
(1997) 07 BOM CK 0108

In the Bombay High Court

Case No : Suo Motu Writ Petition No. 112 with Writ Petition No. 392 of 1996

Public at Large

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 31-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 23, 26

Citation : (1997) 4 BomCR 171

Hon'ble Judges : M.B. Shah, C.J.;F.I. Rebello, J

Bench : Division Bench

Advocate : Anand Grover and Moosa, for the Appellant; C.J. Sawant and R.V. Govilkar for respondent No. 1, S.M. Shah, for respondent No. 3, M.B. Rao and Cardoz, for the Respondent

Judgement

M.B. Shah, C.J.—This Court suo motu took notice of an Article that appeared in the daily Indian Express dated 13th January, 1996. The said report disclosed a very shocking and alarming state of affairs regarding sex workers operating in the city of Mumbai. The report indicated that minor girls were illegally confined and were forced to be sex workers. As per the said newspaper report :

- i) Girls who are rescued from the brothel houses are harassed and their guardians are required to pay large sums for providing protection;
- ii) Large sums are regularly extorted from brothel owners and prostitutes for giving them protection;
- iii) There are no efforts by the State Government to rehabilitate 40,000 and odd sex workers;
- iv) Minors are procured by local agents as prostitutes and are illegally confined in brothel house;
- v) Many prostitutes whose blood was tested were having HIV positive. In so far as the report about AIDS amongst sex workers, it is stated that out of the

70,000 prostitutes in the red-light district, 65% were already infected with the dreaded AIDS disease and had been tested HIV positive.

2. Based on the said report the Court passed an order on 17th January, 1996 and issued notices to the State of Maharashtra through its Chief Secretary, Commissioner of Police, Mumbai, Municipal Commissioner for Municipal Corporation of Greater Bombay. The notices, who were joined as respondents, were directed to show cause why appropriate actions under sections 366, 366-A of the Indian Penal Code and sections 5 and 6 of the Suppression of Immoral Traffic in Woman and Girls Act, 1956 were not being taken.

Certain other directions were also given as it was alleged that girls who were rescued from brothels were not provided with any Police protection by the Police Authorities and in that view of the matter the Court directed that the same needs to be immediately investigated by the 1st and 2nd respondents. Further directions were given as under :-

- (1) To frame proper Scheme so that the women including minors who are procured for sexual slavery are released from the confinement of their procurers;
- (2) For implementing this Scheme, a proper Cell, also involving social workers, be created so that by regular checking minors and others can be released and rehabilitated in the society; and
- (3) Considering the spread of the dreaded disease of AIDS, the State of Maharashtra is directed to frame proper Scheme with the active assistance of the Municipal Corporation of Greater Bombay for carrying out HIV test for the willing sexual workers, so that the disease may not spread like a wild life in the City.

II. Subsequent actions being taken and various relevant orders.

3. On the basis of the said directions, raids were carried out and about 473 minor girls were rescued from brothel houses as per the statement of the learned Advocate-General. On 7th February 1966, considering the serious allegations with regard to the release of the rescued minor girls by interested persons and with regard to their rehabilitation, following directions were given :-

- "(a) the respondents are directed to keep the rescued girls in proper custody and not to release them;
- (b) even if there is any order from the Magistrate's Court with regard to the release of the said minor girls, the respondents are directed not to release the said girls without prior approval of this Court;
- (c) it would be open for the authorities to keep the said minor girls outside Bombay for the purpose of their rehabilitation;
- (d) the respondents are further directed to launch criminal prosecutions against the brothel owners from where the minor/major girls were rescued;
- (e) the Women and Child Welfare Department of the State of Maharashtra, which

is headed by an I.A.S. Officer, to carry out the rehabilitation work; and

(f) for seeing that the said Department is properly assisted and its work is monitored, the respondents are directed to frame a proper scheme with the assistance of various social organisations, particularly the women organisations."

