

# MANUAL FOR MEDICAL OFFICERS



## DEALING WITH CHILD VICTIMS OF TRAFFICKING AND COMMERCIAL SEXUAL EXPLOITATION



Department of Women  
and Child Development





# manual

for medical officers dealing with  
medico-legal cases of victims of  
trafficking for commercial sexual  
exploitation and child sexual abuse

## **Disclaimer**

The report quotes data and information from both Government and Non-Governmental sources even through the intellectual rigour, accuracy and precision of such data has not been endorsed or authenticated. Also, the views expressed in the report may not necessarily be that of the Department of Women and Child Development, Government of India.

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## **P R E F A C E**

Trafficking of women and children for sexual exploitation is an extremely complex criminal activity that appears to be on the rise as communication systems the world over are becoming easier and faster. It functions through criminal networks involving several accomplices and abettors from the recruitment stage to the final stage of sexual exploitation and slavery. It is imperative, therefore, that this issue receives the most serious attention at the national, international and societal levels.

The Department of Women and Child Development and UNICEF have been placing a special focus on this issue so as to study the problem in greater depth, and collate the data, evidence, strategies and success stories. This would enable government and non-government agencies working in this area to benefit from this collective knowledge and put it to use for combating the problem with greater impact.

Our discussions with government and non-government counterparts confirm that an issue that has a critical bearing in a criminal case against the trafficker under the Immoral Traffic (Prevention) Act 1956 or the Indian Penal Code is the age determination test to determine whether the victim is a major or a minor. Both these laws prescribe higher criminal culpability and a higher punishment for the offence of trafficking for sexual exploitation of minors and children. Further, a trafficked child below the age of 18 years is to be treated as a child in need of care and protection and sent to a children's home, as per the Juvenile Justice (Care and Protection) Act, 2000, and not as an accused under the Immoral Traffic (Prevention) Act. Hence, the age determination of the victim is of critical significance in the conduct of the case. An inaccurate age determination, especially in the borderline cases of majors and minors, can make a crucial difference to the proceedings of a case. An error in the age determination or medical report can result not only in miscarriage of justice but also in a grievous and irreversible violation of the victim's right. It, therefore, becomes the bounden duty of the medical personnel to conduct the age determination test with the utmost care, and truthfully report the age of the victim, especially if she appears to be below 18 years of age.

The preparation of this document is an initiative under the GOI-UNICEF Master Plan of Operations. It is hoped that this Manual will serve as a valuable guide for medical officers in discharging their statutory responsibility of conducting the age determination test and providing the medical report. Both these constitute vital evidence not merely for prosecuting the traffickers and bringing them to justice, but also for protecting the rights of the victims.

  
(REVA NAYYAR)





## Foreword

Trafficking of women and children for commercial sexual exploitation is an organized crime and violates basic Human Rights.

Preventing trafficking of children for commercial sexual exploitation is one of the key priority areas that has been identified by Unicef under its current GOI-UNICEF Programme of Cooperation. As a part of this cooperation, Unicef supports the Government of India in implementing interventions that promote holistic strategies that address the problems faced by victims of trafficking for commercial sexual exploitation. These include awareness creation among NGOs and civil society on the issue, and advocating for national legislations and policies to be at par with international and regional instruments on the elimination of trafficking for commercial sexual exploitation.

By supporting the Department of Women and Child Development in the development of this Manual, Unicef reaffirms its commitment to work with the Government of India, Non-Government Organisations and other stakeholders to ensure that every child in India country gets the best start in life and is fully protected to thrive and develop to his or her full potential.

I hope this Manual would help the Medical Officers to understand the issue of trafficking and conduct the Medical Examination specifically the age verification test with utmost care and precaution.



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### **MESSAGE**


Trafficking of children for commercial sexual exploitation is a heinous crime. There exist only estimates of the number of children who have been victimized in this manner because of the clandestine nature of the crime. The children are trafficked on various pretexts, such as false promises of a good job or marriage and a better life and are eventually sold at various brothels in the demand areas. These children undergo all kinds of abuse in the hands of the traffickers. They are made to work in unhygienic and hazardous conditions with very little or no access to health and basic services.

As per the provisions laid down by the Immoral Traffic Prevention Act, 1956, it is mandatory for any person who is produced before a magistrate to undergo medical examination for the purposes of determination of age and for detection of injuries as a result of sexual abuse. Unfortunately, during the rescue operations, it is often seen that these young victims do not have any document or certificate to prove their age, and that have they been tutored by their traffickers to give false information on their age.

The Medico-Legal Report prepared by a Medical Officer is an important piece of evidence in the Court of Law. If the medical examination, including the age determination test has been carried out properly and scientifically, it can prove whether a victim has been sexually abused, and whether she is below 18 years of age or not. Therefore, it is imperative that the tests are conducted and corroborated correctly. It is also essential that the medical examination is done with sensitivity keeping in mind the abuse and distress of the child. In no circumstances should the medical examination itself become a source of further trauma to the child.

Currently in India, there are no uniform procedures or protocols for conducting the medical examination of the victims and for writing of a Medico-Legal Report. This lacuna has been brought out by NGOs and civil society in various forums. To fill this gap the Department of Women and Child Development, with support from Unicef has prepared this Manual for Medical Officers giving guidelines for conducting medical examination of the child with emphasis on age determination.

It is hoped that the Medical Officers would find this Manual useful and that the evidence provided by the Medico-Legal report will ensure that the perpetrators of the crime are prosecuted and punished.

  
(Loveleen Kacker)  
Joint Secretary





**Veens S. Rao**  
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## Acknowledgments

The preparation of this Manual has been an opportunity to learn of the critical importance of the Medical Examination, particularly the Age Determination Test, in Medico-Legal Cases relating to trafficking of children for commercial sexual exploitation.

We are grateful to Dr. O P Murty, Forensic Expert, All India Institute of Medical Sciences, New Delhi for his painstaking efforts in the preparation of this Manual.

Our special thanks to the members of the Indian Medical Association, State Departments of Forensic Sciences, Forensic Experts from Medical Colleges, and representatives from Non-Government Organizations for participating in the National Consultation to finalize the Manual, sharing their view points and contributing to this document with their experiences.

The preparation of this Manual commenced and was developed during my tenure, as Joint Secretary, Department of Women and Child Development Government of India. I would like to express my sincere thanks to Ms. Reva Nayyar, Secretary, Department of Women and Child Development for her support and for enabling me to complete the work.

I would also like to thank Ms. Maria Calvis former Country Representative UNICEF India, Dr. Erma Manoncourt, Deputy Director (Programmes), UNICEF, and Dr. Susan Bissell, UNICEF for their dedicated support and contribution to this exercise.

Finally, I would like to specially thank Ms. Radha Kamath, Consultant, UNICEF for ably assisting me during the entire process of preparation and finalization of the document.

  
(V S RAO)



## Abbreviations

<b>AIDS</b>	<b>Acquired Immunodeficiency Syndrome</b>
<b>DWCD</b>	<b>Department of Women and Child Development</b>
<b>GoI</b>	<b>Government of India</b>
<b>HIV</b>	<b>Human Immunodeficiency Virus</b>
<b>IPC</b>	<b>Indian Penal Code</b>
<b>ITPA</b>	<b>Immoral Traffic (Prevention) Act, 1956</b>
<b>JJA</b>	<b>Juvenile Justice (Care and Protection of Children) Act, 2000</b>
<b>MLR</b>	<b>Medico Legal Reports</b>
<b>NGO</b>	<b>Non-governmental Organization</b>
<b>NHRC</b>	<b>National Human Rights Commission</b>
<b>PIL</b>	<b>Public Interest Litigation</b>
<b>SAARC</b>	<b>South Asian Association for Regional Co-operation</b>
<b>STD</b>	<b>Sexually Transmitted Disease</b>





# Part 1

## 1.1 Introduction

Human trafficking has a history coterminous with that of society and has existed in various forms in almost all civilizations and cultures. It is a trade that exploits the vulnerability of human beings, especially women and children, in complete violation of their human rights, and makes them objects of financial transactions through use of force and duress, whether for the purpose of sex, labour, slavery, or servitude. In today's globalized climate of human rights, the world community has taken a unanimous stand condemning this gross human rights violation and has exhorted governments to take effective action against it.

In the 1990s, intense activity in the international scene brought the issue of trafficking into the realm of public debate. International instruments, Conventions and the Human Rights movement<sup>1</sup> brought about a high degree of international focus and exerted very positive pressure on national governments, facilitating commitment to accelerate awareness on the issue and the need for proactive interventions against the growing scourge of the trafficking of women and children. This sustained international momentum of the 1990s acted as a powerful catalyst for advocacy, and for demanding greater accountability from governments to take stringent action against the trafficking of women and children that had for long, eluded serious public attention. The decade also witnessed a growing anti-trafficking NGO movement and national and international recognition of their partnership and services.

In India, public debate on the issue of trafficking of women and children for commercial sexual exploitation emerged in the 1990s after landmark decisions of the Supreme Court in the cases of Vishal Jeet Vs. Union of India (1990) and Gaurav Jain Vs. Union of India

(1997), in which the Supreme Court issued directions to the Union and State Governments to study trafficking in depth and prepare a National Plan to address the problem. In 1998, the Government of India (GoI) formulated the National Plan of Action to Combat Trafficking and Sexual Exploitation of Women and Children, which prescribes an exhaustive set of guidelines to the Central and State Governments, covering the entire spectrum of Prevention, Law Enforcement, Awareness Generation and Social Mobilization, Health Care, Education, Child Care Services, Housing, Shelter and Civic Amenities, Economic Empowerment, Legal Reform, Rescue and Rehabilitation. Today in India, there are seven Public Interest Litigations (PILs) seeking more effective implementation of the Plan by the Central and State Governments.

The 1990s also witnessed a significant shift in the perception of the flesh trade in differentiating 'prostitution' from 'trafficking', in seeing it not merely as a moral or law enforcement problem, but as a human rights (including legal and democratic rights) violation linked to gender discrimination and disparity in development. Attendant causal factors that create fertile ground for trafficking, such as, poverty, vulnerability of the girl child, lack of access to education and health care, and lack of livelihood options, were also acknowledged.

Concern about human trafficking deepens when we consider its sinister dimensions. It is stated to generate a turnover of US \$ 7 billion annually<sup>2</sup>, a figure said to be next only to the income from arms and drug trafficking.<sup>3</sup> A shocking trend reported in India is that the minimum age for trafficked persons has fallen below 10 years.<sup>4</sup>

<sup>1</sup> The Vienna Declaration and Programme of Action, issued by the World Congress on Human Rights (1993) (Para 18); The World Congress against Commercial Sexual Exploitation of Children held at Stockholm (1996); The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000; World Congress against Commercial Sexual Exploitation of Children at Yokohama (2001); The UN Universal Declaration on Human Rights, 1948

<sup>2</sup> U.N Estimates as quoted in the *Guide to the New UN Trafficking Protocol* by Janice G Raymond

<sup>3</sup> *Trafficking in Women and Children: The US and International Response*, 2000, Congressional Research Service Report 98-649 C

<sup>4</sup> *The World of Prostitutes*, S.K. Ghosh, 1996, A.P.H. Publishing Corporation, New Delhi

## 1.2

# Why Does Trafficking Occur?

There are several factors that lead to trafficking of women and children or cause them to become victims of trafficking. These factors can broadly be classified into two categories: Supply Factors and Demand Factors

### Supply Factors

- *Abject Poverty* sometimes forces parents to sell their children to traffickers.
- *Harmful cultural practices* often make women and children extremely vulnerable. Child marriage is sometimes the route for a child to be trafficked for sexual purposes. The stigma attached to single, widowed, and abandoned women, or second wives through bigamous marriages, causes such women to be abandoned by society. They become easy targets for traffickers.
- *Female illiteracy* and lack of access to education by girls.
- *Male unemployment* and loss of family income that puts pressure on women to earn and support the family.
- *Natural calamities* and *poor rehabilitation* of victims of disasters puts pressure on women to earn and support the family.
- *Dysfunctional Families* or families that have difficulty functioning and communicating in emotionally healthy ways; a family that has a negative environment which contributes little to the personal development and growth of family members.<sup>5</sup>
- *Desertion* by one or the other parent, uncared for or abandoned children.
- *Traditional practices* give social legitimacy to trafficking. These include the Devadasi and Jogin traditions where Devadasis are often trafficked and sexually exploited. This is equally applicable to other communities such as the Nat, Kanjar, Bedia communities where traditionally, girls are made to earn through prostitution.

