

**Status of Rehabilitation of Rescued Bonded Labourers-  
Analysis of Data with Bachpan Bachao Andolan  
(2010-2014)**



**Bachpan  
Bachao  
Andolan**

**2015**

# I. Bachpan Bachao Andolan – An Introduction

Bachpan Bachao Andolan (BBA), started in 1980, is a people's movement at the grassroots level with the vision to create a 'child friendly society,' providing children access to basic rights for their growth and development.

BBA adopts a three pronged approach to create child friendly society. **Rescue, Rehabilitation and Prosecution** is an end to end Victims' Assistance programme that entails rescue of victims of exploitation, provision of free legal aid for rehabilitation of survivors and prosecution of offenders. **Child Friendly Village (CFV)** is a programme that involves the entire village community in upholding children's rights. It is a preventive approach, started in 2001, with focus on preventing labour trafficking through access to education and community development. **Campaigns and Policy Advocacy** work

encompasses the organization of public awareness campaigns and sensitising legislators for policy changes to uphold children's rights and to strengthen institutional mechanisms for effective response.

BBA has been actively involved in bringing the issue of child labour to the forefront. BBA's advocacy on the issue and support to the government led to substantive changes in policies and laws on child labour and juvenile justice system. Since its inception, BBA has successfully rescued 84,702 victims of forced labour and bondage with help of law enforcement agencies. BBA also ensures repatriation and statutory rehabilitation of the rescued victims as well as carries out their follow-up through its field staffs to keep track of the rescued victims.

## II. Rehabilitation of Bonded Labourers

An elaborate judgment on the condition of rescued bonded labourers and their rehabilitation was given by the Supreme Court of India in Neeraja Chaudhary and State of Madhya Pradesh [AIR 1984 SC 1009, order dated 8<sup>th</sup> May 1984]. The judgment gave detailed guidelines on the rehabilitation process and ways for effective monitoring and proper implementation.

Writing the judgment Justice Bhagwati observed, "Ensuring rehabilitation of bonded labourers is far more important than mere identification and rescue because without rehabilitation, they would be driven by poverty, helplessness and despair forcing them back into the same situation." It is therefore imperative that every possible effort are made by the government and judiciary to see that the freed bonded labourers are properly and suitably rehabilitated after their rescue, under the provisions of the Centrally Sponsored Schemes for Rehabilitation of Freed Bonded Labourers, 1978.

Justice Bhagwati also observed, "Whenever it is shown that a labourer is made to provide forced labour, it is presumed that he is required to do so in

consideration of an advance received by him and is, therefore, a bonded labourer unless proved otherwise."

Quoting the Constitution of India, the Court held that every bonded labourer must be identified, rescued and be suitably rehabilitated. Failure to provide suitable rehabilitation is tantamount to violation of the fundamental right (of the freed bonded labourers) as enshrined in Article 21 of the Constitution.

For proper implementation and monitoring of bonded labourer's rehabilitation, the court directed an intensive survey of bonded labour prone areas and check and supervision over the activities of the officers charged with the task of securing identification, release and rehabilitation of bonded labourers.

Justice Bhagwati further stated in the judgment, "India had plenty of good schemes but the real difficulty lay in securing their proper and effective implementation. The evaluation of the implementation of these schemes must be target-oriented and not expenditure-oriented."

### III. Analysis of BBA Data on Rescued Bonded Labourers

There is no centralised system of recording information on rehabilitated bonded labourers in India. The United States Trafficking in Person Report (USTIP), published in 2012, quoted Ministry of Home Affairs data on rescued bonded labour in India. According to this information, in 2012, 865 bonded labourers were rescued in India. However, we know that in the same year 808 bonded labourers were rescued on the complaints filed by BBA, a staggering 93% of the total. However, the same report is silent on the rehabilitation benefits given to these rescued bonded labourers.

An important problem with regards to the situation of bonded labourers in India is with non-implementation of the legislative provisions made for the rehabilitation of the bonded labourers after they have been freed.

BBA has developed internal systems to track progress of the process of rehabilitation of rescued bonded labourers through follow-up by letters, phone calls, physical visit to child's home by staffs and information sought under RTI.

Between 2010 and 2014, BBA identified 14,782 victims of trafficking for forced labourers of which 5,828 have been rescued. Out of the total rescued, only 3,266 are bonded labourers. During follow-up, carried out for a small sample of all rescued bonded labourers, it has been found that only 722 rescued bonded labourers have received rehabilitation benefits so far while 464 bonded labourers, who have been issued release certificate<sup>1</sup> and have subsequently been repatriated, have not received any rehabilitation assistance. Among 2562 rescued forced labourers (not accepted as bonded labourers), 979 are yet to get their bonded status certification/release certificate as their cases are lying pending.

Complete analysis of BBA's data is presented below (all figures in percentages):

#### Status of Trafficking Victims Rescued

**Figure 1: Proportion of rescued bonded labour to other trafficked victims**

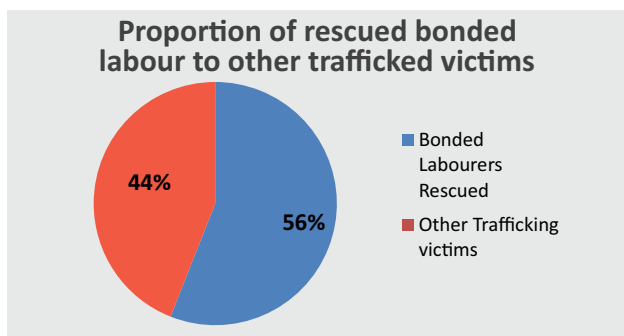


Figure No. 1 shows almost half of the trafficking victims rescued by BBA are not accepted as bonded labourers.