In the affidavit filed on behalf of the State Government on 7th February 1996, it was pointed out that after the order of this Court on January 24, 1996 action was initiated by conducting raids and approximately 473 girls and child sex workers were rescued by the Police and kept in the proper custody of Juvenile Homes, etc. In the said affidavit it was also pointed out that the Centres of procurement of the girls or sex workers, who ultimately are found in Mumbai, are not in Mumbai or even in Maharashtra. It was pointed out that the Centres are, to a very large extent, in the neighbouring States of Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, etc. and North-Eastern States e.g. Assam, etc., and countries like Nepal and Bangladesh.

4. On 16th February 1996, it was directed that all the 473 rescued child sex workers be kept in proper custody of Juvenile Homes and other institutions. As few girls were kept in some school premises, objections were raised and they were shifted to other appropriate places. The State Government was also directed to carry out HIV tests of the rescued girls at the earliest without raising the contention that it would be too costly. The Director-General of Police was directed to provide adequate police protection to the institutions where the rescued girls were kept as it was alleged that pimps, muscle men or touts were creating unruly situation near the places where the rescued girls were housed. The State Government was also directed to provide adequate finance to the institutions for food, medicine and clothes of the rescued girls.

5. Pursuant to Chamber Summons various interested N.G.Os. were allowed to intervene in the matter, which included the Maharashtra State Women's Council, Youth For Unity & Voluntary Action and The Children's Aid Society. Ms. Saudamini P. Joshi was appointed as Amicus Curiae for the petitioners. By the order dated 23rd February, 1996 a Committee was constituted for rehabilitation of the rescued girls.

6. On February 29, 1996 the Advocate General informed the Court that communications were received from the Governments of Karnataka, Andhra Pradesh and Tamil Nadu who were willing to accommodate the girls hailing from their States in various Homes in their respective States. The Court, therefore, directed that the girls hailing from these States be sent to their respective States. In the said order it was also pointed out that consequent to the meeting in the office of the Advocate General on 26th February, 1996 in the presence of the representatives of several Social Workers certain consensus was arrived at on some of the major points as under :-

(a) There was unanimity on the point that the rescued girls should not be subjected to HIV test.

(b) If HIV tests have already been carried out on some of the girls, their identity should not be disclosed and they should not be informed of the result of the test.

(c) All the rescued girls must be subjected to medical examination for finding out their age and also for treatment if they are suffering from any other diseases.

(d) If the girls are found to be adult and are not covered by the Juvenile Act and if they do not desire to remain in the present institutes, they may be allowed to leave the said Homes.

(e) Rehabilitation of these girls is possible if they are segregated in groups of 10 or 15 and thereafter counselling work is done.

Suggestions given by the representatives of various Women's and Voluntary Organisations were also incorporated in the said order as the recommendations were pertaining to rehabilitation of the rescued girls.

7. Some persons took out Chamber Summonses, contending that willing sex workers should be released. The Court deprecated their attitude because it was felt that the said Chamber Summonses were taken out at the behest of brothel keepers or middlemen. It was made clear that the order was passed to see that those who were illegally confined in the brothel houses should be immediately released from the clutches and if possible to see that they are rehabilitated in their life. Appropriate Authorities were directed to ascertain the willingness of the major rescued girls to stay in the Observation Home for their rehabilitation and, if they are unwilling, to release them after making proper application and obtaining orders from the Court.

8. There were some other Chamber Summonses taken out by some Social Organisations that there should not be any HIV test as it is against the national policy adopted by the Central Government as well as State Government. As against this, it was contended that HIV test is required to be carried out so that it would prevent spread of fatal disease in the society. It is now known that HIV disease can be transmitted by sex workers easily and considering the seriousness of spread of HIV for the time being, the respondents were directed to carry out HIV test only of those girls who give their consent for such tests.

The respondents were directed to evolve a long term policy so that minors are not sent to brothel houses by deception, fraud or misrepresentation and to provide residential accommodation to the girls rescued from the brothel houses so that they could be rehabilitated in the society after proper counselling. The Court also directed that before the long term scheme is evolved, provision be made for medical treatment and counselling programme of the rescued girls/ children.

