

## **Role Of Magistrate In Preventing Re-Trafficking And Combating Human Trafficking:**

*By Application of Section 17 of Immoral Traffic Prevention Act, 1956.*

### **I. Introduction -**

“Unless we fight for the victims and champion their dignity, we will not be able to embrace fully our own dignity as human beings. Let us act now, tomorrow may be too late”.

Dr. Justice. A.S. Anand,  
Fr. Chief Justice, Supreme Court.

Have we been able to protect the victims of commercial sexual exploitation in INDIA? The answer is “NO”. In a recent judgment the Supreme Court observed that the Immoral Traffic Prevention Act, 1956 has failed to achieve its objective. The police, court and the administration who are expected to implement the act have completely failed to achieve the object of the act. The Bench comprising Justices S B Sinha and Cyriac Joseph, observed that, *“It is unfortunate that the Investigating Officer and courts fail to bear in mind the distinction between the rescued children including the girls, on the one hand, and the persons who have been organizing such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences,”*.

The Immoral Traffic Prevention Act (ITPA), 1956 the National law for addressing the problem of commercial sexual exploitation in India has in its object stated that the purpose of the enactment of the Act is to inhibit or abolish commercialized vice, namely the traffic in women and girls for the purpose of prostitution as an organized means of living. The idea is not to render prostitution per se a criminal offence, or punish a woman merely because she prostitutes herself. But unfortunately in a majority of the cases the women in prostitution are treated as accused instead of victim. And in the cases where they are treated as victim, the law enforcement agencies treat them worst than an accused.

## **II. How the victim of commercial sexual exploitation are treated by the Criminal Justice System (CJS) after the rescue:**

Section 17 of ITPA deals with the victims rescued from CSE. It provides for the protection and rehabilitation of the rescued victims of CSE. But the implementation of this is not very common and where ever it is used, leaving few exceptions, it is not done in the true spirit of the section 17 of ITPA.

### **1. Scenario:-**

- The women in prostitution are treated as accused and sent to the judicial custody. The perpetrator arranges for her bail and releases her from the custody.
- After her release she gets re-trafficked as she is expected to prostitute and return the money spent by the perpetrator for her release.
- The trial usually results in acquittal as there is no victim. The woman in prostitution usually turns hostile during the trial.

### **2. Scenario:-**

- The woman in prostitution is treated as victim.
- The victim is released from the police station in the custody of the person who produces the document proving her relationship.
- No inquiry is conducted by the magistrate to check why and who trafficked her for commercial sexual exploitation, the capacity of the person requesting for the custody to protect her from re-trafficking and the views of the victim regarding her future.
- No service mobilization for her rehabilitation or protection before the victim is released.
- Most of such cases results in re-trafficking.

### 3. Scenario:-

- The woman in prostitution is treated as victim.
- The victim is produced before the magistrate under sec 17 and referred to the State Protective Home for shelter & Care.
- The magistrate instead of conducting an inquiry asks the police or the superintendent of the protective home or the probation officer to inform the relatives to come and take the custody.
- Once the relative comes and produces the documents the victim is released in the custody of the person (*In a lot of cases the documents are found to be fabricated*).
- Magistrate does not meet the victim, no inquiry is conducted regarding how she was trafficked, capacity of the person who has requested for the custody, services mobilization, etc.
- Most of such cases results in re-trafficking for commercial sexual exploitation.

### 4. Scenario:-

- The woman in prostitution is treated as victim.
- The victim is produced before the magistrate under sec 17 and referred to the State Protective Home for shelter & Care.
- The magistrate instead of conducting an inquiry asks the Superintendent/or Probation officer to submit a report (*The reports are many a time found to be biased. The staff usually has a conflict of interest. In most of the cases they do not want the girl to stay at the home, as it adds to their work load, and/or in case of victim who are problem creator it is difficult for the staff to be objective and give priority to the interest/welfare of the victim*).
- Based on the report (*usually the recommendation is for the release*) the victim is released.
- Magistrate does not meet the victim. The magistrate relies on the report prepared by the staff of the home or probation officer which is usually based on the interview with the victim.

