

**BALI PROCESS ON PEOPLE SMUGLING, TRAFFICING IN PERSONS AND RELATED TRANSNATIONAL CRIME -SENIOR OFFICIALS' MEETING**

**EFFORTS IN PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN**

The Penal Code of Ceylon which was promulgated in 1883 during the British occupation of Ceylon (Sri Lanka) still remains the principle statute pertaining to Criminal Law. The Penal Code was based on the Indian Code which was introduced to India by the British. However over the years it was found that provisions in the Penal Code are inadequate to deal with ever increasing incidence of crimes especially sexual offences, child abuse, trafficking in women and children. Hence there was a need to amend the Penal Code to keep abreast with the developments in the other countries and effectively deal with the offenders.

Act no 22 of 1995 introduced significant changes to the Penal Code. Subsequent amendments to the Penal Code acts No 29 of 1998 and 16 of 2006 further strengthen and consolidated the law pertaining to sexual offences and human trafficking.

In order to have a proper understanding of the law pertaining to trafficking in humans one has to consider somewhat related offences such as abduction/kidnapping, child abuse, exploitation of children and like offences. These offences are inter related and very often becomes constituent elements in human trafficking.

**CHILD ABUSE AND SEXUAL EXPLOITATION OF CHILDEN**

**CHILD ABUSE**

For the purpose of criminal offences a person under the age of 18 years is considered as a child

Amending acts to the Penal Code enlarged the scope of the existing sections and definitions and introduced new sections criminalizing acts and conduct hitherto not considered as offences. Some of the important offences are given below:

Section 286(A) of the Penal Code deal with obscene publications, exhibitions, indecent photograph, films or videos relating to children, causing or procuring children to pose or perform in such activities

288 (1) causing or procuring children to beg

288A (1)A - hiring or employing children to act as procurers for sexual intercourse

288 B (1)- hiring or employing children to traffic in restricted articles.

308A -Cruelty to children,

360 B - sexual exploitation of children

The offences given below not restricted to children. However when committed in relation to children are considered as 'child abuse' cases.

360A - Procuration of any person

360 C – trafficking

363 - Rape 364 A – incest

365 – Unnatural offence

365 A- acts of gross indecency between persons

365 B grave sexual abuse

## SEXUAL EXPLOITATION OF CHILDEN

Section 360 B (1) deals with sexual exploitation of children. This section was introduced by act No 22 of 1995. According to the section

(a) Whoever knowingly permits any child to remain in any premises for the purpose of causing such a child to be sexually abused or participate in any form of sexual activity or in any obscene or indecent exhibition or show?

(b) acts as a procurer of a child for the purpose of sexual intercourse for any form of sexual abuse;

(c) induce a person to be a client of a child for sexual intercourse or for any form of sexual abuse by means of print or other media, oral advertisements or other similar means;

(d) take advantage of his influence over or his relationship to a child to procure such a child sexual intercourse or any form of sexual abuse

(e) threatens or uses violence towards a child to procure the child for sexual intercourse or any form of sexual abuse;

(f) gives monetary consideration, goods or other benefits to a child or his parents with intent to procure such a child for sexual intercourse or any form of sexual abuse, commits the offence of sexual exploitation of children.

Sub section (d) above refers to an instance of abuse of power and (f) refers to exploitation of a person in a vulnerable position.

### **PROCURATION:**

Procuration and trafficking are interrelated and somewhat overlaps. Penal Code treats procuration and trafficking as distinct offences. Acts No 15 of 1995 and 29 of 1998 amended section 360 A of the penal Code.

- (1) Whoever procures or attempts to procure any person, whether male or female of whatever age, (whether with or without the consent of such persons) to become within or outside Sri Lanka a prostitute;
- (2) procures or attempts to procure removes or attempt to remove any person under sixteen years of age to leave Sri Lanka (Whether with or without the consent of such persons) with a view to illicit sexual intercourse with any person outside Sri Lanka,;
- (3) procures or attempts to procure or removes, or attempts to remove any person of whatever age to leave Sri Lanka(Whether with or without consent of such persons) with intent that such persons may become the inmate or frequent a brothel elsewhere
- (4) brings or attempts to bring into Sri Lanka any person under 16 years of age with a view to illicit sexual intercourse with any other person in Sri Lanka or outside Sri Lanka;
- (5) procures or attempts to procure any person of whatever age (whether with or without the consent of such persons) to leave such person's usual place of abode in Sri Lanka with a view to illicit sexual intercourse within or outside Sri Lanka;
- (6) detains any person without the consent of such persons in any premises with a view to illicit sexual intercourse or sexual abuse of such person,  
Commits the offence of Procuration.

### **TRAFFICKING**

The act number 16 of 2006 introduced this section by extending the scope of trafficking. Before the amendment trafficking was restricted to buying, selling and bartering. In keeping with the developments in the other jurisdictions the meaning was extended to recruiting, transport, transfer, receiving etc. Trafficking is defined thus

- 360C (a) whoever buys or sells or barter any person for money or for any other consideration or instigates another person to commit such acts
- (b) Recruits, transport, transfers, harbours or receives any person by the use of threat,force,fraud ,deception etc. for securing forced or compulsory labour or slavery prostitution removal of organs
- (c) Recruits, transport, transfers, harbours or receives any child with or without the consent of that child. for securing forced or compulsory labour, slavery ,prostitution removal of organs

360 D refers to offences related to adoption. This criminalizes various illegal means and methods used by the criminals to adopt children for the purpose of trafficking. Following acts are penalized.