The learned Advocate-General has pointed out that a letter dated 27th February 1996 has been received from the Secretary to Government, Women and Child Development Department, Karnataka State, to the effect that the State of Karnataka is able to find places in their State Homes/Certified Schools for the 88

girls who have given their addresses at places from Karnataka State and who have been rescued under the Juvenile Justice Act. Similarly, he has also produced a letter from the Principal Secretary to Government, Women's Development and Child Welfare Department, Hyderabad, wherein it is stated that the State of Andhra Pradesh is willing to accept the 31 rescued girls if they are committed u/s 13 of the Juvenile Justice Act to the State Juvenile Homes. Ms. Aruna Ashtekar, Superintendent, Observation Home, Umerkhadi, who was present in the Court, stated that at Bangalore there is sufficient facility for rehabilitation of the rescued girls. A Fax message was also received by the State of Maharashtra from the Secretary, Social Welfare Department of the Government of Tamil Nadu, to the effect that the rescued girls/women will be accommodated in the Vigilance Home at Mylapore, Madras.

In this view of the matter, the State of Maharashtra was directed to send those rescued girls who were willing to go to their native State under the supervision of Probation Officers and the Juvenile Aid Police Unit of the State. The Secretary, Woman and Child Welfare Department of the State, was directed to keep continuous contact with the respective States to find out the steps taken by them for the rehabilitation of the rescued girls. The rescued girls were allowed to be counseled by NGOs of private Women's Organisations. Three senior trained social workers from the Maharashtra State Women's Council and Youth for Unity and Voluntary Action were allowed to accompany the rescued girls to their respective States.

9. On April 9, 1996 the Court considered one of the reports submitted by one of the Counsel regarding diseases amongst the rescued girls and appointed a Panel of Doctors and Counsellors to visit the places where the rescued girls are housed so as to given them medical treatment as well as counselling.

10. On April 17, 1996 it was pointed out that medical tests had been carried out and medical facilities were provided to the rescued girls/children at various hospitals. In respect of the girls hailing from Nepal, the Court was informed by the Advocate General that as there was no response from Government of Nepal, the State Government has established contacts with Non-Government Organisations in Nepal and that steps were being taken for ascertaining the bona fides of the persons/organisations willing to take back the girls from Nepal.

11. The medical report on behalf of the Indian Health Organisation in respect of four Homes where the girls have been housed indicated that they were inflicted with various ailments. The medical reports indicated that 70% of the rescued girls were HIV positive and the remaining 30% were suffering from other venereal diseases. The medical reports are as under :-

GROUP "A"

71% of the women examined presented with PGL (Persistent Generalised Lymphadenopathy) a marker of HIV/AIDS; 34% of the women examined presented with STDs (Sexually Transmitted Diseases); 63% of the women

examined presented with Non-STDs (Non-Sexually Transmitted Diseases); 16 unconfirmed cases of Pulmonary Tuberculosis; 3 unconfirmed pregnancies, 1 surgery case; 1 confirmed pregnancy.

GROUP "B"

65% of the women examined presented with PGL (Persistent Generalised Lymphadenopathy) a marker for HIV/AIDS; 20% of the women examined presented with STDs (Sexually Transmitted Diseases); 94% of the women examined presented with Non-STDs (Non-Sexually Transmitted Diseases); 6 unconfirmed cases of Pulmonary Tuberculosis; 7 unconfirmed pregnancies, 1 surgery case; 3 confirmed pregnancies.

GROUP "C"

59% of the women examined presented with STDs (Sexually Transmitted Diseases); 60% of the women examined presented with Non-STDs (Non-Sexually Transmitted Diseases); 3 unconfirmed cases of Pulmonary Tuberculosis; 3 unconfirmed pregnancies, 1 case for immediate admission to hospital.

GROUP "D"

78% of the women examined presented with STDs (Sexually Transmitted Diseases); 47% of the women examined presented with Non-STDs (Non-Sexually Transmitted Diseases); 5 unconfirmed cases of Pulmonary Tuberculosis; 2 unconfirmed pregnancies, 1 case for immediate admission to hospital.

Further, a report was also submitted from the Department of Criminology and Correctional Administration of the Tata Institute of Social Sciences called "PRAYAS", which indicates that after proper counselling much could be done for rehabilitation of the girls. It was suggested that raids on large scale should not be conducted but that raids on a small scale should be conducted so that if rescued girls are small in number it will ensure better rehabilitation. The other suggestions made in the report were also considered and on the facts on record it was found that proper steps were being taken to meet the basic needs of the rescued children.