- No rehabilitation services, job, protection, etc is arranged.
- Most of such cases results in re-trafficking for commercial sexual exploitation.

### 5. Scenario:-

- Processing the victim in the right spirit and provisions of Sec 17.

### III. What does the sec 17 state?

The persons removed under section 15 or rescued under section 16 of ITPA shall be produced before the appropriate magistrate (*Metropolitan Magistrate, Judicial magistrate of the First Class, District Magistrate or the Sub-Divisional Magistrate*). When the special police officer for any reason is unable to produce the rescued victim before the appropriate magistrate, he shall forthwith produce the victim before the nearest magistrate of any class, who shall pass such orders as he deems proper for the safe custody until the victim is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order:

Provided that no [person] shall be -

- detained in custody under this sub-section for a period exceeding ten days from the date of the order under sub-section; or
- restored to or placed in the custody of a person who may exercise a harmful influence over him.

(2) 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 the victim 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 the victims parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on the victim if she is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders

Act, 1958, (20 of 1958), to inquire into the above circumstances and into the personality of the [ person] and the prospects of his rehabilitation.

(3) The magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the [person]: [Provided that where a person rescued under section 16 is a child or minor, it shall be open to the magistrate to place such child or minor in any institution established or recognized under any Children Act for the time being in force in any State for the safe custody of children.

Provided further that, ] no [person] shall be kept in custody for this purpose for a period exceeding three weeks from the date of such an order, and no [person] shall be kept in the custody of a person likely to have a harmful influence over him.

(4) Where the magistrate is satisfied, after making an inquiry as required under sub-section (2), -

- c. that the information received is correct; and
- d. that he is in need of care and protection, he may, subject to the provisions of sub section (5), make an order that such [person] be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable.

Provided that such custody shall not be that of the person or body of persons of a religious persuasion different from that of the [person] and that those entrusted with the custody of the [person] including the persons in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the [person] as well as supervision

by a person appointed by the court, which will be in force for a period not exceeding three years.

(5) In discharging his functions under sub-section (2), a magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in [persons].

(6) An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.]

#### **IV. Why Sec 17 should be applied:-**

It is usually experienced that a person gets trafficked for commercial sexual exploitation due to his/her being in a vulnerable situation and the lack of capacity of the parents/guardians to protect him/her.

Once a victim, she is made to believe by the exploiters that her life is now to continue in the CSE. The experiences in the process of commercial sexual exploitation are usually negative. The victim's starts believing that now no body will accept her, fear of lack of option and retribution from the society, lack of proper understanding of the law, etc.

In this situation it becomes utmost important that to prevent re-trafficking of the victim after the rescue, the victim be kept at a place where the perpetrators do not have access, she receives counseling to handle her issues, an inquiry is conducted to understand as to what caused her trafficking, role of parents and close relatives is studied and the views of the victim is taken regarding her future and the services and

to prevent her re-trafficking after her release from the shelter home necessary services are mobilized/ provided.

## **V. How Section 17 is being implemented in Goa.**

In Goa the victims rescued from commercial sexual exploitation are routed through section 17 of ITPA since 2001.

Step1:- After the rescue the police produces the victim before the sub-divisional magistrate.

Step 2:- The magistrate verifies with the victims that is she a victim of CSE.

Step 3:- The magistrate remands the victim (minor or major) to the Government state protective home.

Step 4:- The magistrate asks the probation officer to submit a report.

Step 5:- The magistrate asks Arz (*social work organization, providing social work services at the government protective home*) to submit a home study report (HSR) if the victim is from Goa and if from outside the state asks to arrange for a HSR with the assistance of government or non-government agencies in the source states.

