

BACKGROUND FOR THE MOOT PROPOSITION

Out of the numerous social evils faced by our country today, drug addiction or drug abuse is one of the most common evil prevalent in the Indian society since time immemorial. There are a variety of drugs which are used in various forms which include narcotics, depressants, stimulants, hallucinogens, cannabis etc.

The World Health Organisation has defined drug abuse as a state of periodic, chronic intoxication, detrimental to the individual and to the society, produced by repeated consumption of drugs either natural or synthetic.

As in other countries, the menace of drug addiction is spreading in India also. A large number of our young men and women have taken to intoxicants. Near about 87.6 per cent drug addicts are between the ages of 14 and 25 years. The coming generation is thus crippled by the rampant abuse of drugs. The easy availability of different drugs in the market due to illicit trafficking makes it much easier to procure it which again aggravates the problem.

Another form of social evil is "Human trafficking" which is the fastest increasing criminal industry in today's world, coming to second only after illegal drug-trade. This evil has been traced back to the ancient Mesopotamian and Mediterranean civilization and has continued to grow. Trafficking in India is often disguised as migration, commercial sex or disgustingly even marriage. It is estimated that ninety percent of the India's sex trafficking is internal. Women, girls and children are trafficked internally for commercial natural / unnatural sex. Children are subject to involuntary servitude as factory workers, domestic servants, beggars, agricultural workers and many times they are also

naturally / unnaturally sexually abused by their owners. No crime can be worse than this.

Also, a rapid increase in the use of computer and internet has given rise to new forms of crimes / social evils like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, e-commerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services.

The Indian government is committed to fight against the aforementioned social evils at home and abroad. It has recently assisted few countries to enact anti-trafficking legislation(s), trained law enforcement officials, prosecutors, border guards and judicial officers on detecting, investigating & prosecuting traffickers and protecting victims and provided start-up equipment for new anti-trafficking police units.

Hence, this moot problem is been framed to spread awareness among common sections of the society to come forward and discuss the same for eradication of these social evils.

MOOT COURT PROPOSITION

BRIEF FACTS

1. Noor Mohammad (hereinafter NM) a smart, handsome and fair skinned boy, aged 13 years was on 03/04/2014 crowned the new student "Mr. Fresher" in the Ninth Grade of Little Flowers School, Jaipur in the State of Rajasthan. On the fateful day (25/04/2014), NM while coming outside the school premises went to a nearby Pan-stall to purchase a soft-drink. While sipping his

drink, he saw his senior of Eleventh Standard Rajveer Singh (hereinafter RS) aged 15 years and 11 months, making gestures to come behind the shop. NM went with RS where RS took out a Cigarette and started smoking the same. After a few puffs (shots), RS offered the same to NM and told him, it is not a normal Cigarette and if you take only two puffs (shots), you will reach in a different world. NM being a curious teenager went ahead to "Try" that joint and as soon as he took that in, after a few moments, he started feeling lightheaded and he said that I am feeling too good and tried to enquire from RS that what is it actually and from where he got it. RS in reply gave him an address and asked NM to reach that place at 5 pm sharp and warned him not to disclose that address to anyone.

2. At around 4.45 pm, NM reached that spot and found that it was a deserted new construction site a bit far from the city, at the newly build four lane highway, where there was hardly anyone around. After waiting for few minutes, when he could not find RS, he called RS on his mobile phone. RS picked the call and told him that he will be late by half an hour around as he is stuck somewhere but requested NM to go to the Roof-Top of the deserted site and wait for him over there. RS also promised that he will bring 'A New Thing' for NM to 'Try' and he is busy arranging that only. NM went ahead and after sometime RS arrived there with four boys of age group between 14-19 years around.

3. They soon became friends with NM and gave him some special 'Chocolate' with a Joint of Marijuana. Two boys from that group thereafter started 'touching' NM on different parts of his body. NM by that time was so much inebriated that he failed to understand the nature of that act and after some time NM lost his senses and slept.

4. At around 2.30 pm next day (26.4.2014) NM came back to his senses and found himself in a heavy headache and nearly unable to open his eyes. After gathering some strength he tried to get up but found that very hard too. After making some efforts he finally stood up on his legs and found himself naked and in a corner of the same building but on different floor. He tried to recapitulate what happened last evening but reminding himself about yesterday's incident after he started eating the chocolate given by RS, he found himself unable to remember anything thereafter. With pain, he started walking and found a torn shawl nearby, covered himself and found his mobile phone near the shawl with a printed message to "check the inbox of your e-mail". NM switched on his mobile and opened his inbox on Gmail.com. There was a new e-mail with an attached video and near about a dozen photographs. He downloaded that Video file from his inbox and clicked on "Play Video". To his horror he saw himself being wantonly molested at the very first by all those boys and thereafter being sodomized by the entire group one by one. Thereafter, he received a call from RS who warned him of dire consequences for disclosing last day's act to anyone. He also told him that he will upload the video on U-2, a globally recognized free site for uploading Movie and Songs and also on Face-Life another trans-national social website. Thereafter, NM reached the nearby highway, got an auto-rickshaw for himself and reached home by 4 pm. At home everyone in his family was waiting for him. At once he didn't told to his parents about the incident but after their continuous questioning and mental assurance, told them the entire unfortunate incident. NM's parents assured him not to disclose this to the Police or anyone concerned as it was a matter of the reputation of the entire family concerned.