12. On April 26, 1996 the Court passed an order and noted that the report submitted by Ms. Aruna Ashtekar, Superintendent, Children's Aid Society, Observation Home, Umerkhadi, Bombay, indicated that result of counselling the rescued girls was very much encouraging and that the rescued girls seriously desire rehabilitation. It was pointed out that these girls initially considered themselves to be adults and not minors; that previously they were suffering from various illness and for the last two months they are properly treated; constant counselling by different staff groups and child guidance clinic sessions slowly had its effect; that the father of one rescued girl came to visit her and it was a heart-rendering reunion to see the girl run in her father's arms and both sobbing uncontrollably; before seeing her father, the girl had quickly washed off her make-up; the other girls wanted to meet the girl's father; the girls touched the

feet of the elders and wept when they were informed that their parents should also be sent there; that after this incident, no more counselling was necessary to remove garish make-up and the girls began to dress simply. It was also pointed out that those girls who had not told the truth earlier came to the Probation Officer to provide correct details and after their friend departed with her father, the girls cried inconsolably. In consequence thereof the girls had removed the garish make-up and were dressing simply. The Court's attention was invited to the fact that the counselling is continuing and activities such as stitching and knitting were going on.

13. There was some dispute between the Governmental Organisation and Non-Governmental Organisations in the matter of counselling. The Court thereafter issued some directions which included the following :--

(a) The task force established by the Government and the Members Committee appointed by the Court are directed to visit all the institutions twice a month to find out the problems faced by the rescued girls and sort out the same.

14. On June 11, 1996, the Court took note of a report published in the Indian Express issue dated 29th May, 1996 in the matter of two rescued girls from Mumbai who were sent for rehabilitation to Madras. The report indicated that minor girls lured into the sex trade were treated worse than that of bonded labourers. The Court further observed as under :-

"On occasions, some social workers and also Government are taking action for releasing the bonded labourers but uptil now, no serious action is being taken by the Government for rescuing the bonded prostitutes who are kept in the hell on earth for no fault of theirs. May be that in some cases, poverty might have driven the parents or guardians to sell their minor girls. May be, in some other cases, they might have been lured by unscrupulous elements to come to Mumbai and fall in the trap. As per the said report, the girls are kept in a brothel and in beginning they get severe punishments from eunuchs. Teenagers are required to entertain as many as 15 to 20 men on a single day. Only those who could entertain above 15 persons were treated well and were given incentives. If they are not in a position to entertain a certain number of persons, they were beaten and were tortured. In brothel houses, they are under constant state of fear psychosis."

These girls and such other girls who are kept in brothel houses are required to be rescued and pursuant to our earlier orders, in all 457 girls were rescued from such confinement. It is needless to state that these rescued girls are required to be protected from sexual exploitation and are to be properly rehabilitated. It is also needless to state that confinement of the girls in brothel houses is not only illegal and unconstitutional but is also against basic human rights.

The Court, based on material before it, noted that 70% of the rescued girls were found to be HIV positive and other 30% from other venereal diseases. The Court noted that if the girls suffering from HIV are permitted to carry on prostitution it

will have adverse effect on the society and as such it was essential that the Government submitted appropriate rehabilitation programme for the rescued girls as well as for other homeless girls so that they could be rehabilitated in the society and for their survival they should get some amount. The report dated 4th June 1996 of the Maharashtra State Women's Council was taken on record. The report showed that regular meals have been given to the rescued girls; that a number of them had shown interest to learn household chores; they were attending classes; and that the attendance was consistent.

15. The Court in its order of July 25, 1996 noted that the girls who were sent to Nepal, their home State, were happy and cheered up and excellent work was done by the N.G.Os. at Nepal. The report of the Children's Aid Society recorded that the public at large was avoiding even to sit with the unfortunate girls who were victims of unsocial elements or of poverty. The Advocate General was requested to call a meeting of the Committee appointed by the Court's order dated 23rd February, 1996 so that proper scheme could be evolved to see that in future minor/major girls are not confined at the brothel houses.