**Figure 2: Age-wise Trafficked Victims Rescued**

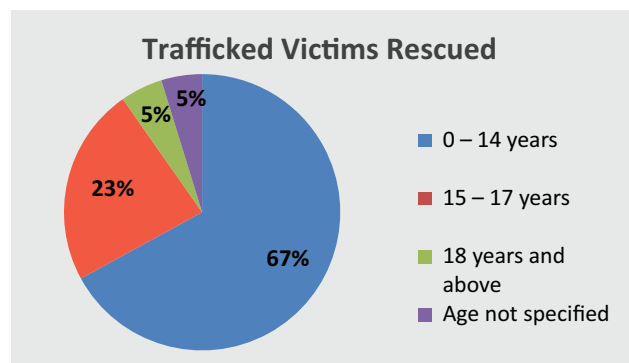


Figure no. 2 shows two-third of the trafficked victims rescued are children below 14 years and around one-fourth belongs to 15-17 years age group.

**Figure 3: Age-wise distribution of bonded labourers rescued**

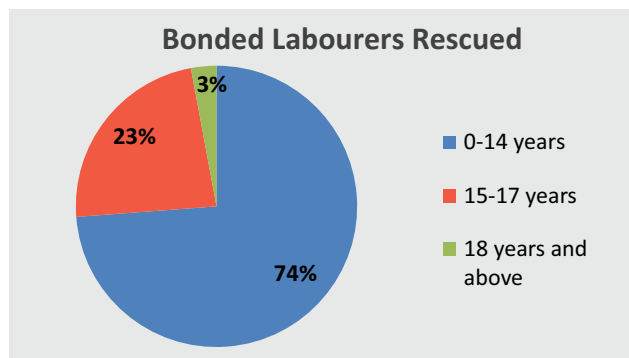
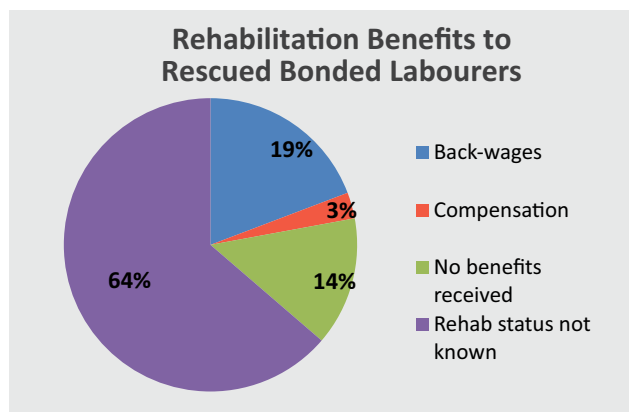


Figure no. 3 shows three-fourth of the total bonded labourers rescued are children under 14 years.

#### Status of Rehabilitation

**Figure 4: Rehabilitation benefits to rescued bonded labourers**



The figure no. 4 shows rehabilitation status of almost two third of rescued bonded labourers are not known. In addition, the figure also shows that one out of seven children did not receive any rehabilitation benefits.

1. A government document declaring a rescued labourer as bonded labourer.

**Figure: 5 Release Certificate of rescued bonded labourers – Pending cases**

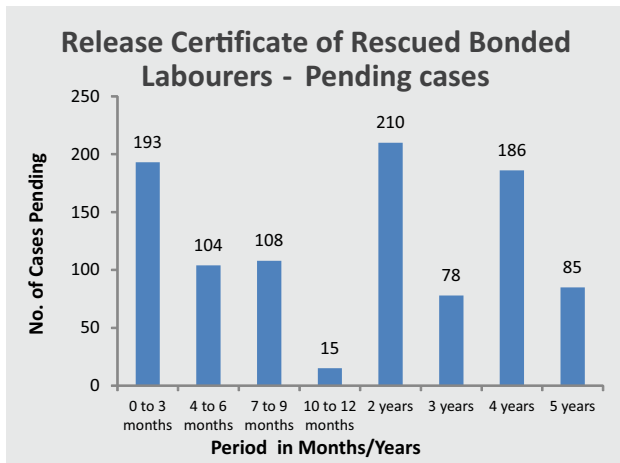


Figure no. 5 shows statistics of rescued child labourers who did not receive release certificates till date because their cases are lying pending.

## IV. Major Findings

Between 2010 and 2014, BBA rescued 5828 victims of trafficking for forced labour. Of the total rescued victims of trafficking for forced labour by BBA-

- 67% are below 14 years.
- 56% are bonded labourers.
- Rs. 1,39,15,661 has been recovered as back-wages
- Rs. 14,16,000 has been received as compensation under MC Mehta judgment and Centrally Sponsored Schemes for Rehabilitation of Freed Bonded Labourers
- Rs. 9,69,75,000 is total accrued compensation as per MC Mehta Judgment for rescued child labourers below 14 years
- 17% did not get bonded status certificate because the cases are pending.

Of the total rescued victims of bonded labour by BBA-

- 74% are below 14 years of age.
- 14% did not receive any rehabilitation benefits despite declared bonded labourers whereas rehabilitation status of 64% of rescued victims is not known.
- Rs. 6,34,40,000 is total accrued compensation under Centrally Sponsored Schemes for Rehabilitation of Freed Bonded Labourers.

## V. Conclusion

Proper rehabilitation of rescued bonded labourers in India is still a distant dream. In many cases it has been observed that-

1. People rescued from trafficking and forced labour are not given release certificates;
2. Even when orders certifying rescued children as bonded labourers have been issued by the District Magistrate/ concerned authority, the release certificate have not been issued to them; and
3. Even when release certificates have been issued to the rescued bonded labourers, no efforts for compulsory rehabilitation been made by the Center and State Governments.

## VI. Suggestions

On the basis of the findings and observations made by this report, it is suggested that –

1. All pending cases of certifying bonded status to rescued labourers should be completed within 7 days.
2. All the rescued labourers who have been awarded bonded status but did not receive any rehabilitation benefits should be given the benefits immediately.
3. All the rescued child labourers, below 14 years of age, should be given the status of bonded labour.