- *Porous borders.* Weak law enforcement, and inefficient and corrupt policing of the borders ensure that women from neighbouring countries are brought into India and forced into prostitution in different towns.
- *Clandestine nature of the crime* and weak law enforcement. The crime does not come to light very often because of its clandestine nature. Victims are unable to access justice and even when they attempt to do so, weak law enforcement enables the traffickers to escape.
- *Urban opportunities.* Many women are either lured by false promises of jobs in urban areas or they voluntarily migrate to urban areas looking for work, on hearing about the opportunities in cities from their neighbours and friends.

When a woman is pushed into prostitution due to these causes, the issue of consent of the trafficked person is not relevant. But even if a woman knows that she is being trafficked and gives her full consent, it does not absolve the trafficker of guilt. Trafficking is an offence irrespective of the woman's consent. (Sections 5 and 6 of Immoral Traffic (Prevention) Act, 1956).

### Demand Factors

- Rising male migration to urban areas and demand for commercial sex
- Growth of tourism, which sometimes indirectly encourages sex tourism
- Scare of HIV/AIDS and prevalent myths on sexuality and STDs (Sexually Transmitted Diseases) - leads to greater demand for newer and younger girls. The number of trafficked girls thus increases and their age decreases.

<sup>5</sup> www.kent.k12.wa.us

## 1.3

# How Trafficking Victimizes and Violates Human Rights of Women and Children

Trafficking is an offence and the trafficker is liable to punishment irrespective of the consent of the trafficked person. Other than the fact of being trafficked, the traffickers deprive the victims of their most basic human rights in the following manner:

- They are subjected to physical violence and sexual abuse, and are held under duress against their will.
- They receive low or no wages. Hence, they have little or no savings. This combined with indebtedness to the trafficker keeps them in a situation of debt bondage and slavery.
- They are forced to work extremely long hours, in inhuman working conditions leaving little time for rest.
- They live in conditions of physical confinement similar to imprisonment and have little or no control over their own movement.
- They are subjected to poor living conditions with abysmal hygiene and sanitation facilities.
- The trafficker restricts their access to health or medical facilities.
- They face social stigma and social ostracism in their daily lives and as a result undergo constant humiliation.
- They are exposed to drugs and other addictions and sometimes forcibly made addict, in order to ensure their continued dependence on the trafficker.
- They face a continuous assault on their physical, psychological and emotional health.
- They face health risks such as physical injury, STD, HIV/AIDS, unwanted pregnancies, repeated abortions, gynecological diseases, tuberculosis and other diseases.
- They also face harassment from the police and prosecution and convicted by the judicial system under the ITPA.
- When they are no longer in a position to earn, they are abandoned and even families who lived off their earnings do not support them.
- Children of women in prostitution especially daughters are prone to being trafficked themselves. They have no access to education and basic needs of life.

In typical instances of trafficking for commercial sexual exploitation a trafficker would include:

The *procurer* is a first point of contact with the potential victim. This could either be a neighbour or friend who lures the victim with promises of a job in the city; a person who directly purchases the victim from the victim's family; or someone who enters into a sham marriage with the victim in order to later sell her. The victim may be later sold to either a *middleman* or to a *brothel keeper* or to any other *buyer* who may exploit the victim. There may also be abettors such as, policemen who are paid by the middlemen, employment agencies, transporters or others who detain the victim at the behest of the procurer or seller. Once the victim falls into a trafficker's clutches, she will be exploited without any hope of redressal as long as she is capable of earning. After she becomes old or ill, or is infected with HIV/AIDS, the trafficker abandons her. He no longer arranges for her bail or pay the fine for her pleading guilty, and she is left alone to face trial and the due process of law.

Trafficking occurs not only for prostitution/commercial sexual exploitation. Women and children are trafficked for several other purposes, some of which are enumerated below. (Legislation addressing the specific offences is indicated in the footnotes)

- Forced labour including bonded child labour in the carpet, garment, and other industries/factories/worksites.<sup>6</sup>
- Forced or bonded domestic work may be bought and sold or forced to work in inhuman and violent conditions that include sexual abuse.<sup>7</sup>
- Forced labour in construction sites with little or no wages.<sup>8</sup>
- Forced employment in the entertainment industry including bars, massage parlours, and similar establishments. In addition to poor or no pay and bad living conditions, sexual harassment is common.<sup>9</sup>
- Children are sometimes trafficked for begging.<sup>10</sup>
- Organ trade, such as, sale of kidneys.<sup>11</sup>
- Fraudulent or forced marriage: this includes sham, fraudulent and illegal marriages, entered into by the man, residing in India or abroad, with the criminal intention of sexually exploiting the woman. Mail order brides where women are purchased or lured with false promises of a marriage abroad, and subsequently recruited into prostitution, is also a form of trafficking.<sup>12</sup>
- Camel jockeying often involves the sale of young children who are tied to camel's backs for racing. Children are often badly hurt or killed in such races.<sup>13</sup>
- Purchase and sale of babies for adoption both within the country and abroad, against the established laws and procedures for adoption.<sup>14</sup>

<sup>6</sup> The Child Labour (Prohibition and Regulation) Act, 1986.

<sup>7</sup> The Bonded Labour System (Abolition) Act, 1976 and The Child Labour (Prohibition and Regulation) Act, 1986.

<sup>8</sup> For women— The Minimum Wages Act, 1948. For children— The Child Labour (Prohibition and Regulation) Act, 1986.

<sup>9</sup> The Immoral Traffic (Prevention) Act, 1956 and The Indian Penal Code (IPC).

<sup>10</sup> States have their own laws for prevention on beggary.

<sup>11</sup> The Transplantation of Human Organs Act, 1994.

<sup>12</sup> IPC, 1860

<sup>13</sup> *ibid*

<sup>14</sup> *ibid*.

## 1.4

### Challenges and Complexities

Combating trafficking in India is especially challenging due to its myriad complexities and variations. The initial challenge lies in changing the mind sets of the key protagonists, such as, civil society, enforcement agencies, and the judiciary that sometimes trivialize trafficking and perceive it as prostitution, "the oldest profession". The root cause of trafficking in India is poverty that causes the inherent vulnerability of victims. Poverty, compounded by illiteracy, lack of skills and few livelihood options, makes women and children easy targets of organized criminal networks that exploit this vulnerability through fraud and deception, promising jobs and a better life. The matter becomes more complex when trafficking for prostitution is a traditional cultural practice and has the tacit support of family and society, such as the *Devadasi* and *Jogin* traditions, still prevalent in some parts of India. Although these traditions have been declared as illegal by the government, and comprehensive preventive and rehabilitative programmes have been initiated for them, they still persist in certain patches.

The multi-causal nature of trafficking, and the size and cultural diversity of India's population, demand multiple customizations for addressing each form of trafficking. The clandestine nature of trafficking and the resultant paucity of data add to the challenge. The erosion of border barriers by globalization, technology, and improved communication has inadvertently facilitated the trafficking networks.

Further more, the ambivalent attitude of society towards trafficking results in a lack of outrage in the influential sections of society, rural or urban, and some complacency. The tendency to equate trafficking with prostitution keeps respectable opinion leaders away from the issue and from exerting their power. It is often difficult to get witnesses for to prosecute traffickers. Enforcement agencies, if not in complicity

with traffickers, sometimes remain indifferent, equating trafficking with a 'petty offence' in contrast to crimes such as murder or theft. As the very concept of "trafficking" and "trafficked victim" is questioned in legal proceedings, traffickers exploit this grey area and the loopholes it throws up, to escape punitive action.

The question of trafficking of women and children has been receiving serious attention by the National Human Rights Commission (NHRC), the Department of Women and Child Development (DWCD) and the UNICEF, which are placing special focus on this issue and have undertaken several activities to study the problem in greater depth, so that more effective steps can be taken to prevent and curb it at source, protect the victims more meaningfully, and provide them sustainable rehabilitation.

During several discussions and consultations between officials from Gol, UNICEF, and NGOs regarding the issue of trafficking, a recurring issue discussed was the lack of awareness and sensitivity regarding the issue of trafficking in general, and regarding the significance of the age determination test in particular, amongst medical officers. It was widely held that the age test, which is mandatory as per Section 15 (5A) of the ITPA, and the medical examination are seldom done properly or are carried out in a casual manner due to insufficient training. Often a trafficked child of less than 18 years of age is wrongly classified as an adult, above the age of 18 years. This causes a miscarriage of justice as it has a direct adverse impact on the conduct of the proceedings, and mitigates the culpability and punishment of the trafficker, and results in further victimization of the victims.

In this connection it was decided that UNICEF under the GOI-UNICEF Programme of Cooperation would support DWCD and Gol, in developing a Training Manual for Medical Officers. It was felt that

strengthening their capacity would have a direct impact on their functioning and on the future of the victims and would ensure that their rights are protected.

The objective of the Manual is to provide Medical Officers with a ready reference book giving guidelines on how to conduct a medical examination of trafficked children thoroughly and with sensitivity and as also on different legal aspects associated with the results of the examination.

The main objective of the Manual is to emphasize the legal significance of the age-determination test and the crucial importance of conducting it with utmost caution and seriousness, as it is one of the most critical factors that determines the future of a case.

The assistance of Dr. O. P. Murty, Department of Forensic Medicine and Toxicology, AIIMS has been taken to develop the Manual.

## 1.5

# Significance of the Medical Officers Report vis-à-vis Trafficking of Children for Commercial Sexual Exploitation

### Legal Provisions

1. Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA)  
*"juvenile" or "child" means a person who has not completed eighteenth year of age.*

2. Section 15 (5-A) of the Immoral Traffic Prevention Act, 1950 (ITPA)

Any person who is produced before a Judicial Officer under sub-section (5) shall be examined *by a registered medical practitioner for the purpose of determination of age of such person, or for the detection of injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.*

3. Section 17 (2) of the ITPA

When the person is produced before the appropriate Magistrate under sub-section (5) of Section 15 or the Magistrate under sub-section (2) of Section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, *the age*, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation.

4. Section 49 (1) of the JJA

"Where it appears to a competent authority that a person before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or child, the competent authority shall make due inquiry as to the age of that

person and for the purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be.

Analysis of the data collected during the research study<sup>15</sup> brought out the fact that a significant number of cases registered against trafficked women were in the age group of 18-21. This is a fluid age group with the fine dividing line between major and a minor. Knowing the correct age of the trafficked person is critical to the outcome of a case, because very often the trafficked person may actually be below 18 years but is declared as above 18 years in the age-determination report.

Inaccurate age determination makes a crucial difference in the conduct of the proceedings and can result in a miscarriage of justice, as according to the ITPA, trafficking of minors is a more heinous offence warranting more stringent punishment as per Sections 4(1), 5(1), 6(2), 6(2-A), 7(1-A).

Moreover, where the age determination test establishes that the victim is below 18 years of age, the JJA would automatically apply. According to Section 2 (d) (vii) of the JJA- "Child in need of care and protection" means a child who is found vulnerable and is likely to be inducted into drug abuse or trafficking". This means that the Act treats the trafficked child as a victim in need of care and protection and is to be sent to a protective home for protection and care.