16. Pursuant to this the State of Maharashtra held a workshop on prevention of child prostitution and rehabilitation. The broad objectives of the workshop were to arrive at a common understanding of the subject, to seek solutions and to prepare a vital plan of action for prevention of child prostitution and rehabilitation. The purpose behind this was that despite stringent laws and Constitutional provisions against kidnapping, abduction, child abuse and prostitution, more and more minor girls were being forcibly inducted into the flesh trade which was flourishing. The workshop addressed itself to the following objectives and to formulate strategies in the areas of -

- (a) The Role of the police in prevention and rescue.
- (b) Effectiveness of existing laws and ensuring punitive action against perpetrators of crime.
- (c) Preventive measures through formal and non-formal education of the family and community.
- (d) Health Care for rescued minors.
- (e) The training and rehabilitation of rescued minor girls.

17. Subsequent to the workshop the Directorate of Women & Child Welfare, Maharashtra State, Pune, has prepared a plan for rehabilitation of the unfortunate victims of sex trade. The Rehabilitation Programme consists of :-

- 1) Housing
- 2) Medical care & health awareness
- 3) Counseling & guidance
- 4) Formal & non-formal education

5) Vocational training suited to their capabilities.

18. The learned Advocate General, who has submitted a plan of rehabilitation, has informed the Court that steps have already been taken and monies have been released and further monies will be made available in the course of the current Financial Year. This will to some extent help in rehabilitation of the rescued girls. The specific objectives are the rehabilitation and health care for rescued girls and rehabilitation of other unfortunate women forced into this trade as sex workers.

III. Discussions and Directions

19. The need of the day, however, is how to effectively take steps to prevent exploitation of women and children hailing mostly from rural areas, who are lured into the trade by unscrupulous elements taking advantage of the socioeconomic backwardness of women. The survey conducted in respect of the girls rescued from Mumbai shows that the girls hail from Maharashtra, Karnataka, Andhra Pradesh, Tamil Nadu, West Bengal and Eastern part of India, including, Nepal and Bangladesh. The reports submitted by the organisation working under the State Government as well as the various N.G.Os. reveal that by and large the rescued women on proper counselling would prefer to go back to their homes. It is further noted that if they are allowed to learn skills and alternative source of self sustenance it would help in preventing them from coming back into the same trade. The experience gained by the State Government in the homes in which the rescued girls were housed could be basis for evolving strategies for the future which could be exchanged by the State of Maharashtra with the other States from where the sex workers hail.

20. This obnoxious trade in women has been recognised, but not stamped out. In a civilized country minor girls cannot be permitted to be confined for illegal and immoral purpose and their rescue operations should not be delayed. Our society, right through the ages, though has given a special status to women, nevertheless, exploits women for pleasure. Arthashastra compiled by Kautilya, Kamsutra of Vatsyayana, dancing and singing girls during the Mughal period and the Devadasi women where young girls were introduced basically in service of temples but were exploited by the temple officials, reverberate in our ears. We have introduced Legislation to punish those who indulge in the trade, but at the same time the State has been unable to wipe out or control the same. Our Constitution recognised existence of this evil and enjoined the State by enacting Article 23 of the Constitution of India to prohibit traffic in human beings and begar. In fact by virtue of Article 24 no child below the age of 14 years can be employed to work in any factory or mine or engaged in any other hazardous employment. When Article 23 was being debated in the Constituent Assembly, Prof. K.T. Shah moved an amendment by which the words "Traffic in human beings and begar" were sought to be substituted by the words "Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation and begar." While moving the

amendment Prof. K.T. Shah is quoted as under :-

"But the traffic in human beings is not confined only to what was known as slavery in recent times. It happens, and perhaps it happens on a much larger scale than innocent Members of this House may be aware - in what is known as White Slave traffic, namely, the buying and selling of young women for export or import, from one set of countries to another; and their permanent enslavement or servitude to an owner or proprietor of the establishments of commercialised vice probably for life."

We have introduced Legislation to punish those who indulge in this trade, but instead of any decrease in this activity, it is increasing day by day.