- (1) Arranges for, or assists a child to travel to a foreign country without the consent of his parents or lawful guardian or
- (2) Obtains an affidavit of consent from a pregnant woman for money or for any other consideration for the adoption of the unborn child of such a woman or
- (3) Recruits women or couples to bear children or
- (4) Being a person concerned with the registration of births, knowingly permits the falsification of any birth record or register or
- (5) engages in procuring children from hospitals, shelters for women, clinics, nurseries, day care centers etc. for money or other considerations or procures a child for adoption from any such institution or centre by intimidation of the mother or any other person or
- (6) Impersonates the mother or assists in such impersonation commits the offence of trafficking

#### KIDNAPPING, ABDUCTION, SLAVERY ETC.

It should be observed that slavery which was considered as the worst form of human oppression was abolished in Sri Lanka as far back as 1844 by the Abolition of Slavery Ordinance. According to the ordinance 'Slavery shall no longer exist in Ceylon and all persons being slaves shall become free and entitled in every way to all the rights and privileges of free persons.....'

It is an Offence under section 350 to kidnap a person from Ceylon and from a lawful guardian. Following acts are considered as aggravating offences.

Kidnapping or abducting a person

- (a) to commit murder,
- (b) to force a woman to marry or forced or seduced to illicit intercourse.
- (3) subject to grievous hurt or slavery.

In keeping with the developments in the other jurisdiction and also considering international instruments, section 358 A was introduced. According to this section any person who subjects any person to

- (a) a debt bondage or serfdom
- (b) forced or compulsory labour
- (c) to slavery
- (d) engages or recruit a child for use in the armed conflict.

Shall be guilty of an offence

#### Enhancement of Punishment:

In order to deter and prevent the commission of people smuggling and trafficking amending acts enhanced the sentencing powers of the courts. Minimum sentence of two years and maximum sentence up to 20 years could be imposed for most of the offences. Further courts could impose heavy fines and order compensation.

#### Training:

Regular seminars and workshops were held in the recent past to improve the knowledge and develop the skills of investigators and prosecutors. In the recent past there were several seminar organized for the prosecutors, investigators and judges with the assistance IMO and UNICEF.

In December 20-21st December 2007 a residential workshop on 'Child Abuse and Criminal Justice System' was held for the officers of the Attorney General's Department with the support of UNICEF.

In August 2008 a training programme on 'Laws on Counter Trafficking ' for officers of the Attorney General's Department, Immigration and SLFBE was held. This was sponsored by IOM.

In December 2008 another residential workshop was held for the officers of the AG's Department. This was also sponsored by IMO

#### Regional Co operation:

Sri Lanka is a signatory to SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution which was signed in 2002. Pursuant to the signing of this act to give effect to the regional Convention Sri Lanka enacted act No 30 of 2005 under the same title.

In the year 2008 SAARC countries entered into a regional agreement on Mutual Legal Assistance in Criminal Matters. Which was considered as a significant achievement by SAARC counties.

#### International Agreement:

Sri Lanka has ratified important UN Conventions and treaties concerning Human Rights. Sri Lanka had ratified the UN Convention against Transnational Organized Crime. In order to give effect to the above convention a bill titled 'Prevention of Organized Crime' was presented to the Parliament and so far not passed by the Parliament.

## Extradition Law and Mutual Legal Assistance

Sri Lanka enacted an Extradition Law in 1977 to deal with extradition cases. Mutual Assistance in Criminal Matter act was enacted in 2002 and the Transfer of Offenders act was enacted as far back in 1995

### ASSISTANCE AND PROTECTION OF VICTIMS OF CRIME AND WITNESSES:

In the existing law, provisions regarding assistance and protection to the witnesses and victims of crime are inadequate. In most of the cases victims are themselves violators of laws and they are very often convicted, punished, repatriated or deported. There is a need to have schemes to rehabilitate the victims. State has to take measures to provide them with shelter, medical, education and training facilities. Short term measures are taken by the government. Most of the third world countries including Sri Lanka are due to financial constraints unable to provide adequate support and assistance to witnesses.

In order to remedy these defects and shortcomings a bill titled 'Assistance and Protection to Victims of Crime and Witnesses' was presented to Parliament and the Parliament is debating the bill and it is likely to be enacted very soon. According to the long title of the bill the objects of the bill are to setting out of rights and entitlements of victims of crime and witnesses ;Establishment of a National Authority; Protection Division in the Police Department and Witness Protection Fund. The purpose of this act is to give effect to international norms and best practices.

There is no doubt that State should intervene and take effective measures to assist the victims of crime.

### PUNISHMENT OF OFFENDERS

A large number of cases were instituted in crimes such as kidnapping, abduction, and rape and child abuse. However very few cases are instituted in respect of human trafficking, though there is an increase in human trafficking. This is not peculiar to Sri Lanka. Lack of complaints, clandestine nature of the crime, and fear of reprisals could be attributed to this state of affairs.

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