In most cases the trafficked victims do not have birth/school registration certificates to prove their age and therefore the Medical Examination Report submitted by the Medical Officer to the Court is an important and crucial document, which assist the Judicial Officer in rendering justice to the victim by prosecuting the trafficker and sending the victim to a protective home.

<sup>15</sup> Judicial Handbook on Combating of Trafficking of Women and Children for Commercial Sexual Exploitation



## 1.6 Legal Framework

### 1.6.1 Constitution of India

Trafficking of persons is an offence, the prohibition of which flows out of the Constitution of India (Article 23), and not merely through legislation. The Article is defined below: -

Article 23 (1) prohibits trafficking in human beings and forced labour

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

### 1.6.2 Definitions of Trafficking

Article 34 of the Convention on the Rights of the Child states –

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:

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

Further, Article 35 of the Convention on the Rights of the Child states –

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.

According to Article 3 of the UN Protocol To Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, 2000 –

"Trafficking in Persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

According to Article 1 (3), SAARC<sup>16</sup> Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, signed by India on 5th January, 2002 –

Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.

Article 1 (4) of the SAARC Convention defines "Traffickers" as –

"Traffickers" means persons, agencies or institutions engaged in any form of trafficking.

The ITPA does not specifically define "trafficking". However, the ingredients of trafficking, such as, sexual exploitation and abuse of persons; running of a brothel; living on the earnings of a prostitute; procuring, inducing, or taking a person for the sake of prostitution; detaining a person for prostitution, etc., are contained in Sections 3, 4, 5, 6 and 8 of the Act. "Prostitution" is defined under Section 2 (f) of the ITPA, 1956 and it includes the elements of "sexual exploitation or abuse of person for commercial purposes."

<sup>16</sup> South Asian Association for Regional Co-operation (SAARC)



## Legal Provisions Pertaining to Trafficking of Women and Children in ITPA, IPC, and JJA.

### 1. Section 2(f) ITPA, 1956

"Prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly.

### 2. Section 3 ITPA, 1956

Punishment for keeping a brothel or allowing premises to be used as a brothel.

- i. Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.
- ii. Any person who,
  - a. being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or
  - b. being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term, which may extend to two years and with a fine, which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term, which may extend to five years and also with a fine.
- iiia. For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,-
  - a. a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or
  - b. a copy of the list of all things found during the search referred to in clause (a) is given to such person.
- iii. Notwithstanding any thing contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

### 3. Section 4 ITPA, 1956

Punishment for living on the earnings of prostitution –

- i. Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.
- ii. Where any person over the age of eighteen years is proved, –
  - a. to be living with, or to be habitually in the company of, a prostitute; or
  - b. to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or
  - c. to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

### 4. Section 5 ITPA, 1956

Procuring, inducing or taking person for the sake of prostitution –

- i. Any person who:
  - a. Procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
  - b. Induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
  - c. takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or
  - d. causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section, –
    - is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
    - is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.
- ii. An offence under this section shall be triable, –
  - a. in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or
  - b. in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

## 5. Section 6 ITPA, 1956

Detaining a person in premises where prostitution is carried on. –

- i. Any person who detains any other person, whether with or without his consent, –
  - a. in any brothel, or
  - b. in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term, which may be less than seven years.
- ii. Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).
- iiia. Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.
- iiib. A person shall be presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there, –
  - a. withholds from her any jewellery, wearing apparel, money or other property belonging to her, or
  - b. threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.
- iv. Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

## 6. Section 9 ITPA, 1956

9. Seduction of a person in custody– Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution of that shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

## **7. Section 366 IPC**

**Kidnapping, abducting or inducing woman to compel her marriage, etc**

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her. will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 160 [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.

## **8. Section 366A IPC**

**Procuration of minor girl**

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

## **9. Section 367 IPC**

**Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc**

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## **10. Section 370 IPC**

**Buying or disposing of any person as a slave**

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.

## **11. Section 371 IPC**

**Habitual dealing in slaves**

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with 152 [imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

## **12. Section 372 IPC**

**Selling minor for purposes of prostitution, etc**

**Whoever sells, lets to hire, or otherwise disposes of any 164 [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.**

## **13. Section 373 IPC**

**Buying minor for purposes of prostitution, etc**

**Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

### 1.6.3 Offences in Respect of a Minor or Child

#### 1. Section 4(1) ITPA, 1956

Punishment for living on the earnings of prostitution –

1. Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

#### 2. Section 5 (1) ITPA, 1956

Procuring, inducing or taking person for the sake of prostitution.

- i. Any person who –
  - a. procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
  - b. induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
  - c. takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or
  - d. causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,-

- i. is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
- ii. is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.

#### 3. Section 6 (2) ITPA, 1956

Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section 6 (1).

#### **4. Section 6 (2-A) ITPA, 1956**

Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

#### **5. Section 7(1-A) ITPA, 1956**

Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

#### **6. Section 23 JJA**

**Punishment for cruelty to juvenile or child**

Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, 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.

#### **7. Section 342 IPC**

**Wrongfully confining a person**

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term, which may extend to one year, or with fine, which may extend to one thousand rupees, or with both.

#### **8. Section 366 IPC.**

**Kidnapping, abducting or inducing woman to compel her marriage, etc**

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.

## **9. Section 366A IPC**

### **Procurement of minor girl**

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

## **10. Section 366B IPC**

### **Importation of girl from foreign country**

Whoever imports into India from any country outside India or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

## **11. Sections 367 IPC**

### **Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.**

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## **12. Sections 368 IPC**

### **Wrongfully concealing or keeping in confinement, kidnapped or abducted person**

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

## **13. Sections 370 IPC**

### **Buying or disposing of any person as a slave**

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.



## 14. Sections 371 IPC

### Habitual dealing in slaves

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

## 15. Section 372 IPC

### Selling minor for purposes of prostitution, etc

Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

## 16. Section 373 IPC

### Buying minor for purposes of prostitution, etc

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

## 17. Sections 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 falling under any of the six following descriptions:-

Firstly- 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 that 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.

## 18. Sections 376 IPC

### Punishment for rape

1. Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.
2. Whoever, –
  - a. being a police officer commits rape –
    - i. within the limits of the police station to which he is appointed; or
    - ii. in the premises of any station house whether or not situated in the police station to which he is appointed; or
    - iii. on a woman in his custody or in the custody of a police officer subordinate to him; or
  - b. being, a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
  - c. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
  - d. being, on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
  - e. commits rape on a woman knowing her to be pregnant; or
  - f. commits rape on a woman when she is under twelve years of age; or
  - g. commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years.

## 19. Sections 377 IPC

### Unnatural offence

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 which may extend to ten years, and shall also be liable to fine.

## 1.7

### The Current Situation

In India, there is reluctance to disclose sexual assault or abuse mainly due to shame, guilt, improper knowledge of the law, and also due to cultural and societal compulsions. It is mostly doctors on general OPD/casualty duties who examine these cases. Hence there should be greater awareness amongst the medical professionals about this medico-socio-legal menace.

Most of the time, trafficked or child sexually-abused victims are brought directly to the hospital (mostly Government) for medical examination by the police, generally accompanied by a NGO representative, after raids in brothels or in cases of soliciting or by a Court's order. At times, in cases such as rape or sodomy, the

parents or guardians of the victim may bring her/him to the hospital. Generally, the medical examination is completed within one-to-four hours. In some government hospitals the victim may be requested to come the next day for the age determination test for administrative or technical reasons.

#### An Illustration

One female child brought from a village to a city for domestic work, was sold to a brothel. She was recovered during a raid on the brothel. On medical examination it was found that she had been physically tortured and her genitalia had been dilated with tampons to adjust to disproportionate male organ. She also showed old healed hymen and tears in vaginal wall. She was tested positive for gonorrhea and semen traces were also recovered from stains. An age determination test corroborated that she was 12 years.

The current lacunae in the system are :-

- Lack of trained medical personnel for the age determination tests.
- Medical officers interpret results using old ossification data. They need to be trained on recent advances in the area, such as, dentition and bone union.
- At present, age determination is based on the sole criterion of the ossification test, which gives a wide range in determining the age of the victim.
- Often Medical Officers conduct the age determination test only if requested, and do not consider it mandatory, as stipulated under the ITPA.
- Presently, only one doctor conducts the medical examination. This gives the traffickers a chance to try and influence the medical officer to manipulate the age in the Medical Legal Report.
- There is no time stipulation for submitting the age determination test to the investigating agency/court.

In the present scenario, while preparing Medico Legal Reports the following issues have been observed:

- i. There is no uniformity in the text of the report and the method of examining the victimized children. Currently, there is no uniform prescribed format for preparing the report. Different states and hospitals have different practices regarding this.
- ii. Some times, the medical examination conducted is a routine one without any clinical and forensic screening. Swabs and slides are prepared only in sexual assault cases.
- iii. Due importance is not given to minute details and injuries and findings in genitalia and over the body surface are not properly described.
- iv. It is seen that many a time, unless requested by the investigating agency or Court, the Medical Officer does not conduct the age determination test. This against the provisions laid down in Section 15 (5-A) of the ITPA, which makes the age determination test mandatory.

Age estimation of the victim is done by special clinics in a few hospitals such as Lok Narayan Jai Prakash Hospital, Delhi, Grant Medical College, Mumbai, and SMS Medical College, Jaipur.

In other hospitals, like the districts hospitals where special clinics or expertise are not available, the duty doctor himself/herself carries out age determination. In such cases, it is seen that too much importance is placed on one criterion i.e. epiphysial union of long bones (bone test). Detailed physical, secondary sexual characters, and dental examination are almost neglected though they are equally important to determine the age of the victim, especially that of a child.

Moreover, the range of age of the victim expressed by the Medical Officer is too wide, which inadvertently goes against the victim and favours the perpetrator.

- v. There have been incidences where the medical officer in concurrence with the traffickers (brothel owner, pimp, perpetrator, unlawful guardian) and enforcement agencies tamper/falsify the Medico Legal Reports and give the opinion that the victim is above 18 years of age, even though she may be a minor. This is professionally unethical and by doing so the medical officer is not only going against the very objective of bringing justice to the victim and punishing the trafficker but also indirectly encouraging the trafficking of children for commercial sexual exploitation.

# Part 2

## 2.1

### The Steps to be Taken by a Medical Officer While Examining a Medico-Legal Case of Trafficking or Child Sexual Abuse

The medical officer needs to obtain a written request with proper daily diary number of FIR number with the date and time from police officer for the medical examination of the victim. In cases, where the victims

are brought directly by parents/guardians/NGOs/ individuals to the hospital, the medical officer needs to obtain the proper history, inform the police, and conduct a proper and complete medical examination of the victim.

The following steps are essential while conducting the medical examination:

- Procure consent for a medical examination including age determination and genitalia examination.
- Record a brief history of the case.
- Examine the clothes of the victim to find out semen stains or struggle tears/ trace material, if required.
- Document the findings accurately and in detail by making correct observations in an impartial, objective, and scientific manner in the following order:
  - General physical examination
  - Systemic examination
  - Examination for injuries
  - Examination for genitalia
  - Sampling for clinical (STD, pregnancy, etc.) and forensic use depending on the nature of the case.
  - Examination for age determination by general, physical, secondary sexual characters, dental, and radiological methods.
  - Express an opinion about the case for sexual abuse/age estimation
  - Treatment, if any
  - Refer to any other specialist for further examination and management.

The above steps are being dealt in detail in the following sections.