21. Though the Immoral Traffic (Prevention) Act, 1956 Act contains provisions for closing down brothels no attempts had been made to close them down though they are functioning and known to all the arms of the Government. Periodical raids pursuant to directions of this Court and/or well-meaning citizens raising their voice is no answer to the duty cast on the State by the Immoral Traffic (Prevention) Act 1956 to weed out the obnoxious trade. It is to be stated that even till date in spite of social reformers like Raja Ram Mohan Roy Mahatma Jyothi Phule and others, our inability to educate and inform our citizens is a national shame. Let our attitude towards women be slightly changed by not considering them as only an explosive material of sex-stimulation.

22. No doubt in recent years both the Government of India and the State Government have been paying some attention and confronting the issue of child prostitution. However, if the number of girls who are lured into the sex trade every year is an indication the effort has not succeeded. The Directorate of Health Services, Government of Maharashtra, has recognised that in the State of Maharashtra there are about 30,000 girls in the sex trade. Most of them are in the city of Mumbai and other cities and a large number of them are children or minors.

23. Hence, the entire approach to this problem is required to be changed. We have to consider that minor girls and young women who are forcibly thrown into this trade are also daughters and sisters of someone. Apart from this, we have to consider that they are also human beings and they are required to be treated as such in a civilised society. The Government of India has set up the National Commission for Women. The National Commission has prepared a report on Socialite Violence on Women & Children in Prostitution. The said report gives an insight into the problems of women and children forced into the sex trade. Instead of keeping that report on desk, it is high time that the country takes note of the suggestions and serious steps are taken to prevent the exploitation of women, more so of young children who are victims of the economic depravation. In this Golden Jubilee Year of a free and democratic India, we owe them that much.

24. Smt. Mohini Mathur, President of Maharashtra State Branch of Indian Council

of Social Welfare in a Paper "ROLE OF POLICE AND NGOS IN PREVENTING MINOR GIRLS FROM COMING INTO PROSTITUTION" present at the workshop on Prevention of Child Prostitution and Rehabilitation held on November 17, 1996 has identified the contributing main reasons of trafficking in women and children as under :-

"(1) Poverty and economic distress.

(2) Ignorance and illiteracy.

(3) Lack of employment opportunities.

(4) False promises given to innocent victims.

(5) Social customs-caste rigidity stands in the way of suitable marriages in India.

(6) Dowry system - Many poor girls are sent to big cities as maids to acquire money for dowry, detached from their homes and they fall victims to various temptations of big cities.

(7) Unequal status of girl in a family and in society parents attitudes towards girls. Birth of a girl is not hailed happily. The feelings of being unwanted and humiliation carries her away from home and she succumbs to the carnal passions of men.

(8) Home conditions-housing shortage, lonely homes, broken homes are the miscellaneous social factors by which young girls are carried away to seek shelter elsewhere, very often landing up in wrong places.

(9) Consumerism and love for money-The love for money and its power to get things which satisfy the needs like love for fancy clothes, cosmetics, etc. Once a young girl is trapped and starts getting these things, she becomes a slave to these desires. She is easily captivated by the trader who sells her to the brothels.

"

25. We have found in the course of hearing of these petitions that a large number of sex workers in Mumbai are from nearby States, Eastern States of India and from Nepal. The rescued sex workers have presently by and large been sent to their respective States on account of the active co-operation given by the States and in Nepal by the N.G.Os. The State Government should continue to share with the concerned State Governments the experience gained by it and also the remedial measures taken so that other State Governments are also in a position to prevent abuse of children by brothel owners.

26. At this stage we would reiterate, for its implementation, the directions issued by the Supreme Court in the case of Vishal Jeet Vs. Union of India and others, . The Apex Court in that case was pleased to issue several directions. Some of the relevant directions are as under :-

"(i) All the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy

action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.

(ii) The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective Zones consisting of the Secretary of the Social Welfare Department of Board, sociologists, criminologist members of the women's organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc. the main objects of the Advisory Committee being to make suggestions of :

a) the measures to be taken in eradicating the child prostitution, and
b) the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.

3. All the State Government and the Governments of Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.

4. The Union Government should set up a committee of its own in the line, we have suggested under direction No. (2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation, etc. etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.