Step 6:- Arz provides counseling to the victim at the protective home.

Step7:- Arz submits a report based on the interaction with the victim to the magistrate.

Step 8:- The magistrates summons for a panel meeting.

Step 9:- The magistrate and the panel members visit the state protective home to meet the victim (victim is not summoned to the court) and to conduct an inquiry under sec 17....

Step 10:- During the panel meeting the statement of the victim and the person who has made an application to take the custody their statement is recorded.

Step 11:- Based on the HSR, Arz report, Probation officers report, statement of the victim and her relative/s the panel advises the magistrate with their recommendations.

Step 12:- The panel and the magistrate again meets the victim and informs the decision of the panel.

Step 13:- The magistrate passes an order giving detail instruction regarding the rehabilitation of the victim and also the role and responsibility of the individual or the organization responsible for the implementation of the order.

**In Certain Cases The Magistrate Conducting Inquiry Under Sec 17 If Necessitated Also Does The Followings:-**

- Direction to the police to investigate against the person/s whose name have not been included in the FIR, but during the inquiry have been found to be involved in the CSE of the victim.
- Complaint to senior police officials regarding human rights violation of the victims by the police.
- Order for closure of brothel/s under sec 18.

**V. Advantages of using sec 17?**

**1. VICTIM FRIENDLY -**

Section 17 (5) provides for a panel of social workers, among which three of the members needs to be women and having experience in trafficking. This is to ensure that the persons having expertise in the field of anti-trafficking assist the magistrate in conducting inquiry in a victim friendly environment and prevent re-trafficking of the victim.

In a raid in Goa 3 girls were rescued by the police and admitted at the government state protective home under sec 17 of ITPA. Two of the victims in their statement to the police mentioned that they are a native of West Bengal. But when the magistrate along with the panel members were interacting with the victims at the protective home, two of the victims shared with the panel that they were from Bangladesh and not from West Bengal.

When the panel probed with the two girls that why they did not share this with the police or the protective home staff, they shared that the way they were treated by the police and the staff they were scared to share. They felt that they may be prosecuted for illegally staying in India. But when they interacted with the panel they found that the magistrate and the panel members were very nice, polite and sympathetic to them. The behavior and attitude of the panel gave them the confidence to share about their nationality.

## 2. NO DISCRIMINATION BASED ON AGE -

Sec 17 of ITPA does not discriminate on the basis of the age. It provides for the similar process to be followed for inquiry to prevent re-trafficking.

Vasco police conducted a raid in Goa and rescued a victim aged 45 years from the commercial sexual activities. The question before the panel was that what should be done? The panel felt that the age of a person should not be the criteria of deciding that a person will change or not.

The panel met the victim twice to know and understand the reason for her being in commercial sexual activities and what kind of assistance she requires. The panel suggested to the counselor at the protective home to provide counseling services to the victim.

The second time when the magistrate along with the panel met the victim, she shared that she wants to stay in Goa and wants assistance in securing a job close to her place of residence.

The magistrate referred her to an economic rehabilitation unit for rehabilitation.

### 3. ENSURES PROTECTION FROM THE TRAFFICKERS: -

After the admission of the victim in the government home usually it is experienced that the perpetrators try to contact the victims and seek for their custody based on the forged documents. In some cases where in the family members are involved in trafficking they take advantage of the relationship and take the custody of the victim.

The staff of the government protective home many a times does not have the information about the involvement of the family in trafficking but are entrusted with the responsible of giving permission to the members of the family. The staff many a times in the good interest allows permission to family members to meet the victim. This effects the rehabilitation of the rescued victim.

It is in the interest of the victim that the authority who gives permission knows the detail about the victim. It is the magistrate and the panel who is completely abreast about the details of the victim as they conduct a detail inquiry under sec 17. Therefore, if the permission to visit and meeting is granted by the Magistrate it will ensure the protection of the victim from the trafficker/perpetrator.