# **Annexures**

## **Annexure I**

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9767/2009**

COURT ON ITS OWN MOTION ..... Petitioner

versus

GOVT OF NCT OF DELHI ..... Respondent

Through: Mr.A.S. Chandhiok, ASG with  
Mr. Sanjay Katyal, Ms. Sweta Kakkad &  
Mr. Varun Pathak, Advs. for UOI.  
Ms. Mukta Gupta, Standing Counsel  
with Mr. Rajat Katyal, Adv. for State.  
Mr. Anil Shrivastav, Adv. for NCPCR.  
Ms. Asha Menon, Member Secretary,  
DLSA with Mr. Harish Dudani, OSD for  
DLSA.

AND

+ **W.P.(CRL) 2069/2005**

SAVE THE CHILDHOOD  
FOUNDATION

..... Petitioner

Through: Mr. H.S. Phoolka, Sr. Adv. with  
Ms. Sunita Tiwari & Mr. Bhuwan  
Ribhu, Advocates.

versus

UNION OF INDIA & ORS. .... Respondents

Through: Mr.A.S. Chandhiok, ASG with  
Mr. Sanjay Katyal, Ms. Sweta Kakkad &  
Mr. Varun Pathak, Advs. for UOI.  
Ms. Mukta Gupta, Standing Counsel  
with Mr. Rajat Katyal, Adv. for State.  
Mr. Anil Shrivastav, Adv. for NCPCR.  
Ms. Asha Menon, Member Secretary,  
DLSA with Mr. Harish Dudani, OSD for  
DLSA.

AND

+ **W.P.(C) 15090/2006**

Q.I.C. & A.C.

..... Petitioner

Through: None.

versus

**MINISTRY OF LABOUR &  
EMPLOYMENT & ANR.**

..... Respondents

Through: Ms. Zubeda Begum, Adv. for GNCTD.  
and Labour Department.

Mr. Anil Shrivastav, Adv. for NCPCR.

Ms. Asha Menon, Member Secretary,  
DLSA with Mr. Harish Dudani, OSD for  
DLSA.

AND

+ **W.P.(C) 4125/2007**

**ALL INDIA BHRASHTACHAR  
VIRODHI MORCHA (REGD.)**

..... Petitioner

Through: Mr. Tiger Singh, Adv. with Ms. Jasbir  
Singh & Mr. Manmeet Singh, Adv.

versus

**KAROL BAGH BANGIYA  
SWARAN SHILPI SAMITI  
(REGD.) & ORS.**

..... Respondents

Through: Mr. Mayank Nagi, Adv. for R-1.

Ms. Deepak Tiwari, Adv. for Ms. Sujata  
Kashyap, Adv. for GNCT.

Mr. Sanjeev Sabharwal, Adv. with Mr.  
Hem Kumar, Adv. for MCD.

Ms. Pinky Anand, Adv. with

Ms. Aakanksha Munjhal, Adv. for R-7.

Mr. Anil Shrivastav, Adv. for NCPCR.

Ms. Asha Menon, Member Secretary,  
DLSA with Mr. Harish Dudani, OSD for  
DLSA.

AND

+ **W.P.(C) 4161/2008**

COURT ON ITS OWN MOTION ..... Petitioner

versus

STATE NCT OF DELHI ..... Respondents

Through: Ms. Zubeda Begum, Adv. for GNCT.  
Mr. Anil Shrivastav, Adv. for NCPCR.  
Ms. Asha Menon, Member Secretary,  
DLSA with Mr. Harish Dudani, OSD for  
DLSA.

Reserved on : July 09, 2009

Date of Decision: July 15, 2009

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE MANMOHAN**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the digest? Yes.

### **J U D G M E N T**

**MANMOHAN, J :**

1. Today's children constitute tomorrow's future. To ensure a bright future of our children, we have to ensure that they are educated and not exploited.

2. In fact, children are the most vulnerable members of any society. They are entitled to special care and assistance because of their physical and mental immaturity. The problem is more complicated in developing



countries like ours, where child labour exists in relationship with illiteracy and poverty.

3. To eliminate the menace of child labour and to effectuate the mandate of Articles 23, 24, 39, 45 and 47 of the Constitution, Supreme Court had given a large number of mandatory directions in “*M.C. Mehta v. State of Tamil Nadu* reported in *AIR 1997 SC 699*”. One of the important directions was to direct an employer to pay a compensation of Rs.20,000/- for having employed a child below the age of 14 years in hazardous work in contravention of Child Labour (Prohibition & Regulation) Act, 1986 (hereinafter referred to as ‘CLPRA, 1986’). The appropriate Government was also directed to contribute a grant/deposit of Rs.5,000/- for each such child employed in a hazardous job. The said sum of Rs.25,000/- was to be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund and the income from such corpus was to be used for rehabilitation of the rescued child.

4. As the constitutional mandate and statutory provisions with regard to children were not being vigorously implemented and there was lack of coordination between different agencies of the Government of NCT of Delhi and other authorities, this Court, vide a detailed order dated 24<sup>th</sup> September, 2008 directed the National Commission for Protection of Child Rights (hereinafter referred to as ‘National Commission’), to formulate a detailed Action Plan for strict enforcement and implementation of CLPRA, 1986 and other related legislations. The National Commission was directed to suggest

measures regarding education, health and financial support to the rescued children. The National Commission was also directed to suggest measures for timely recovery and proper utilization of funds collected under the Supreme Court's direction in the aforesaid *M.C. Mehta's* case.

5. The National Commission after holding consultation with various stakeholders and after conducting research and survey submitted to this Court a *Delhi Action Plan for Total Abolition of Child Labour*.

6. According to the National Commission, the *child labour profile* in Delhi is of two types namely, *out-of-school children* living with their parents in Delhi and *migrant children* from other states who have left their family behind.