5. The Central Government and the Governments of States and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

6. The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the Government could do in that regard."

IV. AIDS Amongst Sex Workers

27. That takes us to the next question namely the spread of AIDS through sex workers. The Directorate of Health Services, Government of Maharashtra, gives us the following figures in so far as the City of Mumbai is concerned :

28. From the interim orders that were passed we have noted that round about 70% of the sex workers rescued were suffering from AIDS. The large patronage that sex workers enjoy shows that the situation in the city of Mumbai is alarming. It has been contended that though the rescued sex workers had been tested there should not be further forcible testing of the sex workers as that could go against the national policy that there should be no forcible testing and

on the contrary the testing should be voluntary. The argument against forcible testing is that it would violate the citizen's right under Article 21 of the Constitution of India. However, we may note that the State of Goa has enacted the Goa, Daman, Diu Public Health Act, 1985 which empowers the State Government to isolate the persons found to be positive for Acquired Immune Deficiency Syndrome. Section 53 of the Act was the subject matter of challenge in the case of *Lucy R. D'Souza v. State of Goa and others*, 1990 Maharashtra Law Journal, 713. The Division Bench of this Court repelled the contention that such a law would be violative of Articles 14, 19(1)(d) and 21 of the Constitution.

29. It may however, be noted that the Secretary General of the United Nations in his address to the General Assembly on October 20, 1987, in "Fight Against AIDS" observed as under :-

"is also a fight against fear, against prejudice and against irrational action born of ignorance."

And he added later :-

"that the World should make war against AIDS, and not against people with AIDS."

Accordingly the National HIV testing policy recommended amongst others as under :-

(i) Any testing procedure undertaken in the country must be in accordance with and a part of comprehensive control programme on HIV.

(ii) Any testing procedure without explicit consent of the patient/mandatory testing must be discouraged with it tends to identify an individual except in exceptional situations.

(iii) Testing procedure must be supported by social and psychological support.

(vi) Any procedure for testing must be consistent with a pre-decided objective which is scientifically sound, feasible and cost effective.

(v) Any kind of mandatory linked testing (unless otherwise required by the Court) excepting blood unit (not necessarily the donor) should be discouraged which includes testing of international traveller, refugees, reproductive age group women, hospital inpatients or those seeking admission, injecting drug users, sex workers, prison inmates, sportsmen, pre or in-service employment screening or insurance procedure.

We have reproduced this from the paper of National HIV Test Policy produced by the National AIDS Control Organisation.

30. We note that mandatory testing of sex workers has not been recommended. However, experience shows that amongst the women, who were medically tested, an alarming large number amongst them were infected with AIDS. If no steps are taken to warn patrons of brothels, it will create a catastrophic situation

in our nation. From the figure quoted earlier it is seen that the number of sex contact with infected sex worker in a year is around 14,850,000 in the City of Mumbai itself. The State Government will, therefore, be well advised to take appropriate steps to educate the public at large about the dangers to the health of such persons and their families. Though such brothels are illegal, yet in reality they exist. In fact the various places where they exist are also referred to in the report prepared by the National Commission for Women. It seems that the worst hit areas are the port cities. The Government through its organisations or through N.G.Os. should take steps to inform both the sex workers as well as their patrons the desirability of taking safety measures in the larger public interest. If brothels cannot be closed down, at least steps should be taken to educate and inform those who patronise the places of the dangers of AIDS.

31. For the time being, apart from eradicating prostitution, the main question should be how to control illegal confinement of minors and major girls for the purpose of prostitution. The second question is how to control minor and major girls being lured to this trade; thirdly how to eliminate pimps and others, who indulge in meting out inhuman treatment to such unfortunate girls and lastly control the spread of AIDS. If the society claims to be a civilised one, then uncivilised activities of the anti-social elements who are kidnapping minor and major girls and pushing them into this trade is required to be absolutely wiped out and those who are involved in these activities should be harshly punished, so that it may have a deterrent effect on others.

V. Directions

32. Hence, in conclusion, we issue the following directions :-

(1) The various directions given by the interim orders, if not complied with, should be complied with and acted upon periodically.