**In cases of trafficking and Child Sexual Abuse, the Medical Examination and its reports should be maintained in a confidential manner and must not be revealed to any unauthorized persons so as to prevent further exploitation / exposure of the victim.**

## Do's and Don'ts for the Medical Officer

### Do's

1. Document the findings chronologically and with consistency.
2. Maintain objectivity and avoid subjectivity.
3. Authenticity of information should be ensured.
4. Conduct the age determination test, whether requested or not by the investigating agency.
5. Provide a comfortable and relaxed atmosphere to the victim to seek his/her cooperation for the medical examination.
6. Build "trust and confidence" with the victim.
7. Make sure that even minute detail of the examination is recorded in the Medico Legal Reports.
8. Currently there is no prescribed format for interviewing the victim or for writing the Medico Legal Reports. It is advisable to follow a ready format. A recommended format is included in Annexure 3.

### Don'ts

1. Don't ally with any individual involved in investigation.
2. Do not concur with traffickers, who may pressurize you to give false age determination report.
3. Do not get emotionally influenced by allegations.
4. Trial of the case has to be done by Court not by you.
5. Write the report clearly and precisely.
6. Do not use ambiguous words, those that have more than one meaning, or which can be interpreted wrongly by either side.
7. Do not disclose the identity of the victim and findings to any unauthorized persons.
8. Do not try to become an investigator. Remain a person of science.
9. Do not write a very lengthy and irrational history in the report.
10. Do not venture a premature opinion.

## 2.2

### Consent

While the police refer most cases for medical examination and/or age determination under the ITPA or the IPC, sometimes a victim or her parent/guardian may request for a medical examination. In such cases, the consent of the person/parent/guardian is essential.

Consent is a voluntary agreement, permission or compliance, it may be expressed /implied, or written.

In other words, two or more persons are said to consent, when they agree upon the same thing in the same sense at the same time (Indian Contract Act, Sec. 13).

Further, consent is said to be free when it is not obtained by coercion, under influence, fraud, misrepresentation, and mistake. Information regarding the nature of examination, investigation, treatment and their consequences must be provided to the person/parent/guardian. An adult person gives free consent. In the case of a minor, the parent/guardian should give consent.

During the examination of a female victim, a female lady attendant/witness should be present.

Sample formats for obtaining consent for general medical examination and age determination are given in Boxes 4 and 5 respectively:

I ..... D/o .....or Guardian of .....  
voluntarily give my full and free consent for complete medical examination including of genital parts. I understand that this examination may involve blood, urine, and vaginal samples, radiograph, and photographs for legal evidence, control, clinical audit, diagnostic, research, and academic purposes. The purpose, procedure, consequences, and use of such findings have been explained to me.

Right (Female)/ Male (Left) Thumb Impression  
Signature and Thumb Impression of the person

Signature of  
Witness / Accompanying person / or Guardian

I ..... D/o ..... or Guardian of .....  
voluntarily give my consent for complete medical examination for the purpose of age estimation. I understand that this examination involve, radiograph, and photographs for legal evidence, control, clinical audit, diagnostic, research, and academic purposes. The purpose, procedure, consequences, and use of such findings have been explained to me.

Right (Female)/ Male (Left) Thumb Impression  
Signature and Thumb Impression of the person

Signature of  
Witness / Accompanying person / or Guardian

## 2.3

### History

The Medical Officer while recording the history of the case should record only the relevant information which is pertinent to the case. The information should pertain to the following:-

1. Observation of behavioural symptoms including anxiety, anger, hostility, betrayal, guilt, shame, depression, grief, extreme dependency, anger, impaired ability to trust others, powerless, hopelessness, phobias, hyper vigilance, aggressive behaviour, poor self-esteem, self-injuring behaviours, inappropriate sexual behaviour.
2. Information regarding physical symptoms such as, abdominal pain, rectal vaginal bleeding, pain and discomfort during walking, urination or defecation, last menstrual period, fatigue, fever.
3. Family history such as, socio-economic status, employment, income of parent/guardians, drug abuse, alcoholism, family environment, interpersonal relations among family members, parental supervision etc.
4. Physical, Mental and Personality Development
5. Parent assessment (if information is available)
  - Family history—single/separated/divorced
  - Whether family is cohesive, broken or dysfunctional
  - Employment
  - Age, education level, physical and mental maturity of the parents
  - Whether there is a positive parent/child relation
  - Whether family is concerned about protection, health and education of children.

#### 6. Sexual History

- Information regarding type of sexual exploitation or abuse.
- Use of alcohol/drugs/tobacco.
- Relation with the accused or exploiter.
- Age difference between the accused and the victim.

#### 7. Psychological Abuse

If the victim is in a state of psychological trauma then she may be referred to a Clinical Psychologist.

When a child is brought for medical examination then the medical officer must listen to the child carefully as he/she may express his/her thoughts or may show any of the following signs.

- Complaints against her own family members regarding ill-treatment.
- Poor body and personal hygiene. Inappropriate and insufficient clothing.
- Abuse of alcohol, drug or addictive substances.
- Indifferent attitude.
- Low self-esteem. Poor physical growth and health.
- Mood disorders/ depression.
- Interpersonal difficulties.
- Frequent, and acute or gradual changes in behaviour and mood.
- Sexually tainted conversation and acts.
- Sleep disorders/attention-seeking behaviour.

Information required on the history of the case may be modified as per the requirement of case. It may not be necessary to ask all the above questions, unless pertinent.



## 2.4

# Physical Examination

Victims of Trafficking and Child Sexual Abuse have considerable difficulty in developing trust with any person and therefore it is necessary to conduct a complete examination and may include:

1. Mental maturity in relation to age/time/person and circumstances
2. Physical maturity—Height / Weight / subcutaneous fat / expansion of chest/arm grip
3. Nutrition—poor / satisfactory/healthy
4. Look—vacant /starry / fearful /slanting
5. Mental status—confused / clear / apprehensive
6. Clothing—pattern / examination for struggle/trace evidence like hair and stains of forensic importance, if any.
7. Oral hygiene—poor / good / tobacco or betel chewing / addictive habits
8. Personal hygiene—bath/urination / local wash / douching / defecation after sexual act.
9. Physical indicator of sexual assault—STD / pregnancy / anogenital injury and infections
10. Physical examination— struggle injuries/bite marks
11. Samples
  - Swab for the presence of semen mixed with vaginal cells from shaft, prepuce and glans penis (for males), urethral swab in STD  
(In males, the Logol's iodine test for the presence of vaginal and oral epithelial cells in recent cases)
  - Scraping of foreign blood for DNA is done by scrubbing with a normal saline wet cotton swab.
  - Blood/ urine for alcohol and drugs, and if needed, DNA profiling
  - Debris under nails for grouping from skin tags, if necessary

## 2.5

# Injury Examination

It is most likely that victims of trafficking or Child Sexual Abuse may show injuries over the body.

Photograph of injuries should be taken, wherever possible and facilities are available. The medical officer should look for these injuries in a victim that may include:

### 2.5.1

## General Injuries

Look for recent physical assault injuries, like grip marks, bite marks, pinpricks, ligature impression, broken pieces of hair.

While writing a description of injuries, follow a sequence and the whole body should be examined so no part is left out. The description should contain the type of injury, dimension of injury, shape, exact location, and stage of healing. The description should contain the nature of injury (simple/grievous), and its causation (Blunt /force/sharp instruments/cigarette burns, etc).

Some of the commonly encountered injuries are:

#### Bruises

- Its colour, size and shape, shape patterned or unpatterned, on the face, ears, buttocks, trunk, back, any other body surface.
- Patterned bruises by fingers, teeth, belt buckle, common kitchen or oven utensils, electric cord, bruises in the genital region, irregular bruises, and disc-shaped bruises on the face.

#### Scratches / Nail abrasions

- Patterned marks of straps, sticks, buckles, kicks, slippers, cane, shoe sole etc.
- Hand marks of palms, fingertips, slap marks, impressions of finger rings, fingernail marks, diffused and irregular fist marks, marks by poking.

- Dragging marks over bony prominence, rope marks on wrists, ankles, finger nail abrasions.
- Bite marks: size, shape, scabbing or infection, on areas like neck, breasts, buttocks, or inner thighs.

#### Lacerations

- In the mouth, lips, gums, genitalia, body surfaces, over the defensive area (in areas of upper limbs), anus and vagina, acquired during violent sexual activity

#### Burns

- Patterned burns of *bidi* or cigarette on the buttocks, thighs, palms or soles, or other parts of the body.
- Patterned burns of iron rods, *salakh* iron frongs, tongs, and electrical appliances.

Head injury or eye injury or fracture or swelling in any part of the body.

### 2.5.2

## Drug Addiction Signs

The victim must also be examined for any signs indicating drug or alcohol abuse, such as:

- Blackish nails, nasal septum discoloration, inflammation or hardened veins, recent or old injection marks of intramuscular or intravascular injections over wrist, elbow, and outer parts of the arms, buttocks, and ankle areas.
- Withdrawal symptoms in the form of yawning, twitching, muscle cramps, rhino rhea, tendon reflexes, hallucinations or delusions, psychosis. Acute withdrawal symptoms persist for about two weeks
- Intoxication — Trembling, watery eyes, running nose, deliriousness and elation, confused, slurred speech, sleepiness, depression.

## 2.6

### Genitalia Examination

The examination of genitalia is an important part of the Report. Newly exploited victims may show injuries and bleeding, while victims who have been sexually exploited over a long period of time may show no injuries or bleeding. However, the victim may be suffering from STDs, which requires examination and proper screening.

While carrying out genitalia examination the victim should be properly gowned or draped. She may be examined in the lap of caretaker or supine if very young. Ensure minimum discomfort to the victim.

While examining the genital area, the victim should be placed on a table with good light, with her legs drawn up and widely open. The physical signs following sexual exploitation may be observed:

- **Fresh Case** – The findings seen immediately after the sexual act:
  - a. Acute vaginal bleeding.
  - b. Introduction of objects into the vagina and/or rectum resulting in injury to the organs.
- **Old Case** – Late signs are remnants of the past and healed trauma to genitalia
  - a. Menstrual disorder
  - b. Vaginal scar
  - c. Impregnation of the female victim
  - d. Injury of the uterus, which can obstruct full-term pregnancy
  - e. Infertility
  - f. Fissure, vascular change and splitting of the sphincter anal may be seen in the anus
  - g. Injury to the mucous membranes and vascular tissue may be seen in the rectum.
  - h. In direct sexual contact cases, STDs, including HIV/AIDS can be transmitted.

To determine that sexual activity has taken place, the following examinations are essential

- Microscopy for spermatozoa
- Comparison microscopy for hair and fibres
- Serological analysis for blood grouping
- Biochemical analysis for phospho-glucotase and acid phosphatase
- DNA fingerprinting.

## 2.6.1

### Detail Examination of the Genitalia:

#### 1. Pubic Hair

- Shaved / unshaved / matted / boils / discharging lymph nodes in groin
- Matted foreign body etc.

Note presence of mucous discharge, Proctitis, cervicitis, pelvic inflammatory disease, vaginitis, urethritis, balanitis, genital ulcer, chancroid, bubo, genital warts, hepatitis, worm infestation

#### 2. Vagina

While examining the vagina, look for external opening, growth, hypertrophy, pigmentation, smoothness of surface, signs of delivery, episiotomy. Expected findings should be observed in a systematic manner.

- Labia Majora – any swelling, adhesions, tears, lubricants edematous, bruises or abraded in rough manipulation
- Labia Minora – scratches, bruises, lubricant, fingernail marks and tears, infection, and adhesions
- Fourchette – infection, bleeding shows tear due to disproportionate size of vaginal cavity and penis size.
- Vulva – any injury infection, bleeding

#### 3. Hymen

- Size of hymenal orifice > 1.5 cm (Opening of orifice 1 cm, 1.5 cm, 2 cm, 2.5, 3 cm, 3.5 cm or more)
- Shape (annular/crescent/cribiform elongated/microperforate/separate/sleeve like), intact, normal or elastic

- Injury that is incompatible with history. Look for tears. Check whether they are fresh or old, assess whether the depth of the tear is up to the wall or not, the position of the tear in sexual activity generally varies between the 4 to 8 O'clock position.