5. After two days, (on 28/04/2014) RS called NM and demanded Rupees 10,000 within 24 hours together with a rider that non fulfilment of which will lead to Video & Photo Upload. NM being a

teenager got very scared from that call but didn't told that to anyone. As the time approached, he thought 'if I will not give him the money, what will happen to me and thereafter to my family's reputation'. Thinking that, he made a plan to steal his mother's gold earrings and pay the ransom. He worked as per his plan and furnished the ransom to RS. This continued for some time till NM's father realised that things are being stolen from the house. He followed NM one fine day and saw him delivering money to RS. NM's father thereafter went to "BACHPAN", a Non Governmental Organization (hereinafter NGO) and sought their help. The NGO first took NM into confidence, took him to the nearby police-station, got an First Information Report (F.I.R.) registered (on 5/5/2014) (copying that to the Cyber Cell of the Police). The police came in swift action, conducted raids and on preliminary investigation found that not only NM but at least two dozen more male/female teenagers were victims in the same kind of act. Not only the victims but most of the alleged accused were also found to be teenagers involved in the gruesome act for easy money. The police also found post interrogation that the accused not only abused and blackmailed their victims but also supplied their Video files / Photographs to a person Jai Dev (hereinafter JD), a citizen of Mumbai where these Video's etc. were actually uploaded on free porn sites available for downloading in public domain. Also it came out in the investigation reports that the main Kingpin in the aforementioned affair was no other that Ms. Saloni Kamra who also happens to be the current Women & Child Development Minister of India and a sitting Member of Parliament (hereinafter SK) directly in touch with JD. It also came out in the preliminary investigation that JD was a near relative of SK. The police, for nabbing JD (through proper channels) sought the help of Police Commissioner and got the information through Home Ministry.

6. The NGO somehow became aware of this investigation report and other concerned information(s) and passed on the information to a national newspaper PATRIKA who in turn conducted a “Sting Operation” (hereinafter OP) on SK on 10/05/2014 in very knotty circumstances and compiled its data in three various compact discs (C.D.'s).

Disc 1 Contained SK taking token money for a bribe from a reputed multi-billionaire private tycoon active in many sectors in national and trans-national level and getting a promise from that businessman for depositing the rest of the remaining amount in "Swiss Bank" as directed by SK & JD.

Disc 2 Contained SK observing the transportation of few children from orphan homes being transported to a third world country for prostitution etc. and

Disc 3 Included contents of SK's 'private life' involved in natural/unnatural sexual intercourse.

The channel thereafter broadcasted all the three discs on 12/05/2014. Following the broadcast, almost all the News Channels in the Country aired the same news numerous times and a huge hue and cry was raised by different sections of the society.

PUBLIC INTEREST LITIGATION FILED

7. On the basis of the telecasted NEWS by PATRIKA, the NGO went ahead and filed a “Public Interest Litigation” (hereinafter P.I.L.) in the High Court of Rajasthan at Jaipur for the same on 15/05/2014 and demanded SK's immediate resignation and an inquiry by the Central Bureau of Investigation (hereinafter CBI) with a request that the Hon'ble Court itself shall monitor the entire investigation as it was a very high profile case. The Hon'ble High

Court admitted PIL on 20/05/2014 and issued show cause notices for the same to all the concerned parties.

8. On the other hand, SK also filed a case of Defamation against PATRIKA & NGO on 25/5/2014 alleging her Right to Privacy enshrined by the Constitution and pleading that she is not guilty and that PATRIKA is from no stretch of imagination authorized to put on Television the news contents like the current one. NM, PATRIKA and some others adduced evidence, provided material. Investigation report was called and provided to the parties. SK, JD and RS denied the allegations and claimed the action by the opposite parties as private and malafide. They claimed damages for defamation. All the concerned parties argued through their counsel and during hearings a large number of persons attended the hearings in the Chief Justice's Court.

JUDGMENT OF HIGH COURT

9. The matter being of public interest and national importance, the Hon'ble High Court after hearing the concerned parties, perused and examined the record. Number of hearings day to day were given to both sides and to some interveners. The Hon'ble Court held on 30.5.2014 as under:-

(i) There are prima-facie allegations against SK, JD and RS. Further investigation to be done by CBI and if sufficient material to launch prosecution in the appropriate court and in accordance with law. No sanction need be taken for SK from Central Government.

(ii) Cost-cum-compensation of Rs.1.00 lac was awarded in favour of NM to be paid by SK and JD equally;

(iii) RS being juvenile be dealt with by Juvenile Court in accordance with law;

(iv) Appreciated the petitioners for taking up the sensational social issue at the national level;

(v) Writ for defamation dismissed. May file suit.

SPECIAL LEAVE PETITION FILED

10. SK and JD thereafter filed S.L.P. before the Hon'ble Supreme Court, which was admitted. The Court clubbed other similar PILs pending before it and other High Courts. It issued notices to all the States to represent and assist it and fixed 15/7/2014 for final arguments.

Kindly draw S.L.P. and frame arguments & supporting judicial precedents from the appellant as well as from the respondent's side.

RELEVANT LAW(S) -

1. The Juvenile Justice (Care and Protection of Children) Act, 2000.
2. Narcotic Drugs and Psychotropic Substance Act, 1985;
3. Indian Penal Code, 1860;
4. Criminal Procedure Code, 1973;
5. Indian Evidence Act, 1872;
6. Information Technology Act, 2000;
7. Constitution of India;
8. U.N. Standard Minimum Rules for The Administration of Juvenile Justice, 1985;
9. U.N. Convention On The Rights Of The Child, 1989 (Ratified By The Government of India in 1992);
10. Protection Of Children From Sexual Offences Act, 2012;

11. The Immoral Traffic (Prevention) Act, 1956;
12. United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, 1988;
13. Money Laundering Act;
14. Income-tax Act, 1961;
15. Any other relevant law(s) For eg. Laws relating to media etc.

Background for the moot proposition (Rajan) 22.5.2014.