(2) The respondents-State Government to see that strict vigilance is maintained in the areas where sex workers normally operate and to rescue the child sex workers. Further, adequate steps should be taken to see that those who indulge in trafficking of women should be suitably punished. For this purpose, appropriate directions should be issued to the investigating agencies to take immediate steps. Sometimes it is noticed that a Police Officer who detects this type of activity does not take immediate action on the ground that such duty is assigned to some other Officer. In our view, this is not the proper approach because all Police Officers are bound to prevent or take immediate action in those cases where cognizable offences are committed. It is true that they may not investigate those cases but can certainly report them to the proper officer and during such time take preventive measures. Section 107 of the Indian Penal Code provides that "a person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing."

(3) It is high time that the State Government should take serious steps :

- a) to prevent forcible pushing of women and young girls into prostitution;
- b) to prevent trafficking in women i.e. buying and selling of young girls.

These girls may be victims of kidnapping; they may be victims of various deprivations; they may be victims of circumstances beyond their control. For this purpose, regular raids should be carried out in the area where sex workers operate. On numerous occasions it is reported in newspapers that persons from social organisations who dare to rescue these girls are manhandled, beaten or threatened. To prevent such situation, for the time being the Government must have a Squad of Police Officers who can take immediate action.

(4) The State Government to set up an Advisory Committee, if not already set up, within 4 weeks from today in terms of Direction No. 2 of paragraph 15 of the Judgment of the Apex Court in the case of Vishal Jeet (supra) to comply with the objects set out therein and to further take steps to implement the suggestions made by the Advisory Committee.

(5) To set up homes for rehabilitation of rescued sex workers including children so as to enable these rescued sex workers to acquire alternative skills in order to enable them to have alternative source of employment. It is also to be noted that when the girls were rescued, it was difficult for the State authorities to provide residential accommodation to them. The State was not having any infrastructure to meet such a situation. It is true that in Mumbai City premises are very costly, but in the periphery of the City the State Government can certainly provide such facility, more so when it is throughout claimed that Maharashtra State is a much more industrialised, developed and civilised State. In such a State, 473 rescued girls were not properly accommodated and no steps could be taken to rehabilitate them for want of premises and they were required to be sent to their respective home States. This type of situation arises only because of lack of interest on the part of the concerned authorities in implementing the decision of the Supreme Court in the case of Vishal Jeet (supra). If the problem is looked at from the angle that these young girls are also daughters and sisters of someone and that they are also required to be treated as human beings, then the State authorities can easily find out a solution to the problem. During the course of hearing, we have noted that there are no adequate facilities available in the State of Maharashtra, particularly in Mumbai, where these rescued girls could be rehabilitated or kept for some period for bringing them out of the clutches of unscrupulous elements who deal in trafficking of women. Adequate training facilities are also not available and it appears that serious thought is not given to this problem by the State Government. In a civilised State, it is the duty of the State to take preventive measures to eradicate child prostitution without giving room for any complaint of culpable indifference. One should not forget that these rescued girls are also fellow human beings who require some support and treatment for getting out of the immoral activities.

(6) Regularly carry out AIDS awareness programme in the areas where sex

workers normally operate.

(7) The State Government is also directed to submit periodical reports, by taking out Notices of Motion, either through the learned Advocate-General or the learned Government Pleader, stating what steps are taken pursuant to the aforesaid directions and how many girls are rescued from the clutches of middlemen; whether medical treatment is given and whether rehabilitation facilities are made available to them. Even recent newspaper reports indicate that pimps or middlemen are raising their muscle strength to prevent NGOs from rescuing illegally confined girls.

(8) The State Government is further directed to place before this Court the compliance report of these directions.

33. With the above directions, both these petitions stand disposed of.

34. Before disposing of these petitions, the Court must express its thanks to the learned Advocate General, the various other Counsel particularly Mr. Anand Grover representing the intervenors, the State Organisations, NGOs., Mrs. Vijayalaxmi Pandit, Chairperson, Juvenile Welfare Board and Mrs. Motia Prakash, Treasurer, Children's Aid Society, who co-operated with the Court in helping the rescue of children and other sex workers and for their rehabilitation.