- Fresh torn bleeding, position of tears swelling, indurated, inflamed margins, extent up to wall
- Old tears – shape, position, healing stage
- Only hymen tags in multipara

#### 4. Intra-vaginal transverse folds rugae

- Rugae of vaginal wall – distinct / not distinct
- Vaginal ridges
- External (from vestibular hymen up to urethra)
- Internal longitudinal intravaginal rim, which extends to inside or beyond the vaginal cavity. Likely to be seen at the 10, 2, and 6 O'clock positions.
- Position of old tears, extent, or in the form of tags
- Introitus – Narrow roomy, old tears

#### 5. Cervix

- Mucous plug, erosions, growth, bleeding, dilation

#### 6. Uterus

- Size shape, position, any

#### 7. Discharge

- Foul smelling, creamy, mucous plaques, blood or pus mixed

## Genital injuries in minors and adolescents

- Scratches over the thigh, genitalia, or body
- Bruising of the vulva
- Swelling in the genital area
- Minor tears in the hymen
- Minor lacerations
- Bleeding
- Laceration of large size in cases of age incompatibility

## Signs indicating sexual activity

- Fresh laceration of the hymen, old laceration of hymen and scarring, attenuation of hymen
- Pregnancy, positive forensic tests for semen, spermatozoa, multiple tears in the vagina / anus.
- In the case of young children if the hymen opening is more than 1 cm and in cases of adolescent more than 1-5-2.0 cm, the evidence is in favour of abuse. It should not be considered in isolation. Totality of the case should be considered.

## Signs indicating sexual abuse

- Acute injury erythema, edema, minor abrasions
- Posterior Fourchette scar
- Lubricants, STD, bite marks, grip marks, behaviour during examination

## Indicators of Child Sexual Abuse

- **Sure Indicators**
  - a. Venereal diseases
  - b. Pregnancy
  - c. Presence of semen
  - d. Gonococcal infection of pharynx, urethra, rectum, vagina
- **Probable Indicators**
  - a. Genital Herpes
  - b. Trichomonas
  - c. Urinary Tract Infection
  - d. Horizontal hymen opening in relation to age
- **Near Indicators**
  - a. Abdominal pains
  - b. Leaking vagina or anus
  - c. Difficult walking
  - d. Sudden withdrawal from normal activities
  - e. Sudden change in appetite
  - f. Unusual sexual knowledge
  - g. Mood variation without any obvious reasons
  - h. Depression or depersonalization
  - i. Irritation unprovoked or easily induced
  - j. Suicide attempts or threats
  - k. Lack of attachment to parents
  - l. Torn clothing, and/or stained with blood or semen

## 8. Anus

- Dribbling, bleeding, mucopurulent discharge from anus, incontinence
- Anal ampulla (dilated part of anus just proximal to the anal canal)
- Anal rugae (skin fold)
- Anal verge (tissue that overlies external anal sphincter)
- Fold (redundant skin fold may be present at the 12 and 6 O'clock positions)
- Pectinate line (where squamous epithelium meets columnar cells)
- Tags (skin tag after injury or trauma)
- Venous pool / piles (dilation or bulging of the veins around the anus)
- External sphincter strength / dilation
- Tears (shape and extent)

In cases of anal sexual abuse the following findings may be noted.

### Fresh cases

Anal trauma, bruising over the body, torn frenulum, presence of lubricants, laxity of anus opening, swelling, haematoma, fissures, linear abrasions and other associated injuries, burns and scalds, damage to urethra, scrotum swelling and bite marks. In acute cases dilation is seen up to one-to-three hours.

Immediate signs	Chronic cases
<p>a. Trauma, electric current application to the genital organ may lead to haematuria due to injuries to the urethra and bladder.</p> <p>b. Blows to the scrotum may result in swelling.</p> <p>c. Use of cutting, burning, or smouldering implements and caustic agents result in scar tissue wounds on genital organs and consequent scar transformation.</p> <p>d. Introduction of objects into the rectum can result in injury to the organ.</p> <p>e. During direct rectal contact, sexually transmitted diseases including HIV/AIDS can be transmitted</p>	<p>In chronic cases thickened skin, loss of folds, anal dilation, venous congestion, scarring, skin tags, warts, hyper or anal infection and dribbling in chronic or infected cases can be noticed.</p> <p>Injury to the mucous membranes and vascular tissue may be seen in the rectum.</p>

## Sexual abuse signs in sodomy

Chronic	Recent
Proctitis	Tear
Hypotonic sphincters	Bleeding
Anal fistula	Bruising
Anal and perianal skin changes	Semen
Chondylomata, warts, chancre	Gonorrhea

## Differential diagnosis of anal bleeding

- Fissure
- Anal intercourse
- Ulcerative colitis
- Rectal polyp
- Penetrative penile / foreign body

## The important findings indicative of frequent anal intercourse

- Thickening of anal verge skin area obliteration and reduction of anal verge skin folds
- Increase laxness and elasticity of the anal sphincter muscles and admitting three or more fingers with ease;
- Reduction of gripping power of anal sphincter with slow contraction in comparison to normal tone
- Presence of semen
- Presence of gonorrhea and warts.

## 2.7

### Collection of Samples

The following must be taken for testing in cases of sexual exploitation or abuse.

#### Collection of forensic samples

Following samples are required to be collected in sexual abuse cases

- Blood (blood grouping, testing drug intoxication)
- Urine (to test for suspected pregnancy, drug testing)
- Seminal stain (blood grouping)
- Nail scrubbing (to look for epithelium of the assailant)
- Hairs (to look for seminal stain, foreign hair)
- Vaginal swabs (vulva, low vaginal, high vaginal) to stress here that it should be made a routine
- Microscopic examination of vaginal slides (motile and immotile sperm)
- Ultraviolet test for detection of seminal and saliva stains

#### 2.7.1

#### Samples for hospital laboratory/clinical laboratory

Nisseria gonorrhea, Chlamydia trachomatis, Herpes Simplex virus, Syphilis Chancroid, Lympho granuloma venereum, trichomonas vaginalis are commonly encountered infections in cases of multiple relations.

The following tests are recommended and if felt necessary that further examination may be carried out by the STD clinic.

Disease	Sample	Rapid test	Confirmatory Test
Neisseria Gonorrhea	Swab and smear from urethra and cervix infected part	Gram stain	Culture
Trichomonas Vaginalis	Swab and slide from the vagina	Wet prep in saline	Not needed
Candida Albicans	Swab and slide from the vagina	Saline Prep or 10%KOH	Not needed
Herpes Simplex	Slide from ulcer	-----	EIA, PCR, Western Bolt
Treponoma pallidum	Slide from genital ulcer	Dark field microscopy	Not required
Human Papilloma virus HPV	Smear from growth Blood	-----	Pap stain, DNA hybridization
Hepatitis	Blood	-----	Serological test
Herpes Simplex Virus	Slide and blood	-----	Direct FA slide; PCR
HIV	Blood, vaginal discharge		ELISA, Western Blot, PCR



Prepare a smear and air-dry it, pass it gently over a flame to fix it. Avoid scrubbing and total covering of the slide, collect a sample on a cotton swab and transfer it to the slide. Immediate voiding of urine and washing or douching of genitalia should be avoided.

## Sexually Transmitted Diseases

### Incubation period of common infections

Gonorrhea	3-4 days
Trichomonas	1-4 weeks
Chlamydia	7-14 days
Warts	several months
Herpes	2-14 days
Herpes Vaginitis	2-14 days
Syphilis	3 months

## In trafficked sexual abuse victims, screenings recommended

- Pregnancy Test
- HIV, STD Test
- Inflammatory disease pyosalpingitis, pyometra, cervix growth
- Nutritional assessment if needed
- Blood and urine for addiction or substance abuse such as: Heroin, opium, benzodiazepine, and alcohol

**Never allow the sample to dry for clinical screening**

## 2.7.2

## Samples for the Forensic Science Laboratory

### A. Clothing

Save torn, blood/semen-stained clothing for further examination. Describe in detail about tears, stained areas. These stained and torn areas in the clothing may be encircled, made into a proper layer and kept in a paper packet. Dry the wet clothing at least for one hour in fresh air before preserving. Otherwise candida growth will spoil the semen and blood stains.

### B. Foreign material

The medical officer may look for

- Foreign hair from the pubic or chest areas
- Cloth fibres from foreign clothing
- Foreign skin fragments in nail, and over the abraded areas

### C. Swabs and smears over clean glass slide

(Minimum two swabs, one external and one internal).

These are preserved for detecting sperm, acid phosphatase, P30, MHS-5 Antigen, and blood group antigen

- Vagina  
Take a dry or saline wet swab according to observations:
  - a. Labial part
  - b. External orifice

- c. Deep vaginal swab
- d. From cervix
- e. From thighs pubic, rectal or affected areas if required

For spermatozoa, smears are prepared from the external genital organs. The smears are fixed on the slide after one drop of alcohol

- Mouth  
Swab from under the tongue and buccal area near molars. Take one swab from each area and prepare the smear.
- Rectum  
Take one sample from the external parts and another from the 2- 5-cm area from external orifice.

### D. Toxicological Screening

- Blood 10 ml and urine 50 ml should be tested in the toxicology laboratory for presence of drugs and alcohol.

Please note: The pathological laboratory in the hospital/ medical college can also examine the samples.

**Always air dry the sample before preserving fix it up either by heat or alcohol**

### 2.7.3

#### Method of taking specimens

The following precaution should be taken while taking a Swab:

- Avoid accidental contamination by doing work carefully
- Vaginal swab, anal swab, or oral swab must be taken before any form of manual examination.
- Swabs should be taken through a sterile and unlubricated speculum or proctoscope.

### 2.7.4

#### Microscopic examination

Preparation of the smear —

After making smears the following finding are usually examined. These are being highlighted to make the medical officers aware of the process and interpretation thereof:

a. Essentials for preparing smearing — Instruments used to obtain a smear:

- Clean microscopic glass slides of good quality, preferably with frosted ends (0.96-1.06 mm. thickness).
- Suitable glass marking pencil or a diamond marked for identification of slides.
- Paper clips to separate the slides.
- Fixative
- Laboratory form with clear identification of the patient and history

b. Procedure to make a smear

- Place as much as possible of the material obtained, on the slide.
- Make a thin, uniform smear well spread but avoid the edges of the slides.
- Air-dry the smear.
- Fix the smear with 95% ethyl alcohol or 100% methyl alcohol.
- Stain by H&E Haematoxylin and Eosin staining.

c. Motility of sperms — Prepare a hanging drop preparation

- Place a drop of vaginal pool secretion on a cover slip.
- Apply a circular band of clay over a glass slide,
- Put an inverted cover slip over it
- Look under a microscope
- Motile sperms can be visualized up to four-five hours.

## 2.8

### Age Verification

Age estimation of trafficked victim is mandatory under Section 15(5A) of the ITPA. The provisions laid under the JJA clearly states that if a trafficked victim is a child (below 18 years of age), then the child would be treated as a victim in need of care and protection and sent to a protective home. Thus, the future of the victim greatly depends upon a correct age determination test.

Often, the trafficked victim may not have any record such as a birth registration certificate to prove her age. It is of utmost importance that the medical officer conducts this test with great care so that the victim's age can be estimated correctly. This is critical because very often the trafficked child may actually be below 18 years but is declared in the age determination report as above 18 years. An inaccurate age determination can make a crucial difference in the conduct of the proceedings and can result in a miscarriage of justice, as according to the ITPA, trafficking of minors is a more heinous offence warranting more stringent

punishment against the trafficker as per Sections 4(1), 5(1), 6(2), 6(2-A), 7(1-A) of ITPA. In cases, where the age determination test establishes that the victim is below 18 years of age, the JJA would automatically apply. In all cases of victims between the ages of 16 and 21 years, the medical officer should be especially vigilant and should conduct the age determination test with utmost caution and thoroughness.