7. The Action Plan for Total Abolition of Child Labour is *based on two strategies*. The *first strategy* is an 'Area Based Approach' for elimination of child labour, wherein all children in the age group of 6 to 14 years would be covered whether they are in school or out-of-school. The National Commission has proposed that this approach be initiated as a *Pilot Project in North-West District of Delhi*.

8. The *second strategy* is an approach to be adopted in the *context of migrant child labour*. It involves a process of identification, rescue, repatriation and rehabilitation of child labour. This strategy is proposed to be implemented as a *Pilot Project in South Delhi District*.

9. It is pertinent to mention that both the strategies in essence implement CLPRA, 1986, Delhi Shops and Establishment Act, 1954, Juvenile Justice (Care and Protection of Children ) Act, 2000 and the Bonded Labour System (Abolition ) Act, 1976.

10. One of the objectives of the Area Based Approach is to mobilize and build consensus on the issue of total abolition of child labour through universalisation of elementary education. The plan attains to mobilize and build consensus by holding public meetings, rallies and by involving Municipal Councilors, RWAs' etc.

11. The Area Based Approach also aims to enroll all children in the age group of 6 to 14 years in schools and to withdraw them from work, while at the same time ensuring their retention in schools. This approach also seeks to integrate older children withdrawn from work in classes according to their age through programmes of various courses and accelerated learning. This objective is sought to be achieved by setting up *Transitional Education Centres or Non-Residential Bridge Course Centres or Residential Bridge Course Camps* as well as by holding *Short Term Camps*. This approach also aims to build local institutions for protection of Child Rights by forming Committees and Forums of Liberation of Child Labour (Youth and Teachers' Wings) as well as strengthening of Vidyalaya Kalyan Samitis and by implementing training and retention programmes on issues relating to Child Labour and Children Rights to Education along with tasks and roles of specific stakeholders.

12. The Strategy for Unaccompanied Migrant Child Labourers in Delhi is based on “Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour” issued by Ministry of Labour and Employment, Government of India, 2008. According to the Action Plan, trafficked and migrant child labourers are primarily engaged in prohibited occupations such as zari, bulb manufacturing, auto workshop units and domestic household etc.

13. This strategy contemplates constitution of a *Steering Committee on Child Labour* at the State level and *District Level Task Force on Child Labour* at District Level.

14. The Delhi Action Plan provides for a detailed procedure to be adopted at the pre-rescue and actual rescue stage. The pre-rescue plan deals with as to how information is to be collected, verified and as to the composition of the rescue team as well as what training is to be imparted in advance to the members of the rescue team. The pre-rescue plan provides for prior preparation of residential centres through RBC, JJ Homes, NGO Shelter for accommodating the child labour proposed to be rescued.

15. The Delhi Action Plan provides a detailed procedure for interim care and protection of the rescued children. It provides for immediate medical examination of the children and as to how investigation is to be conducted and charge sheet is to be prepared.

16. The strategy for Unaccompanied Migrant Children also provides for assessment and verification of Child's background and intra state as well as inter state repatriation.

17. The Action Plan provides for detailed procedure for rehabilitation and social integration of the child labour as well as training and capacity building of duty bearers.

18. In a bid to ensure proper coordination amongst different agencies of the Government of NCT of Delhi, the Action Plan defines the role and responsibilities of various departments/authorities involved in the process in the following consolidated manner:

### **“7.7. The Responsibilities of the Respective Departments**

#### **7.7.1. Delhi Police**

*The concerned Deputy Commissioner of Police should:*

- a. Make the necessary arrangements of police force for raids as per the demand and requirement of Action Force;*
- b. Personally participate in the raids conducted by the Action Force;*
- c. Should take charge of the child labour liberated by the Action Force;*
- d. Should take steps to arrest the owners/employers of the child labour as per provision of Indian Penal Code Sec. 331, 370, 374 and 34 as well as provisions of Sec. 23, 24, 26 of Child Justice (Care and Protection) Act. They should register the crime and take all the necessary future steps to conduct further criminal proceedings;*

- e. *Should treat the liberated child labour with respect and honour and hand them over to children's home in the charge of officers of Women and Child Welfare Department;*
- f. *Put forward the cases of child labour as per Section 32 with the help of Action Force in front of Child Welfare Committee. As per the decision of the Child Welfare Committee, the children should be handed over to their parents through JAPU if the children are from other states.*

#### **7.7.2. Department of Labour, GNCTD:**

- a) *To keep the areas in their jurisdiction where the child labour is likely to be hired under continuous active surveillance.*
- b) *In case the child labour is found to be employed and if their number is high, then immediate action should be taken within 24 hours after contacting the District Collector and police officers by carrying out a raid through Action Force. If the number of child labour is less, then immediate action should be taken to liberate them on the very day with the help of departmental colleagues and police.*
- c) *To keep track of the planning and conduct of every child labour rescue operation. It should be ensured that adequate number of officers and shop inspectors are present during the raid. There should be active participation in the liberation of child labour. Necessary action should be carried out against the employer of the child labourer as per the provisions of Section 3 of Child Labour (Prohibition and Regulation) Act, 1986; if this is applicable. If Section 3 of the Act is not applicable then action should be taken under provisions of Section 7, 8, 9, 11, 12 and 13.*
- d) *Even if the job carried out by the child worker does not fall under the dangerous job category, the child labourer should be liberated from the clutches of unscrupulous employers and handed over to the police with a view to eradicate the undesirable practice of child labour and bringing these children under the mainstream of education.*
- e) *To document all details of the liberated child worker by obtaining details from him in an affectionate manner and furnishing a copy to the police department. A complaint*

*against the employer of the child labourer should be lodged (with the help of Task Force, if necessary) with the police and his statement should be recorded as a matter of formality and duty.*

