No consent or choice of the victim
  - Sale like chattel
- Migrant smuggling – Taking victim in expectation of something
  - Initial consent or choice
  - Though, on a deception, misrepresentation of facts or misunderstanding of position

# Sexual v/s. Commercial Exploitation

- Sexual
  - Brothels
  - Pornography
  - Massage parlours
  - Bars
  - Paedophilia
- Commercial
  - Industrial (Labour)
  - Domestic
  - Organ removal for transplant
  - Illegal adoptions
  - Beggary
  - Camel racing

# Authorities under PITA

- Special Courts (S.22)
- Special Police Officers ( S.13(1))
- Trafficking Police Officers (CBI) (S.13(4))
- Tourism Police
- Correctional Service Officers(S.21)
- NGOs

# Special Features of ITPA

- Using or keeping premises as brothel – s.3
- Living on the earnings of prostitution- s.4
- Procuring, inducing, taking any person for prostitution – s.5
- Soliciting for prostitution – s.8
- Detention in corrective home – s.10
- Search without warrant by Special PO – s.15
- Rescue of persons – s.16
- Closure of brothels – s.18
- Application for care and protection – s.19

# Troubles of the Judiciary

- Number of cases not reported
- Number of cases not pursued
- Some child witnesses tutored
- Some witnesses turn hostile
- Some cases doctored
- Collusive investigation

**The crime problem is in part an overdue debt that a country must pay for ignoring for decades the conditions that breed lawlessness**

**- Earl Warren**

# Requirements of the Criminal Justice System

- Infrastructure
  - Victim Support Centres
  - Victim Examination Suites
  - Video recording of statements
  - Video recording of evidence
- Interpretation
- Sensitivity
  - Court climate
  - Court room conduct

*Mankind owes to the child  
The best it has to give*



# Stages requiring sensitivity

- The stage of bail
    - Hearing the victim, the accused and the State
  - The stage of evidence
    - Recording of evidence
    - Appreciation of evidence
  - Decision
    - Sentencing
    - Fine
    - Compensation
    - Rehabilitation
- To pardon the oppressor,  
is to deal harshly with the  
oppressed.
- Law cannot prevent  
what it cannot punish

# Judgments in Trafficking cases

- Prerna v/s. State of Maharashtra (2003 2 MLJ 105)
- Gaurav Jain v/s. Union of India (1996 10 SCC 550)
- Judgment of Bhanumati J. – compensation of Rs.65 lakhs
- State of Maharashtra v/s. Tapas Neogi (1999 7 SCC 685, 695)
- Delhi Domestic Workers v/s. Union of India (1995 1 SCC 14)

# Sensitivity

- Court Climate
  - Special Courts / Officers
  - Priority in disposal
  - Fixed dates / time
  - Victim support & representation
  - Contact with Court officials
  - No contact with accused
  - Interaction with NGOs / social workers / probation officers

*The Child shows the Man  
As Morning shows the Day  
- John Milton*

# Sensitivity

- Courtroom Conduct
  - Evidence in Chambers
  - Specific place for all
  - Victim Confidentiality
  - Victim participation
  - Victim protection (emotional support)
  - Recording of evidence
  - Identification by fear
  - Rest time

Cure the disease and  
kill the patient ?

# Steps for trial

- Familiarity with victims / witnesses
- Separation of victims from accused
- Contact of victim with others only under supervision of NGOs / protection officers
- Protect identity of victims (confidentiality)
- Counseling, if required, before or during trial
- Rehabilitation / compensation / protection after trial

# Checklist for trafficking cases

- ✓ Surprise raids on brothels / hotels
- ✓ Arrest the brothel keeper / hotel owner / customers
- ✓ Rescue the child victims
- ✓ Send the victims for counseling
- ✓ Produce the brothel keeper / hotel owner before Magistrate
- ✓ Resist their bail application
- ✓ Seal the brothel / hotel
- ✓ Attach other properties of the brothel keeper / hotel owner
- ✓ Release properties / child of the victims
- ✓ Presumptive evidence [sec.114(a) Evidence Act]

# 2 views

## 1. Criminalise

- a) Abolish brothels

**The doors of prison**

## 2. De-criminalise

- a) Legalise / license / regulate prostitution  
(right to life – freedom of profession)
- b) Better conditions
- c) Minors excepted

**Swing both ways**

# Prevention

- Poverty alleviation
- Population control
- Awareness creation in schools, neighbourhoods
- Identification of vulnerable people and suspected traffickers at source locations
  - Vigilance squads on borders, transport locations etc.
  - Retired Police, military officers to be trained and recruited
- Maintenance of database of crimes and criminals and missing persons
  - Web-based tracking service for missing children
  - Photographs, finger prints, DNA reports
  - Stringent Visa requirements



# Protection

- Identity of victims to be protected or changed
- Brothel owners to be named and shamed
- Care, support and shelter to be provided to runaway children
- Co-ordination amongst police at different levels and jurisdictions
- Co-ordination amongst NGOs
- NGO/Police partnership
- Training of Police, Prosecutors to assist victims
- Rehabilitation of victims rather than release or repatriation in the same hands

**The true test of civilization of a society  
Is how it treats its victims**

# Prosecution

- ✓ Surprise raids on brothels / hotels
  - ✓ Proactive intelligence
  - ✓ Police / NGO partnership
  - ✓ Raiders to let the victim collect her child, documents and property
- ✓ Arrest the brothel keeper / hotel owner / customers
- ✓ Rescue the child victims
  - ✓ To be produced before CWC under JJ Act
- ✓ Send the victims for counseling, medical aid, legal aid, shelter before her statement is recorded (never overnight in police station)
  - ✓ Video recording of child interview as well as trafficker interrogation

# Prosecution (contd....)

- ✓ Produce the brothel keeper / hotel owner before Magistrate
- ✓ Resist their bail application
  - ✓ Constitutional right of the victim
  - ✓ Threat to / intimidation of the victim
  - ✓ Repetitious nature of the crime
- ✓ Seal the brothel / hotel
- ✓ Attach and confiscate other properties of the brothel keeper / hotel owner

The crime problem is an overdue debt the society pays  
For tolerating for years the conditions that breed lawlessness

- Earl Warren

The Judiciary must

Hear those who cannot shout,

Listen to those who cannot speak.