The ITPA makes a clear distinction between the offences of trafficking of majors and minors, both in respect of the process of law, and in terms of punishment of the offence.

The relevant Sections of the ITPA are as follows:

#### 1. Section 4 of the ITPA.

**Punishment for living on the earnings of prostitution. —**

1. Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.
2. Where any person over the age of eighteen years is proved,—(a) to be living with, or to be habitually in the company of, a prostitute; or (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or (c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

## 2. Section 5 of the ITPA

### Section 5. Procuring, inducing or taking person for the sake of prostitution . —

#### 1. Any person who—

- a. procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
- b. induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
- c. takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or
- d. causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section,—

- i. is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
- ii. is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.

#### 3. An offence under this section shall be triable,—

- a. in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or
- b. in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

### 3. Section 6 of the ITPA

#### Section 6. Detaining a person in premises where prostitution is carried on —

**1. Any person who detains any other person, whether with or without his consent—**

- a. in any brothel, or
- b in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term, which may be less than seven years.

**2 Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).**

(2-A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

**3. A person shall be presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there —**

- a. withholds from her any jewellery, wearing apparel, money or other property belonging to her, or
- b. threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

**4. Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.**

## 4. Section 7 of the ITPA

### Prostitution in or in the vicinity of public place —

1. Any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises:

- a. which are within the area or areas, notified under sub-section (3), or
- b. which are within a distance of two hundred metres of any place of public religious worship, educational institution, hotel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term, which may extend to three months.

(1-A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

2. Any person who:

- a. being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or
- b. being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or
- c. being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine, which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the license for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year: Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such license shall also be liable to be cancelled.

3. The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the official Gazette, direct that the prostitution shall not be carried on in such area or areas as may be specified in the notification.

4. Where the notification is issued under Sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

5. No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.

## 5. Section 18 of the ITPA

### Closure of brothel and eviction of offenders from the premises —

1 A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of Section 7 is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord or such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof, and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders,—

- a. directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion;
- b. directing that before letting it out during the period of one year or in a case where a child or minor has been found in such house, room, place or portion during a search under Section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate;

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place, or portion, he may cause the same to be restored to the owner, lessor or landlord or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein.

2. A court convicting a person of any offence under Section 3 or Section 7 may pass orders under sub-section (1), without further notice to such person to show cause as required in that sub-section.
3. Orders passed by the Magistrate or court under sub-section (1) or sub-section (2), shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be: Provided that where a conviction under Section 3 or Section 7 is set aside on an appeal on the ground that such house, room, place, or any portion thereof is not being run or uses as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.
4. Notwithstanding anything contained in any other law for the time being in force, when a Magistrate passes an order under sub-section (1), or a Court passes an order under sub-section (2), any lease or a agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.
5. When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2), of Section 3 or clause (c) of sub-section (2) of Section 7, as the case may be, and punished accordingly.

Hence, the Age Determination Test Report is the most crucial evidence for the prosecution of a trafficker, in determining the nature of the case, i.e., whether it is bailable or non-bailable, and in the quantum of punishment for committing the crime.

Most of the victims of trafficking are poor and illiterate and do not have any record of birth such as birth certificates. Moreover, from the time her sexual exploitation begins the victim is under tremendous pressure from the traffickers to insist that her age is above 18 if she is ever questioned about it by the police or judicial authorities, and that she is a prostitute of her own free will.

Sometimes at the time of medical examination, the medical officer is further pressurized by the traffickers or their agents to certify that she is more than 18 years of age.

The main objective of the Manual is to emphasize to the medical officers the legal significance of the age determination test, the crucial importance of conducting it with utmost caution and thoroughness, as it is one of the most critical factors that determines the future of the case, particularly in providing relief to the victim and bringing the trafficker under the ambit of the law.



## 2.8.1

### Procedure for Conducting Age Determination Test

The age of a child is established from:

1. General physical examination
2. Development of secondary sexual characters
3. Development and eruption of teeth, and
4. Ossification of bones.

Ideally, a medical officer after conducting general physical, dental and radiological examinations should give an approximate idea of age of the person. It is necessary that to estimate age all precautions should be taken so that the range of estimation should not be more than  $\pm 6$  months up to 16 years of age and  $\pm 1$  year up to 21 years.

#### 1. General Physical Examination

In general physical examination, physical development is examined in detail:

- Physical Development of a Female

- Physical Development of a Male

Years	Development Stages	Years	Development Stages
8-9	Hormones begin to release, sometimes causing moodiness and skin sensitivity	9-10	Hormones begins to release, sometimes causing moodiness and skin sensitivity
9-10	Hips start rounding out	10-11	Testes become larger Scrotal skin redder in colour and coarse in texture
10-11	Breast nipples begin to grow Breast tissues around and under nipple begin to appear Growth spurt may be seen Downy hair near labia	11-12	Prostate gland begins to function Penis begins to lengthen
12-13	Axially hair Genital organs growth Menstruation age (between 9 and 14 years) Pregnancy is possible	12-13	Pubic hair growth Growth spurt may begin Spontaneous erections
13-14	Underpants are wet with clear mucous More with ovulation and sexual arousal	13-14	Rapid growth of penis Testes colour deepens Pseudo breast
14-15	Earliest normal pregnancy Major growth spurt complete	14-15	Axillary hair Voice changes
15-16	Acne Deepening voice	15-16	Average age when sperm matures Can cause pregnancy Majority of growth spurt complete
16-17	Full height achieved	16-17	Chest and shoulder will fill out Acne Body hair
		21	Full height achieved

• **Mean Height and Weight in Indian Girls**

Age in Years	Mean height in cm	Average $\pm$ 2 SD in cm	Mean weight in kg	Average $\pm$ 2 SD in kg
6	118	107-128	20	15-28
7	120	109-131	22	16-30
8	126	114-138	24	16-36
9	132	119-145	28	20-42
10	138	124-152	37	22-50
11	144	130-158	39	25-56
12	151	137-165	41	27-63
13	159	145-172	46	31 -65
14	160	147-174	50	35-70
15	161	148-175	54	35-72
16	162	149-175	55	39-75
17	163	150-175	56	41 -80
18	163-164	151-175	57	42-80

• **Mean Height and Weight in Indian boys**

Age in Years	Mean height in cm	Average $\pm$ 2 SD in cm	Mean weight in kg	Average $\pm$ 2 SD in kg
6	116	106-125	21	16-26
7	121	112-132	23	18-30
8	127	116-138	26	19-35
9	132	120-143	28	21-40
10	138	125-150	31	22-46
11	146	132-161	35	23-49
12	150	135-160	40	27-60
13	157	140-173	45	30-67
14	163	146-180	51	35-75
15	169	152-185	57	40-82
16	174	160-188	62	45-88
17	176	163-189	66	49-95
18	177	164-190	69	51-97

- Female Sexual Characteristic are as follows

Secondary sexual characters in girls are observed as pre-pubertal (10-12 years), pubertal (12-14 years), and post-pubertal (14-16 years)

- Tanner stage of pubic hair and breast in female, which can be studied in detail in any textbook of Pediatrics
- Pubic hair
  - Stage 1 Prepubertal no pubic hair, fine brown vellus hair (less than 12 years)
  - Stage 2 Sparse not extending on to mons pubis, light pigmented (12-13 years) at the base of penis
  - Stage 3 Darker, coarse extending on to mons pubis, pigmented, (13-14 years) start curl and spread
  - Stage 4 Covering most parts but not going up to thighs (14-15 years)
  - Stage 5 Dense hair extending to the inner thighs, Mature pubic (more than 15 years) hair
- Breast development
  - Stage 1 Prepubertal – Elevated papilla, small fat areola (not seen before 9-10 years)
  - Stage 2 Papilla forms a palpable nodule (Breast bud) (10-11 years)
  - Stage 3 Breast development beyond the areola, contour of (by 13 years) breast not defined
  - Stage 4 Contour of breast well defined, more breast (by 13 years) development with elevation of the Areola double mound
  - Stage 5 Mature breast -more breast development with loss (by 15-16 years) of double mound, papilla project as nipple

- Indian Female Mean averages with standard deviation figures

Breast Budding	11±1.2 years, within 2 years fully developed
Appearance of pubic hair	11.8± 1.2.5 years
Growth Spurt	12.5 ± 1.5 years
Menarche	13.5±1.5 years

- Indian Female Height

– Height velocity in girls		
At birth		50cm
Gain during first year		25 cm
Gain during second year		12.5 cm
Gain during 3 <sup>rd</sup> year		7.-10cm
Gain during 3-12 years		5.0-7.5 cm
Adolescence		8cm /year
– Growth velocity of weight		
1-3 years	3kg/yr	(250g/month)
3-12 years	2kg/yr	(200g/month)
12-18 years	5.0.-6.0kg/year	(500g/month)

- Indian Male Height

– Height velocity		
At birth		50cm
Gain during first year		25 cm
Gain during second year		12.5 cm
Gain during 3 <sup>rd</sup> year		.-10cm
Gain during 3-12 years		5.0-7.5cm
Adolescence		10cm /year boys
– Growth velocity of weight		
1-3 years	3kg/yr	(250g/month)
3-12 years	2kg/yr	(200g/month)
12-18 years	5.0.-6.0kg/year	(500g/month)

## 2. Dental Examination

Development of teeth starts with tooth germs within the alveolar space and first the crown is formed followed by root formation. Each tooth has a crown, neck and a root embedded in the jawbone. The tooth eruption in oral cavity occurs when the root is almost half formed. As the root becomes longer, the crown erupts through the bone and is seen outside of the jaw in an oral cavity.

The degree of formation of root and crown structures, the stage of eruption and the intermixture of temporary and permanent teeth are helpful in estimating age from birth to 21 years. The X-ray of the jaw would show developmental status of unerupted teeth and the degree of root completion in erupted teeth.

The crown and root development of the second molar, and third molar are helpful in estimating the age of victims between 8 and 21 years.

## 3. Teeth Eruption

Intra-oral examination of teeth eruption in human beings has a specific pattern, and a reasonable reliable idea of the age can be made by examining the teeth

### – Permanent Teeth

There are sixteen permanent teeth in each jaw — 4 incisors, 2 canines, 4 premolars and six molars. Germinal centres can be appreciated for all teeth except the third molar, by 24 to 36 months, for the third molars these can be appreciated by 7-10 years. Eruption of teeth is as follows:

Teeth	Age of Eruption
Central Incisor	6 years (Range 6-8 years, mean 7.1 years), root completion and calcification by 10 years
Lateral Incisor	7 years (Range 7-9 years, mean 7.8 years) root completion and calcification by 11 years
Canine	11 years (Range 11- 12 years mean 10.8 years); root completion and calcification by 13-15 years
First Premolar	9-11 years (Range 9-11 years, mean 10.5 years); root completion and calcification by 12-13 years
Second Premolar	10-12 years (Range 10-12 years, mean 10.6 years); root completion and calcification by 13-14 years
First Molar	6-7 years (Range 6-6.5, mean 6.5 years); root completion and calcification by 9-10 years
Second Molar	12-14 years (Range 12-14 years, mean 11.8 years); root completion and calcification by 14-16 years
Third Molar	16-25 years (Range 15-25, mean 18 years male, 17 years female); root completion and calcification by 18-25 years.

*Space for third molar:* To accommodate the third molar there is space formation in oral cavity almost equal to tip of the little finger in the back of jaw. In females it is generally seen at the age of 15-16 years, while in male it is seen after 16 years of age.