- f) While obtaining information from the child labourer, if it is found that the employer had paid any money as financial assistance, loan advance etc. to the parents, then immediate report should be made to the District Collector for declaring the child labourer as 'forced' labourer and a copy should be endorsed to the Government through the Commissioner.*
- g) Due care of the liberated child labourers should be taken till they are sent to the Children's Home and it should be seen that they are provided with proper food, water and other facilities in time.*
- h) As per the definition specified in Section 2(K) of the Juvenile Justice (Care and Protection of Children) Act 2000, the individual who is below 18 years of age should be considered as a child. Therefore in the course of raid, if child workers above 14 years of age are found, then they should also be liberated from the clutches of the employer(s) and handed over to the police.*
- i) A sum of Rs. 20,000/- (Rupees Twenty Thousand) should be recovered from the employer of child labourer subjected to legal action vide Section 3 of Child Labour (Prohibition & Regulation) Act 1986 as per the directives issued by the Hon'ble Supreme Court in the M.C. Mehta case, 1996 and credited to the District Child Labour Welfare Fund of the District to which the child originally belongs.*
- j) To designate nodal officers at senior level to be part of the District Level Child Labour Task Force (districtwise) and also for the rescue team.*
- k) To strengthen the intelligence network through the Community Workers of the Labour Department on the status of out-of-school children, places of work involving children and their employers/contractors/middlemen, etc.*
- l) Necessary legal action should also be taken against the employers of child labourers under the following legislations and corresponding Rules (wherever applicable):*

- i. Delhi Shops and Establishment Act, 1954*
- ii. Minimum Wages Act, 1948*
- iii. Motor Transport Workers Act, 1961*
- iv. Factory Act, 1948*
- v. Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979.*
- vi. Contract Labour (Regulation & Abolition) Act, 1970.*

### **7.7.3. Women and Child Welfare Department, GNCTD**

- a) Generation of awareness among masses against the practice of child labour. Steps should be taken for the rehabilitation of local child labourers with the help of Deputy Commissioner (DC) and voluntary organizations, if the child labourer happens to be from the local area.*
- b) Take charge of child labourers liberated by the Action Force and see that they are provided adequate food, clothing and shelter. Due care should be taken about their safety.*
- c) If the child worker happens to be a local person, she/he should be inducted in the mainstream of education with the help of education officer. If possible, he/she should be provided job oriented technical education.*
- d) The Superintendent of the Children Home to which the liberated Child Labourers have been placed should arrange for the interaction/taking of statements by the concerned Child Welfare Committee.*
- e) Information about instructions of the Child Welfare Committee should be independently submitted to the DC and Labour Commissioner every month.*
- f) DWCD, GNCTD should designate nodal officers at senior level who can be part of the District Child Labour Task Force for every district.*
- g) Issue letters to the respective CWCs to nominate a member who can be part of the District Child Labour Task Force. Such member of the CWC can be a link between the CWC*



*and District Child Labour Task Force for all practical purposes, including, attending the pre-rescue planning meeting of the Task Force, issuing Orders for the interim care and custody of the rescued child reports (SIR), verification/identification of their families and their ultimate repatriations/follow-up. The CWC Member will get the inquiry done and Social Investigation Report prepared under JJ Act in a child friendly manner at the camp/home/hostel/RBC where the children have been lodged.*

- h) To keep the Homes ready for the reception and suitable accommodation of the rescued child labours.*

#### **7.7.4. Education Department, GNCTD**

- a) In order to absorb the liberated child labourer into mainstream of education without any discrimination, (sex/caste etc.) they should be offered free and compulsory education and should be compelled to receive it.*
- b) Various schemes sponsored by the Central and State Governments should be implemented for this purpose.*
- c) During their educational period, they should get the benefit of free meals scheme of the State Government.*
- d) The Department will set up initially 250 Alternative Innovate Education Centres (AIEC)/NRBCs in the areas of child labour concentration and/or in the areas having large number of out-of-school children. The Department would also ensure that all the children at NRBCs/RBCs are given free mid day meal (as assured by the Department, vide UEE Mission letter no. 39, dated 11.4.2009).*
- e) Care should be taken to see that the child labourer develops liking for the education.*
- f) The education officer and Principal of the school should be held responsible for the dropouts among the child labourers receiving education.*
- g) Parents of child labourer should be counseled to stress the importance of education among the labourers.*

- h) Monitoring of academically weaker children in schools will be done with the involvement of CRC and NGOs for (as assured by the Department, vide UEE Mission letter no. 39, dated 11.4.2009) preventing dropouts.*
- i) The concerned District Urban Resource Centre Coordinator (DURCC) will send a monthly report to the Dy. Commissioner of the District with a copy of the same to the SPD (SSA) and Director (Education), GNCTD about the following:*
- i. School wise and class wise attendance and drop-outs corresponding to the number of children enrolled;*
  - ii. Number of out-of-school children in the district (school wise and class wise) along with the list;*
  - iii. The efforts made for awareness/sensitization/educational counseling of children and their parents.*

*Such reports should be examined in the following meeting of the district level Task Force and of the state level Steering Committee as well as at the highest level in the Education Department of GNCTD for remedial measures.*

- j) Department will ensure that all its schools have adequate number of teachers in proportion to children in each class (subject specific, wherever applicable) and they are maintaining punctuality. It should also introduce a system of incentive/reward for its schools which maintains higher enrolment/retention of out-of-school children and prevent dropouts as well as a system of disincentives for those who consistently fail to identify, enroll and retain the out-of-school children.*

#### **7.7.5. Health Department, GNCTD**

- a) After receiving information about the raid of Action Force through Labour Officer/Police Officer, complete medical examination of liberated child labourers should be carried out.*
- b) Immediate medical treatment should be initiated, if required.*

- c) *Clear certificate of age (issued by medical officers not below the rank of Government Assistant Surgeon) of the liberated child labourer should be furnished immediately to the investigating police officer or Government labour officer as per their demand.*
- d) *Expenses incurred towards the treatment and issuance of medical certificate should be met by the DC from the District Child Welfare Fund and should be recovered from the employer of the child labourer and reimbursed to the District Child Welfare Fund after recovery.*