A group of 5 girls were rescued by the Goa police who were trafficked from Pune to Goa for commercial sexual activities. Among them one victim was Ms. Priya aged 22 years. After her referral to the government Protective Home a person named Ashish approached the Government Protective Home, Goa, stating that he is the husband of Ms. Priya and would like to meet Priya at the protective home.

The staff of the protective home refused him permission and stated that he needs to get the permission from the magistrate. When Ashish interacted with the Panel members the members got suspicious about his involvement in commercial sexual exploitation activities. Later after probing the panel members found that he was a pimp and was involved in commercial sexual exploitation of his wife.

The magistrate refused him permission and directed the Crime Branch, Goa to probe about the involvement of Mr. Ashish in commercial sexual activities.

#### **4. ENSURES MOBILIZATION OF SERVICES: -**

The re-trafficking is mostly caused if the issues which caused the trafficking of the person for CSE are not addressed properly and also based on the situation and the need of the rescued victim proper rehabilitation services (employment, shelter, counseling, protection, etc) are not mobilized before her release from the shelter home.

#### **Employment.**

Ms. Meenakshi aged 28 years was rescued by the Vasco Police for being involved in commercial sexual activities. After the rescue Ms. Meenakshi refused to go back with her parents to Karnataka fearing that they will harm her because of the bad name she has brought to the family.

She shared with the magistrate that she wishes to stay back in Goa and requested for employment. The panel after exploring various job possibilities found that there were no job opportunities for her.

Finally the panel made a request to the state government to provide her an employment in the government children's home as an Aya.

The state government considered the request and since last 9 years she has been working in the department.

### **Shelter Home**

Arati aged 18 years from Andhra Pradesh was rescued in Goa by the Goa police. After the rescue she shared that she is an orphan and desires to go back to Andhra Pradesh and requested the magistrate to arrange for job and shelter in Andhra Pradesh.

The magistrate sought the assistance the social work organization working in the protective home. The organization contacted a non-government organization in Andhra Pradesh for the shelter and job for Ms. Arati and referred her to Andhra Pradesh.

-

-

### **Repatriation**

Two girls Ms. Sabina and Sajjida aged 22 and 23 respectively rescued from the commercial sexual exploitation shared with the panel that they were from Bangladesh and were trafficked to India by being given false promise of employment.

After they arrived the trafficker blackmailed them stating that he will complain to the police that they are illegal Bangladeshi. Due to fear of arrest the two girls consented to prostitute.

The two victims shared that they wish to go back to their native village and also requested for assistance for job back home.

The magistrate directed the staff of the protective home to provide the two victims shelter and rehabilitation services till they are repatriated and requested Arz (social work organization) and Department of Women & Child Development to arrange for the repatriation.

Arz contacted organizations in Bangladesh and requested them for HIR and documents to prove their nationality. After receiving the documents and verifying their nationality as Bangladeshi, the Bangladesh High Commission in India was contacted by Arz for their repatriation back home.

The Bangladesh government based on the documents issued them documents to return back to Bangladesh.

### **Health**

Shailiza a traffic victim was rescued from commercial sexual exploitation. She was very sick at the time of the rescue. She fainted and was injured at the government medical college when she was taken for a medical examination. During the medical examination she was tested HIV positive. She was admitted at the hospital due to her weakness and injury. The doctors advised for 15 days admission in the hospital.

The magistrate ordered the panel to conduct an inquiry regarding the health status of Shailaza and submit a report.

The panel during the inquiry found that she does not have any family members as she was an orphan. The panel members were informed by the doctors that she was an alcoholic and very weak and she required care for a long period.

When the panel members enquired for the services for Ms. Shailaza with care homes in Goa, they were informed that they provide only temporary shelter.

The panel felt that it was the responsibility of the state to provide necessary protection, care and treatment to the victim.

The magistrate in his order directed the Department of Women and Child Development, Goa to arrange for the victim's shelter, care at the government protective Home and the Department of Health Services, Goa to arrange for health services.