## 4. Radiological Assessment of Teeth Development

Radiological assessment of teeth is made by viewing X-ray films. It is essential to take a Orthopentogram, provided the facility is available in the hospital/medical college. Otherwise, a simple X-ray also can give reliable information on tooth eruption. X-ray of the oral cavity is taken as an oblique tangential view with the mouth open. The teeth are viewed mainly to examine the crown and root development. A tooth erupts in an oral cavity only when there is a half root formation inside the jaw.

Teeth develop earlier in females in comparison to males. The germination centre of the third molar appears between 7 and 9 years, and in majority of the cases the eruption is not seen before 16 years of age in females. Tooth eruption can be described as just "appearing", "half-appeared" (i.e. below occlusal surface), "fully appeared" (when the tooth is near or in the occlusal surface). In cases of permanent second molar teeth, eruption is almost complete between 12 and 14 years. All second molars reach the occlusal surface by 15 years in female and 16 years in males. Root formation is complete by 16 to 18 years in both sexes.

Crown and Root Development of the Third Molar	
Crown Formation	Age
Complete Crown Formation	15 years
Crown with 1/3 <sup>rd</sup> Root Formation	16 Years
Crown with 2/3 <sup>rd</sup> Root Formation	17 Years
Crown with Complete Root Formation	18 years
Apical Closure of Root	19 years

In case of the third molar, the crown is fully developed by the age of 15 years in girls and 16-17 years in boys, and half-roots are formed by 16-17 years in girls and 17-19 years in boys. The root formation is complete by 18-19 years in girls and by 19-21 years in boys. Root apex closure is seen between 20 and 23 years in both boys and girls. It may also be noted that the eruption and development of teeth in females takes place one year earlier than males.

## 5. X-Ray Findings in Bones

The process of appearance and union of long bones has a sequence and a time. Most bones are ossified from separate centres, one centre for the long bone and few small centres for the upper and lower ends. In long bones, the appearance and fusion of epiphyseal can be evaluated for the purpose of age estimation. The findings can be describes "no fusion", "fusing" or "fused". The terminal centres of long bones are also known as 'secondary centres'. For estimating age, x-ray of the hands, wrists, elbows, shoulders, feet, ankles, knees, the pelvis, and hip joints are very useful. The fusion of bones takes place one year earlier in females than in males.

- **Estimation of age as a whole**

<b>2-6 years</b>	Ossification of tarsal and carpal bones, appearance of centres in epiphyses of long bones
<b>6-13 years</b>	Eruption and development of permanent teeth, changes in epiphyseal centres
<b>13-16 years</b>	Changes of puberty, ossification of centres mainly around elbow joint
<b>16-22 years</b>	Union of epiphyses of the most of the long bones with shafts, viz., union at the elbow and wrist in the upper limbs followed by head of hummers. In the long bones of the lower limb, the first to join is the knee joint followed by the hip and ankle joints. The hipbones are useful for determining age in the 13 to 22 age group.

- **Bones and epiphyseal appearances in relation to age can be summarized as follows:**

<b>Year</b>	<b>Bones and epiphyseal appearances</b>
<b>9-11</b>	misinform ossifies
<b>12</b>	mainly dentition
<b>13-14</b>	lateral epicedial of the hummers unites with trochee and capitula, epiphyses at the elbow unite at the elbow, and iliac crest appears.

<b>15</b>	reradiate cartilage fuse in pelvis, medial epicedial fuses with lat lower end of hummers; coracoids process of scapula unites; heads of metacarpals unite with their shafts; eschewal tuberoses appears
<b>16</b>	head of the femur, lower end of the tibia join
<b>17</b>	centres at wrists unite
<b>18</b>	accordion process unite at scapula, centres at elbows, wrists, and the pelvis unite
<b>19</b>	iliac crest unites
<b>20</b>	ischial tuberosity unites
<b>21</b>	articular facet of rubs unite – inner epiphysis f the clavicle unites.

- **X-rays of the following body joints are recommended for determining the age groups:**

<b>5-16 years</b>	<b>Elbow</b>
<b>16-17 years</b>	<b>Wrist</b>
<b>17-18 years</b>	<b>Shoulder</b>
<b>7-22 years</b>	<b>Pelvis</b>
<b>18-19 years</b>	<b>Crest of ilium</b>
<b>21-22 years</b>	<b>Ischial tuberosity</b>
<b>21-22 years</b>	<b>Clavicle - Inner end of clavicle</b>
<b>3-22 years</b>	<b>Jaw</b>
<b>7-18 years</b>	<b>For second and third molar development, X-ray is taken.</b>

**1. The development for the upper limb bones is described here:**

- **Shoulder joint (X-ray AP view)(for the age group 17-18 years)**

Age	Appearance
1 year	head of humerus
3 years	greater tuberosity
5 years	lesser tuberosity
<ul style="list-style-type: none"> <li>• all these centers unite at 6 years and form conjoint epiphysis</li> </ul>	
11 years	tip of coracoid
<ul style="list-style-type: none"> <li>• unites at 16 years</li> </ul>	
15 years	tip of acrominion appears at
<ul style="list-style-type: none"> <li>• unites at 18 years</li> </ul>	
19 years	secondary center for clavicle sternal end appears
<ul style="list-style-type: none"> <li>• it unites with shaft by 21 years</li> </ul>	

- **Elbow Joint (X-ray AP view) (for the age group 5-16 years)**

Age	Appearance
1 year	Capitulum
5-7 years	Medial epicondyle
10 years	Trochlea
11 years	Lateral epicondyle
14 years of age	the three centres i.e. Capitulum, Trochlea and Lateral epicondyle unite together and form a conjoint epiphysis. This conjoint epiphysis unites with the shaft of humerus.

**16 years of age** The last centre to unite at elbow is medial epicondyle, which unites with humerus shaft.

**Other centres at elbow appear**

<b>5 years</b>	<b>Head of radius</b>
<ul style="list-style-type: none"> <li>• it unites at 16 years</li> </ul>	
<b>9 years</b>	<b>Upper end of ulna</b>
<ul style="list-style-type: none"> <li>• it also unites at 16 years</li> </ul>	

- **Wrist Joint and hand (X-ray AP view) (for the age group 16-17 years)**

Age	Appearances
2 years	Lower end of radius
6 years	Lower end of ulna
<ul style="list-style-type: none"> <li>• Both unite with shafts around 19 years</li> </ul>	
<b>Carpal bones ossification appearance</b>	
2 months	Capitate
3 months	Hamate
3 years	Triquetral
4-5 years	Trapezoid
9-11 years	Pisiform
<b>Thumb First (metacarpal)</b>	Head of the first metacarpal unites at 16 years while the head of other metacarpals unites at 17 years
<b>Sternum</b>	Sternum has centres since birth, which unite from downward to upwards direction. The third and fourth parts of the sternum (sternebrae) unite at the age of 15 years while the second and third unite at 20 years. The first and second parts of sternum unite at 25 years. Tip of Xiphoid process appears at 3 years and unites at 40 years.

## 2. Bone ossification at the pelvis including both hip joints with upper end of femur:

- Hip Joint (X –ray AP)

Age	Appearances
6.5 – 8 year	Ischio-pubic ramus unites by six-and-a-half years
14 years	Iliac crest ossification centre appears

- Unites by 19 years

14 years	Tip of pubis centre appear
16 years	Tip of ischium appear

- Both these centres unite by 20 years

13 years	Acetabulum cap appears as triradiate cartilage
15 years	triradiate gets united and appears as a cup

### X-Ray Advised

Age	Appearances
14-16 years	Shoulder, Elbow, Wrist, Dentition, Pelvis including the upper end of femur and iliac crest
16-18 years	Wrist, Elbow, Shoulder, Pelvis, Dentition for the second and third molar
18-22 years	Pelvis, shoulder, medial end of clavicle, third molar, wrist, sternum

**It is essential the x-rays of wrist, elbow, shoulder, pelvis, joints and jaw are taken for determining the age of the trafficked victim**



## 2.9

# Opinion Expression by Medical Officer

Opinion must have components of injury, sexual activity, and age estimation.

The exemplary way of recording opinion is given below as a guide and can be modified according to the case.

The physician must consider the following points before recording an opinion the case

- Was there sexual abuse or not?
- What are the acute or chronic effects of abuse on a victim's body and mind?
- Were proper samples for identification taken?

The findings can be put in three categories

- **Certain—** presence of semen, existence of gonococcal and syphilis infection, presence of acute or residual hymenal and vaginal, or anal tears.
- **Probable—** presence of warts, herpes, chlamydia, and trichomonas infection, injury
- **Possible—** Local infection, swelling, allergy

### 2.9.1

## Important points to be remembered while writing a report

1. Always write a complete report—preliminary, body, conclusion (opinion), and referral in it
2. Date, time of examination, name of female attendant, how he/she was brought to the hospital, whether directly after being exploited/abused or later, whether she was brought by Police/NGO/Parents/Guardians/Others
3. Consent, if the medical examination is on request
4. Marks of identification

## Important points of report writing

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• History – relevant information in brief points</li><li>• Background information of case</li><li>• Behavioural observation</li><li>• General physical examination</li><li>• Injury examination</li><li>• Genital examination</li><li>• Age examination</li><li>• Provisional diagnosis and advice</li></ul> | <ul style="list-style-type: none"><li>• Prophylactic treatment</li><li>• Findings and interpretation of x-rays of bone and jaw</li><li>• Findings of x-ray of teeth</li><li>• Expected date of results of samples sent to Forensic Science Laboratory</li><li>• Recommendation</li><li>• Sampling to appropriate agency, hospital or Forensic Science laboratory</li></ul> |
|--|--|

It is always advisable to review the report oneself or by a peer before handing it over to law enforcing agency

### 2.9.2

#### Recording of opinion by medical officer

While recording an opinion in medico-legal cases the following four criteria must be incorporated:

- i. Evidence of recent sexual activity
- ii. Whether the victim has undergone continuous sexual intercourse
- iii. Sign of struggle / use of force
- iv. Presence of Sexually Transmitted Diseases

### 2.9.3

#### Opinion about Injury

While recording opinion, the medical officer must specify whether the injuries are:

- Fresh (within 4 to 6 hours) / recent (within one day) / old (If more than one day, be specific if possible)
- Caused by sharp/ blunt objects / rough surface/ burning objects or smoldering objects like cigarettes, simple / grievous / dangerous in nature. Injuries are suggestive of impulsive or planned (systemic) physical torture.

**Note:** While giving opinion, multiple injuries if any, may be clubbed according to their nature. The nature of each injury such as, simple / grievous / dangerous, should be specified both individually and collectively.

### 2.9.4

#### Opinion about age

The medical officer should take into consideration all findings collectively and narrow down the range of the age of the victim as far as possible. The range should not be more than  $\pm 6$  months. This range of  $\pm$  is given only when opinion is expressed as a whole number for example, 14.6 years  $\pm 6$  months. Ideally the appropriate method is to express the age in range such as 14-15 years, which means that person is more than 14 years of age and less than 15 years of age.

The medical report should be given immediately after examination. In cases where investigations and test results are awaited, the same should be mentioned in the report.

**Give opinion at the very earliest, justice delayed is justice denied**

## 2.10

### Conclusion

A National Consultation for finalizing this Manual was held in New Delhi on August 18, 2004. It was attended by officers of the Department of Women and Child Development, Government of India, Country Office, UNICEF, members of the Indian Medical Association (IMA), State Departments of Forensic Sciences, Forensic Experts from Medical Colleges, and representatives from NGOs.

The Consultation was highly participatory and interactive. The objectives of the Manual and its contents were appreciated and several suggestions made by the participants, especially with regard to the technical content, have been incorporated.

In addition, it was strongly recommended that the Department of Women and Child Development, Government of India, should urge its State counterparts and the State Departments of Health to adopt and enforce the following guidelines:

1. The Age Determination Test should be conducted for all trafficked victims referred to Medical Officers for a medical report, whether or not the Investigating Agency specifically requests for it.  
  