#### **7.7.6. Municipal Corporation of Delhi (MCD)**

- a) *Under its Slum Development Programme, the MCD should enhance the standard of living of all children living in the slums within its jurisdiction and particularly ensuring effective access to free health check up and medical care, quality education, recreation, vocational training and community life.*
- b) *MCD Schools should provide free and compulsory education to all rescued child labourers belong to Delhi irrespective of their age (by arranging accelerated learning for the older children through NRBCs wherever necessary for mainstreaming them to age appropriate classes) without any discrimination (sex/caste etc.). They should be mentoring the non-formal education programmes run by NGOs in various slums with a view to bringing all out-of-school children in the area into the fold of mainstream education.*
- c) *The Headmasters and the teachers of the MCD schools will hold a monthly meeting of the parents for sensitizing/counselling them about importance of the education. Experts/communities leaders would be invited to such meetings.*
- d) *MCD will also have sensitization/counselling programmes for the slum-dwellers in general about the importance of education for their children and the facilities available for the same as well as the long-term evil impacts of child labour through meetings, prabhat ferries, documentary films, etc. in the colonies.*

- e) *The MCD should ensure that all its schools have adequate number of teachers in proportion to children in each class (subject specific, wherever applicable) and such teachers are maintaining punctuality. It should also introduce a system of incentive/reward for its schools which maintains higher enrolment/retention of out-of-school children and prevent dropouts as well as a system of disincentives for those who consistently fail to identify, enroll and retain the out-of-school children.*
- f) *The Education Department of MCD will obtain the list of children who are not attending schools and will instruct the Principal of the concerned school(s) to bring such children back to school.*
- g) *The concerned Zonal Dy. Education officer (DEO) will send a monthly report to the Dy. Commissioner of the District with a copy of the same to the Labour Commissioner and the Education Department of MCD about the school wise and class wise attendance and drop-outs corresponding to the number of children admitted. The report should also include the efforts made for sensitization/educational counseling of children and their parents. Such reports should be examined in the following meeting of the district level Task Force and of the state level Steering Committee as well as in the Education Department of MCD for remedial measures.*
- h) *The Zonal Deputy Education Officer (DEO) will be responsible as the Nodal Officer on behalf of MCD on various matters relating to the pre-rescue planning, rescue and post-rescue rehabilitation/education in the concerned MCD area(s).*

#### **7.7.7. Deputy Commissioner of the District concerned**

- a) *To ensure that no incidence of child labour in any form is found within his/her jurisdiction.*
- b) *To get the meeting of the District level Task Force on Child Labour on monthly basis and to preside over the same.*
- c) *To forward a copy of the monthly meetings of the District level Task Force on Child Labour, detailed report of the*

*review meeting should be sent to the Government of NCT of Delhi through Labour Commissioner.*

- d) To get a list of all voluntary organizations dealing with the problems of child labour prepared with areas of their expertise and to ensure that such list is updated on regular basis. Along with these organizations, public awareness drives should be arranged. Public opinion should be generated to stress that education is the right of every child and is a first step towards progress.*
- e) To get constantly updated about the raids, rescues and rehabilitations of child labourers in the district and to extend all necessary support to the rescue team.*
- f) To ensure that all necessary actions are taken within his competence under the Bonded Labour System (Abolition) Act and Rules, 1976 as well as under the 'Centrally Sponsored Plan Scheme for Rehabilitation of Bonded Labour', if the facts and circumstances in which child labourers are found lead to the presumption that they are forced labourers/bonded labourers.*
- g) To also ensure that Rs.20,000/- per child labourer is recovered from his/her employer and credited along with Rs.5000/- to the District Child Labour Welfare Fund, as per the direction of the Hon'ble Supreme Court of India in the case of M.C. Mehta, 1996.*
- h) To furnish a utilization certificate to the Government through the Labour Commissioner about the funds stated above on half yearly basis, before 30 September and 31 March every year.*
- i) Guidance may be sought (wherever necessary) from the Labour Commissioner with regard to the utilization of collected funds. As far as possible, the amount collected should be utilized for the rehabilitation of the child labourers for whom the amount is collected.*
- j) As per the judgment of the Supreme Court cited above, adult unemployed member of the family of the child labourer should be provided employment there in his place and the child should be directed to receive education.*

*k) In case the child has taken up the job due to economic condition of the family, adequate efforts should be made to provide all benefits to the family under all relevant developmental and social security schemes of the Government.*

*7.8. The above roles and responsibilities of concerned departments /authorities of Government of NCT of Delhi will be required for implementing both Strategy – I (Social Mobilization for Total Abolition of Child Labour) and Strategy - II (Pre-rescue, Actual-rescue, Interim care, Enforcement of Laws, Repatriation and Rehabilitation of Child Labour).”*

19. Subsequent to the filing of the aforesaid Action Plan, the Labour Department of Government of NCT of Delhi has raised some issues. According to the Labour Department, CLPRA, 1986 prohibits employment of children only in certain scheduled occupations and processes. Consequently, according to the Labour Department, child workers employed in non-hazardous jobs cannot be rescued. The Labour Department has further urged that in the Action Plan it has been stipulated that all children between the age of 14 to 18 years have to be liberated and handed over to the police, even though CLPRA, 1986, defines child as a person who has not completed 14 years of age.

20. On a perusal of CLPRA, 1986, we are of the view that under the said Act, only child workers employed in scheduled occupation and processes can be liberated and children employed above the age of 14 years cannot be rescued.

21. However, in our view, the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply to children between the age of 14 and 18 years as well as to those children employed below the age of 14 years in non-scheduled occupation and processes. Consequently, the said children would be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as Bonded Labour System (Abolition ) Act, 1976, if applicable and not by CLPRA, 1986, as stipulated in the Delhi Action Plan prepared by the National Commission.