#### **Family members of the victim.**

A minor girl Ms. Shanta was rescued from commercial sexual exploitation. During the inquiry it was found that the mother was having a psychiatric problem and was not regular with her medication. Her health was resulting in regular conflict between the husband and wife.

The panel felt that the family is presently not fit to take the custody of the victim and also there was a need for social work intervention to look into the health of the mother and to help the husband and the wife in resolving their issues.

The magistrate in his order directed for the detention of the victim at the protective home for a year. He also in his order stated that arrangements be made for Ms. Shanta to complete her SSC while she is at the protective home and to provide assistance to Ms. Shanta's mother in her treatment and counseling to the father and the mother to enable them to prevent Ms. Shanta's re-trafficking after her release.

**5. VICTIM'S PARTICIPATION IN THE DECISION BEING TAKEN BY THE MAGISTRATE WITH REGARD TO HER REHABILITATION:-**

The magistrate after conducting an inquiry under sec 17, shares with the victim the findings, and the decision, before passing the final order.

The victim is allowed to share her concerns about the decision taken by the magistrate. If her concerns are found to be genuine the panel reconsiders its decision and if the concerns are found not to be in the interest of the victim the panel counsels the victim.

**6. RETRIEVAL OF PROPERTY:**

The magistrate while conducting an inquiry under sec 17 also deliberates into the requests made by the victims. Many a time's the victim's requests for retrieval of the property left behind with the brothel keepers and/ or pimps.

The magistrate has the authority to summon the concern person in whose custody the property is left behind and to order for depositing the property in his office.

Ms. Sapna was rescued from commercial sexual exploitation from Baina red-light district. She was admitted to the Protective Home under sec 17 of ITPA.

During the inquiry the victim shared with the magistrate that she has left her gold ornaments, clothes, cash and other properties in the brothel from where she was rescued.

The victim shared that she wish to go back to her village but she wants the property as it would help her in starting a new life.

The sub-divisional magistrate summoned the Brothel Keeper (the brothel keeper was arrested after the rescue of the victim) and asked her to deposit the property in his office. The brothel-keeper after initial denial accepted that the property is with her and deposited all the property in the office of the magistrate which was later handed over to the victim Ms. Sapna.

#### **7. CUSTODY OF THE CHILD:-**

The children of the women and girls being prostituted are usually not in the same place where they are prostituted. They are mostly with the brothel-keepers, pimps or other members of the prostitution market.

As they are not present at the same site of commercial sexual exploitation, at the time of the raid the children are not rescued with their mothers.

Police some times if informed, do try to take the children along. But many a times the victims informs the police too late for the police to take the child along with the mother to the shelter home or the police are not sensitive about the need for the child and mother to be kept together or it is not possible for the police to admit the child along with the mother as the victim has been trafficked to another state (*mostly in the cases wherein the girls and women are taken to other city or state on contracts for 10-15 days. In such cases their children are left back with the members of CSE*).

During the inquiry by the magistrate under sec 17 the victim gets the opportunity to share with the magistrate directly for the custody of her child and the magistrate can order the police to get the custody of the child.

Ms. Ruchika a native from west Bengal was trafficked to Mumbai for CSE. While being commercially sexually exploited she had a baby girl. Her husband who was previously involved in trafficking of girls was an alcoholic and was presently surviving on the earnings of his wife.

When ever she used to go out of Mumbai on “dates” (short contracts), her husband used to keep her daughter with him.

While she was being commercially exploited in Mumbai, she got a contact of a trafficker in Goa and she came to Goa on a “Date”.

In Goa Ms. Ruchika was rescued and referred to protective home under sec 17. During the inquiry being conducted by the magistrate along with the panel she shared that her 5 years old daughter is with her husband and she requested that the child should be brought form Mumbai and given in her custody. Ruchika was not sure about her husband. She suspected that for money he may sell her daughter.