Discussions at the Consultation and the evidence from the States revealed that presently the Age Determination Test is conducted only if requested for by the Investigating Agency. It needs to be emphasized that the age group from 16-22 years is an extremely fluid age group in terms of physical appearance. The age determination test that is stipulated in the ITPA must necessarily be conducted to arrive at an accurate assessment regarding the age of the victim. Age determination for this group is also crucial to the conduct of the case, as a victim below 18 years of age must as per law, be referred to the Juvenile Justice system, and treated as a child in need of care and protection. Hence, the Age Determination Test should be conducted for all trafficked victims, regardless of their own statements of age, their physical appearance, or whether or not the Investigating Agency has specifically requested for it.
2. The Medical Protocol for Age Determination, as in Annexure 3, may be uniformly adopted throughout the country by Medical Personnel for the certification of age. The Central and State IMAs, and the State DWCDs/Departments of Health may urgently issue necessary instructions regarding this.
3. Medical personnel should be sensitized to the issue of trafficking, and appropriate training for conducting Age Determination Tests in accordance with the Protocol may be imparted to them from time to time by the State Governments or other stakeholders.
4. To avoid malpractice, a panel of doctors should conduct the medical examination, especially the Age Determination Test.
5. No single method alone should be adopted for Age Determination. A combination of examination of physical and secondary sexual characteristics, dentition, and bone ossification should be taken into consideration before recording the final opinion.
6. The Medico-Legal Report should be submitted to the Investigating Officer within 48-72 hours of conducting the examination.
7. In places where the demand for Age Determination Tests is likely to be high, such as, in known destination areas, special clinics may be set up by the local administrations and the IMA, by identifying Special Medical Practitioners for the purpose.

# Annexure 1

## Sample Format for Age Estimation

### Medical Examination for Age Estimation for Girls

1. Name .....
2. Sex .....
3. Daughter of .....
4. Alleged Age .....
5. Address .....
6. Brought by .....
7. Consent .....

Space for  
Photograph or as  
per the column in  
the MLC Sheet

I.....D/o.....or Guardian of .....  
voluntarily give my consent for complete medical examination for the purpose of age estimation I understand that this examination may involve radiograph, and photographs for legal evidence, control, clinical audit, diagnostic, research, and academic purposes. The purpose, procedure, consequences, and use of such findings have been explained to me.

Witness of accompanying person

Signature of person examined or  
Guardian

8. Marks of identification
  - Thumb impression (*Right in female, and left in male*)
  - Any scar /mole / deformity, etc .....
9. General Physical examination  
Height (in cm)                      Weight (in kg)
10. Secondary sexual characters stages (Tanner stages)  
Menarche Age ..... Started or not started .....  
How many years before .....
11. Encircle the stage of development  
Pubic hair                      P1   P2   P3   P4   P 5  
Breast development       B1   B2   B3   B4   B5  
Axillary hair  
Acne  
Any other important finding

## 12. Dentition

### ■ Oral examination of teeth

(This is done by clinical examination by noting tooth eruption, the sequence of eruption)

■ Temporary teeth	55	54	53	52	51				61	62	63	64	65
	75	74	73	72	71				81	82	83	84	85

■ Permanent teeth	18	17	16	15	14	13	12				11	21	22	23	24	25	26	27	28
	38	37	36	35	34	33	32	31			41	42	43	44	45	46	47	48	

### ■ Space for third molar .....

### ■ In cases where a person is more than 14 years of age and all teeth are permanent, these can be depicted as:

8	7	6	5	4	3	2	1		1	2	3	4	5	6	7	8
8	7	6	5	4	3	2	1		1	2	3	4	5	6	7	8

## 13. Inference about age

### ■ Radiological examination of dentition (by AP, oblique tangential view of jaw with open mouth)

(This can be charted according 10 stages of tooth development)

## 14. Inference of age

### ■ Stage of crown development stage of molars (2nd and 3rd Molar teeth )

### ■ Stage of root development stage of molars (2nd and 3rd Molar teeth)

### ■ Ossification of Bones

15.	S. No.	X-Ray Advised	Findings	Observed	Inference about age
	1.				
	2.				
	3.				
	4.				

Inference of Ossification findings in bones .....

## 16. Opinion

After performing general physical, dental, and radiological examination, I am of considered opinion that age of this person is between.....and.....with a range of  $\pm$  ... months or years.

P.S. (The range up to 16 years is  $\pm$  6 months, up to 21 years  $\pm$  1 year, and up to 25 years 1-2 years.)

In the age group 6 month to 14 years fair idea can obtained by general physical examination and dental examination, The examination of long bones can be avoided if it not a capital punishment case.

Dated .....

Signature and Name of  
Medical Officer

# Annexure 2

## Sample Format for Age Estimation

### Medical Examination for Age Estimation for Boys

1. Name .....
2. Sex .....
3. Son of .....
4. Alleged Age .....
5. Address .....
6. Brought by .....
7. Consent .....

Space for  
Photograph or as  
per the column in  
the MLC Sheet

I ..... S/o.....or Guardian of .....voluntarily give my consent for complete medical examination for the purpose of age estimation I understand that this examination may involve radiograph, and photographs for legal evidence, control, clinical audit, diagnostic, research, and academic purposes. The purpose, procedure, consequences, and use of such findings have been explained to me. In token thereof I subscribe my signature below.

Witness of accompanying person

Signature of person examined or  
Guardian

8. Marks of identification
  - Thumb impression (*Right in female, and left in male*)
  - Any scar /mole / deformity, etc .....
9. General Physical examination
  - Height (in cm) ..... Weight (in kg) ..... Chest expansion .....
  - Pulse ..... BP .....
10. Secondary sexual characters stages (Tanner stages)
11. Encircle the stage of development
  - Pubic hair            P1    P2    P3    P4    P 5
  - Penis development    Infantile
  - Axillary hair            brown/light grey/black/dark black
  - Acne
  - Adam's apple            prominent / non prominent
  - Hoarseness of voice    present /Absent

Scrotum development and rugocities      smooth surface / rough surface

Testis size      pearl beads size/ marble ball size/pigeon's egg size/hen's egg size

Moustache

Beard

Any other important finding

## 12. Dentition

Oral examination of teeth

(This is done by clinical examination by noting tooth eruption, the sequence of eruption)

Temporary teeth	55	54	53	52	51				61	62	63	64	65						
	75	74	73	72	71				81	82	83	84	85						
Permanent teeth	18	17	16	15	14	13	12	11				21	22	23	24	25	26	27	28
	38	37	36	35	34	33	32	31				41	42	43	44	45	46	47	48

Space for third molar .....

## 13. Inference about age

Radiological examination of dentition (by AP, oblique tangential view of jaw with open mouth)

(This can be charted according 10 stages of tooth development)

## 14. Inference of age

- Stage of crown development stage of molars (2nd and 3rd Molar teeth )
- Stage of root development stage of molars (2nd and 3rd Molar teeth)
- Ossification of Bones

15. S. No.	X-Ray Advised	Findings	Observed	Inference about age
1.				
2.				
3.				
4.				

Inference of Ossification findings in bones .....

## 16. Opinion

After performing general physical, dental, and radiological examination, I am of considered opinion that age of this person is between.....and.....with a range of  $\pm$  ..... months or years.

P.S. (The range up to 16 years is  $\pm$  6 months, up to 21 years  $\pm$  1 year, and up to 25 years 1-2 years.)

In the age group 6 month to 14 years fair idea can obtained by general physical examination and dental examination, The examination of long bones can be avoided if it not a capital punishment case.

Dated .....

Signature and Name of Medical Officer

# Annexure 3

## Sample of Medical Examination Report for Sexual Exploitation (modify as per requirement)

### CONFIDENTIAL

(The identity and purpose of examination should not be disclosed to unrelated person. The record should be kept in proper custody and supervision).

### Medical Examination for Age Estimation for Child Victims of Sexual Exploitation

1. Name .....
2. Age (alleged if minor) .....
3. Sex .....
4. Brought by .....
5. Under section .....
6. Date and time of examination .....
7. Consent .....

Space for  
Photograph or as  
per the column in  
the MLC Sheet

I ..... D/o ..... or Guardian of.....voluntarily give my consent for complete medical examination including of genital parts. I understand that this examination may involve blood, urine, and vaginal samples, radiograph, and photographs for legal evidence, control, clinical audit, diagnostic, research, and academic purposes. The purpose, procedure, consequences, and use of such findings have been explained to me. In token thereof I subscribe my signature below.

Witness of accompanying person

Signature of person examined or  
Guardian

8. Marks of identification
  - Thumb impression (*Right in female, and left in male*)
  - Any scar /mole / deformity, etc .....
9. History
  - Behavioral symptoms
  - Child development
  - Physical Symptoms
  - General Information
  - Family history
  - Parental / Caretaker history





### C. Vagina

- |      |                   |   |
|------|-------------------|---|
| i.   | Labia Majora      | Any swelling, adhesions, tears, edematous, bruises or abrasion  |
| ii.  | Labia Minora      | Scratch, bruising, fingernail marks tear, infection, and adhesion   |
| iii. | Fourchette        | Infection, bleeding, tear   |
| iv.  | Vulva-            | Any injury, infection, bleeding   |
| v.   | External opening  | Vaginal growth, hypertrophy, pigmentation, smoothness of surface, signs of delivery , episiotomy scar, size, discharge if any |
| vi.  | Vaginal Introitus | Narrow roomy, old tears   |

Colposcopy of vaginal walls; a filter use helps in the recognition of superficial abrasions, if needed

- |       |                      |   |
|-------|----------------------|---|
| vii.  | Cervix               | Mucus plug, erosions, growth, bleeding, dilation                    |
| viii. | Uterus               | Size, shape, position, any other significant finding like pregnancy |
| ix.   | Posterior commissure |   |
| x.    | Fossa navicularis    |   |

### D. Anus

Encircle the relevant

- Dribbling, bleeding, mucopurulent discharge from anus, incontinence
- Findings in Anal ampulla /Anal rugae/ (skin fold)/ Anal verge
- Tags (skin tag after injury or trauma)
- Piles (dilation or bulging of the veins around anus)
- External sphincter strength / dilation
- Tears (shape and extent).

13. Sample Collection for hospital (Samples can be taken according to requirement of a case, and advice investigation according to case presentations and signs)

14. Samples for Hospital Laboratory/ Clinical Laboratory

- *Blood*
- *Vaginal swabs*
- *Culture specimen*
- *Urine for the victim*

as per requirement of case , tick the appropriate

- *Pregnancy*
- *STD*
- *HIV*
- *Drug Addiction or Substance Abuse*
- *Pus Culture*

## 15. Samples for Crime Forensic Science Laboratory

- Collection of forensic samples
  - Blood (blood grouping, testing drug intoxication).....
  - Urine (to test for suspected pregnancy, drug testing, foreign blood for DNA, nails scrubbing).....
  - Seminal stain (blood grouping and identification).....
  - Nail scrubbing (to look for epithelium of assailant)
  - Hairs (to look for seminal stain, foreign hair)
  - Vaginal swabs (vulva, low vaginal, high vaginal) to stress here that it should be made a routine
- Microscopic examination of vaginal slides (motile and immotile sperm) on spot.
- Ultraviolet test for detection of seminal and saliva stains.....
- Clothing
- Foreign material recovered
  - Cloth fibers
  - Skin fragments
- Swabs and smears over clean glass slide (These are preserved for detection of sperms, acid phosphatase, P30, MHS-5 Antigen, and blood group antigen)
- Vagina
- Mouth

## 16. Toxicological Screening (Blood 10 ml and Urine 50 ml for toxicology laboratory mainly for drug addicting and alcohol)

## 17. Disputed Paternity (Blood/ aborted fetus remains for grouping and DNA finger printing for disputed or alleged paternity cases)

Opinion

Any treatment or advise

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