22. Moreover, at the request of Labour Department, we direct that the responsibility of lodging a police complaint against an employer employing child labour would lie with the Delhi Police and not the Labour Department as directed in the Delhi Action Plan. We further clarify that the authority to take action under the Bonded Labour System Abolition Act, 1976, would be the Deputy Commissioner of District concerned and not the Labour Department. Accordingly, paras (e) and (f) of para 7.7.2 of the Delhi Action Plan are amended.

23. It is further clarified that the recovery of fine of Rs.20,000/- as stipulated by the Supreme Court in M.C. Mehta's case will not have to await a conviction order of the offending employer. The said amount would be recovered as arrears of land revenue and the said amount would be utilized for the educational needs of the rescued child even if the child has subsequently crossed the age of 14 years.

24. The Deputy Director, Child Welfare, has also filed a Status Report stating that considering the capacity and existing strength of NGOs' and Government run institutions in Delhi, the department would be able to accommodate only about 500 additional children every month, since the restoration efforts take about 30 to 40 days' time. The said Status Report, however, states that all efforts would be made to motivate NGOs to enhance their capacity to accommodate more children and to register more Children Homes.

25. Keeping in view the aforesaid infrastructural limitation, we direct the labour department to begin implementing the Delhi Action Plan by accommodating for the time being about 500 children every month.

26. Moreover, being cognizant of the fact that ground level reality may be different from the one projected in the Action Plan, we grant liberty to the above-mentioned authorities to seek clarification or amendment of the Action Plan from this Court.

27. To conclude, we would only quote what Dr. Dorothy I. Height, a social activist, has said, "*we have got to work to save our children and do it with full respect for the fact that if we do not, no one else is going to do it.*"

28. Consequently, we accept the Delhi Action Plan which provides a detailed procedure for interim care and protection of the rescued children to be followed by Labour Department as prepared by the National Commission with the modifications mentioned hereinabove in paras 20 to 26 and we



further direct all the authorities concerned to immediately implement the same. The Government of NCT of Delhi through the Labour Department is directed to file its First Taken Report to this Court after six months. For this purpose, list the present batch of matters on 13<sup>th</sup> January, 2010.

**MANMOHAN  
(JUDGE)**

**CHIEF JUSTICE**

**JULY 15, 2009**

**js**

## Annexure II

### Reportable

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (Crl.) No.82 of 2009**

**WP (Crl.) No.619 of 2002**

**With**

**WP (Crl.) No.879 of 2007**

% Reserved On: May 24, 2010.  
Pronounced On: December 24, 2010.

1) **W.P. (Crl.) No.82 of 2009**

**BACHPAN BACHAO & ORS.**

. . . Petitioners

through :

Mr. H.S. Phoolka, Sr. Advocate  
with Ms. Sunita Tiwari, Advocate.

VERSUS

**UNION OF INDIA & OTHERS**

. . . Respondent

through:

Mr. Pawan Sharma, Standing  
Counsel for the State.  
Mr. Sachin Dutta with Mr. Shariq  
Mohammed and Ms. Poorva  
Nanawati, Advocates and Mr.  
Baldev Malik, Advocate for the  
UOI.  
Ms. Aparna Bhat with Ms.  
Madhulika M., Advocates for the  
DCFW.  
Ms. Meera Bhatia, Adv. for Labour  
Department.

2) **W.P. (Crl.) No.879 of 2007**

**SHRAMJEEVI MAHILA SAMITI**

. . . Petitioner

through :

Mr. Colin Gonsalves, Sr. Advocate  
with Mr. Divya Jyoti Jaipuria, Ms.  
Ritu Kumar and Mr. Tariq Adeeb,  
Advocates.

VERSUS

**STATE & Others**

. . . Respondent

through: Mr. Pawan Sharma, Standing Counsel for the State.  
Mr. Sachin Dutta with Mr. Shariq Mohammed and Ms. Poorva Nanawati, Advocates for the UOI.  
Ms. Meera Bhatia, Adv. for Labour Department.

3) **W.P. (Crl.) No.619 of 2002**

**KALPANA PANDIT** . . . Petitioner

Through: Ms. Aparna Bhat with Mr. David A. Advocates.

VERSUS

**STATE** . . . Respondent

Through: Mr. Pawan Sharma, Standing Counsel for the State.  
Mr. Sachin Dutta with Mr. Shariq Mohammed and Ms. Poorva Nanawati, Advocates for the UOI.  
Ms. Meera Bhatia, Adv. for Labour Department.

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI**  
**HON'BLE MR. JUSTICE AJIT BHARIHOKE**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J.**

1. In all these three writ petitions filed in public interest, a disturbing problem which our society faces, day in and day out, has been highlighted. This conundrum relates to child trafficking. It is this menace prevailing in our society, which has been raised in all these writ petitions, *albeit* from different perspective. However, the primary objective and aim of all these writ petitions remains the same, viz., how to eradicate, or at least reduce to significant

level, this peril. In order to appreciate the issue, we shall take note of the facts which have led to the filing of these writ petitions.

**WP (Crl.) No.619 of 2002**

2. Kalpana Pandit is the petitioner in this case whose daughter is espoused by social activist/Advocate, Ms. Aparna Bhat. The petitioner is a domestic servant (illiterate lady), driven by poverty, working as domestic servant in various houses from time to time to earn the minimum livelihood for her family and sustaining the family for fulfilling the daily needs. Her family has roots in West Bengal. However, due to acute poverty and incapable to get any employment, she came to Delhi sometime in 1995-96, i.e. five to six years ago before filing this writ petition. The respondent No.4, viz., Sahyog Placement Sanstha is a placement agency, which makes arrangements for providing domestic helps to the residents of this city. Sometime in March, 1999, the petitioner handed over her daughter to this Sanstha, whose sole proprietor is Sunita Sen, for placement of her daughter as domestic help in some residence. The reason was that the petitioner had fallen serious sick for a long duration, which compelled her to stay at home, as she was not able to work because of the said sickness. Family, in any case, needed sustenance as there was nobody else to support the family financially, no alternative was left to the petitioner to compel her daughter Jharna to take up work.