The magistrate after hearing her plea for the custody of daughter requested Arz to take the assistance of the police and local Ngo’s in Mumbai and to reintegrate the child with her mother.

Arz with the assistance of a local Ngo in Mumbai managed to get the child to Goa and handed over the custody to her mother.

#### **8. PROSECUTION OF TRAFFICKER:**

The magistrate during the inquiry while taking the statement if finds that the police has intentionally or unintentionally not registered case against person/s who were involved in the trafficking of the victim, he may share the information received by him from the victim with the police and direct the police (in writing) to register a case against the said person/s. The police can based on the additional information received from the magistrate amend the FIR (First Information Report).

A raid was conducted in a flat and three girls were rescued by the police from the flat. The three girls aged between the age group of 19 to 28. The police produced the three girls before the magistrate and requested the magistrate to remand the girls to protective home under sec 17.

While taking the statement of the victim at the protective home under sec 17 the magistrate found that the elder girl, Ms. Muskan who was aged 28 years was in-fact a trafficker. Ms. Muskan had trafficked the two girls from Andhra and kept them in her flat and was involved in their commercial sexual exploitation.

The magistrate directed the police to register a case against Ms. Muskan for commercially sexually exploiting the girls and to be removed from the protective home and taken in police custody.

#### **9. DEPOSITION BY THE MAGISTRATE IN THE COURT AS A WITNESS:**

The magistrate while conducting inquiry under sec 17 takes the statement of the victim. If required the prosecution can call the magistrate to depose before the court as a prosecution witness. The magistrate being a judicial officer his deposition strengthens the prosecutions case.

Ms. Mariavva was dedicated by her mother and forced to prostitute under a brothel keeper from Baina, Vasco.

Ms. Mariavva was a minor at the time of her rescue. The prosecution could not produce her birth certificate as her birth was not registered. Also most of witnesses in the case turned hostile.

Ms. Mariavva deposed in the court and narrated her commercial exploitation by her mother and the brothel-keeper. The prosecution felt that the statement of Ms. Mariavva was not sufficient in the absence of any other documentary evidence or other witnesses.

The prosecution decided to summon the magistrate to depose. The magistrate deposed in the court and narrated the statement of Ms. Mariavva to him and also produced the copy of the statement signed by Ms. Mariavva.

The brothel-keeper and the victim's mother were convicted in the case.

#### **10. INFORMATION RECEIVED FROM THE VICTIMS CAN BE USED FOR FURTHER**

##### **ACTIONS:-**

The victims rescued from commercial sexual exploitation many a times have information about the commercial sexual exploitation activities in other places and about the traffickers.

At the police station the victims usually do not share the information due to fear and/or lack of trust in the police. But is quiet often found that when they are at the home and after they are provided counseling and treated humanly by the magistrate they share information about commercial activities and about the perpetrators.

The magistrate can document the information shared about commercial sexual exploitation by the victim and direct the police to investigate and take action.

Ms. Roma along with the four other girls was rescued from a massage parlor in Mapusa, Goa. After her rescue she was remanded to the protective home under section 17.

While at Protective she shared with the Arz counselor about one, massage parlor where commercial sexual activities was taking place.

The counselor encouraged the victim to share the information with the magistrate. The victim while giving her statement provided detail information about the place, owner, modus operandi, nexuses with the local police, etc.

The magistrate ensured that the case is taken up by the crime branch Goa and investigation conducted.

After the investigation the crime branch found that the information provided by Ms. Roma was correct. The police conducted a raid and rescued 4 girls and arrested the owner of the parlor.

## **11. PROTECTION OF THE RIGHTS OF THE VICTIM:**

Sec 15 of ITPA provides for mandatory provisions to be followed by the police while conducting raid. The mandatory provisions are to ensure the protection of the rights of the victims and to prevent harassment and abuse by the police.

Sec 15 (2) provides for two or more respectable witnesses (at least one of them shall be a women). The provision for the respectable women is to ensure that wrong person/s are not rescued and during the rescue there is no abuse by the police.

But many a times it is found that the provisions of sec 15 are not followed. Women are rounded up by the police, women & girls are physically and sexually abused, properties are stolen by the police during the raid, rescued persons are locked in the police lockups, demand of bribe is made after the rescue for release, etc. The victims many a time find it difficult to complain and/or don't know whom to complain as the police personals are responsible for the abuse.

It is not only the police, but it is often found that the victims are ill-treated at the government hospital when they go for medical examination and also by the staff of the government protective home where they are remanded or detained.

The victims generally find it comfortable to share with the magistrate and the panel the abuse and the harassment they have faced either by the police, medical officer or by the staff of the protective home.

The victims feel comfortable in sharing with the magistrate the abuse they face by the police or the medical authority during the medical examination or the staff of the government protective home.

Based on the information the magistrate can order the senior authorities to take necessary action.

#### **POLICE**

In a raid conducted in one of the massage parlors in the North Goa the Goa police rescued 3 girls. The girls were later referred to the state protective home under sec 17 by the magistrate.

The 3 girls while giving their statement to the panel {constituted under sec 17 (5)} claimed that they were not involved in commercial sexual activities. The two girls said they were involved in massage and the third one claimed that she was an accountant.

The magistrate while conducting inquiry along with the panel member found that the provisions laid under Sec 15 of ITPA which provides for presence of respectable witnesses were not followed. The magistrate observed that it was a round up by the police and there was no evidence to prove that the girls were involved in commercial sexual activities.

The magistrate felt that it was a gross violation of human rights of the 3 girls. He ordered for the immediate release of the 3 girls and reported the matter to the senior police officials to take necessary action.

### **PROTECTIVE HOME**

During one of the panel meeting the inmates of the protective home brought to the notice of the panel and the magistrate that they have not been informed the content of the final order of the magistrate. They also shared that they are unaware about the progress with regard to the implementation of the direction passed by the magistrate.

The magistrate summoned the Superintendent of the Protective Home and informed her that the inmates have the right to know about the final decision taken by the magistrate with regard to them and also about the progress in the implementation of the order. He also shared with the Superintendent that hence forth a copy of the order should be served to the victim and be read to the victim in the language she understands.

**12. CLOSURE OF BROTHEL:** - The brothel (place being used for commercial sexual exploitation) plays a key role in encouraging, existence and continuance of commercial sexual exploitation. Therefore, it is utmost important that action needs to be initiated against the place used for commercial sexual exploitation.

As per, sec 18 of ITPA,1956, if any place is used for CSE it can be attached for improper use. The authority to take such action is with the magistrate (District Magistrate or Sub - Divisional Magistrate), *Schedule II of The ITPA, 1956.*

Inquiry under sec 17 assists in taking action under sec 18 for sealing the brothel, because it is the same authority that is authorized to take action under both the sections, 17 & 18 of ITPA. Inquiry under sec 17 provides opportunity and assists the magistrate to confirm if the place was being used as a brothel or not? If used, collecting necessary evidence from the victim and initiating action under sec 18 of ITPA to seal the place.

#### **CASE STUDY**

Two girls from Andhra Pradesh were rescued from Mormugao, Taluka of Goa. After their rescue they were referred to the Government Protective Home for safe custody and protection under sec 17 of ITPA. The sub-divisional magistrate, Mormugao while conducting an inquiry found that the flat in which they were kept was being used as a brothel. The brothel keeper had rented this place wherein she had kept the two girls and was also forcing the two girls to entertain the customers solicited by her.

The magistrate based on the statement of the two victims, police report and other evidences produced before him concluded that the place was indeed used as a brothel and qualifies under sec 18 of ITPA to be sealed. The magistrate after following due process of law ordered for sealing of the brothel.