3. Jharna started working as domestic help at the residence of respondent No.4. She believed that her daughter would be safe and secure with Sunita Sen. According to the petitioner, she did not know that Sunia Sen, who is one of placement agent would place Jharna as domestic help in other people's houses.
  
4. It is averred in the petition that in April 1999 when the petitioner recovered from her illness, she went to the house of Sunita Sen to meet her daughter and then only she came to know that Jharna was working as housemaid at the residence of some Mr. & Mrs. Kaul in Noida, Uttar Pradesh. She was shocked and surprised as no prior consent of the petitioner was obtained before taking such a step and she was not even informed about this. The petitioner pleads that with great difficulty, she managed to get the phone number of her daughter's employer and tried to contact her daughter, Jharna on that phone. However, she was not permitted to talk with Jharna. The petitioner was disturbed and tensed at the sudden disappearance of her daughter, but could not be able to comprehend whom to approach for the help. She went to the respondent No.4 again and respondent No.4 had arranged the petitioner to talk with her daughter Jharna on telephone. However, she had no idea where the respondent No.4 had called. She was concerned and worried about the safety of her growing daughter and wanted to meet her on the occasion of Raksha Bandhan. She along with her son went to the Noida house, the address whereof was provided to the petitioner on phone.

However, she could not be able to meet her daughter there. She made repeated attempts for this purpose by visiting Noida again and again, but didn't succeed. Her continues requests made to respondent No.4 also did not yield any results. She even tried to approach Mehrauli Police Station, but was not provided with any help or guidance there as well. While she was reconciling with the tragedy that had struck her, after a lapse of one and a half years or so, she was informed that her daughter Jharna was missing since 29.08.2000 and the missing complaint had been lodged by Jharna's employer on 06.09.2000 to enquire about her daughter. The petitioner was shocked to hear this and got in touch with the respondent No.4. The respondent No.4 even refused to hand over the copy of the alleged missing complaint. In these circumstances, the petitioner had no other option left but to approach the police station and to seek help to trace her daughter. She lodged an FIR in the Vasant Kunj Police Station on 02.02.2001 under Section 363 of Indian Penal Code. That was registered as FIR No.50 of 2001. However, according to her, no concrete steps were taken to investigate the allegation mentioned in the FIR. The petitioner, viz., had approached the Juvenile Welfare Board (JWB) and filed a case. The JWB acted promptly on the petitioner's complaint and summoned the respondent No.4 to attend the hearings but they did not consider it as important enough to attend the hearing and give the information they had regarding the whereabouts of the petitioner's daughter. However, case did not progress much due to non-appearance of the

respondent No.4. The JWB had at last addressed a letter to the Deputy Commissioner of Police, Crime Branch on 27.08.2001 and requested for a thorough investigation into the incident, but no headway was made. She waited for quite some time, as she was in dark about the whereabouts of her daughter, Jharna. On 23.05.2002, she filed the instant petition in the nature of *habeas corpus* seeking direction against the respondent No.4 to produce the petitioner's daughter, Jharna forthwith. The State of NCT Delhi is impleaded in petition as the respondent No.1, the Commissioner of Police as respondent No.2, S.H.O., Vasant Kunj Police Station as respondent No.3, Sahyog Placement Sanstha (owned by Ms. Sunita Sen) as respondent No.4 and Juvenile Welfare Board was impleaded as respondent No.5.

5. Obviously, it was treated as *habeas corpus* petition and notice was issued to all the respondents on 30.05.2002. It was also directed that notice to the respondent No.4 be served through the S.H.O., Police Station, Vasant Kunj. Juvenile Welfare Board will ensure that record is produced in Court alongwith the statement of respondent No.4 recorded by it. On the next date, i.e., 31.05.2002, after perusing the report of the Probation Officer from JWB and the progress report from the investigation carried out by the Police in FIR No.50/2001, this Court deemed it fit and proper to transfer the case to Anti-Kidnapping Cell, Crime Branch, Delhi Police to carry out further investigation and trace out the petitioner's daughter. The Court also directed the employer of

Jharna, viz. Mr. Veer Kaul and Mrs. Pammi Kaul to be impleaded as respondents. The matter went on from time to time, thereafter giving directions to the police time and again to trace out the missing girl, Jharna.

6. At the same time, the issue of exploitation of children working as domestic helps and children going missing in the process was also taken note of. During the discussions in this case, it transpired that many such placement agencies would place children, initially at some residence for domestic helps, but such children would ultimately be forced into the flesh-trade. Therefore, the Court also deemed it proper to address this issue as well in that proceedings, the petition was also treated as public interest litigation. Keeping the importance of the issue involved, an NGO known as Butter Flies intervened as was impleaded as respondent No.8. This aspect was highlighted in the order dated 04.10.2004 passed in this writ petition and we deem it proper to reproduce the same:

“Two distinct issues arise for consideration in this writ petition. One of these relates to the tracing and production of the missing minor girl named Jharna Pandit. Reports submitted by the investigating agency from time to time show that steps to trace out the missing girl have been taken but without much success. Ms. Mukta Gupta counsel for the respondent submits that efforts to trace the missing minor will continue and that as and when she is recovered, she will be produced in this Court for appropriate orders. We need only say that the investigating agency shall take effective steps in the matter and report the progress to this Court from time to time.

The second question that arises for consideration, relates to the functioning of different placement agencies working in the NCT of Delhi. It is pointed out by Ms. Arpana Bhatt that there are as many as 123 such agencies functioning in Delhi. These agencies apart from other placement work carried on by them engage themselves in placement of



children in various establishments including as domestic help. There is, according to Ms. Bhatt, no statutory control over the functioning of these agencies. The result is that children who are either picked up from the streets or brought from various other States to Delhi are first placed as domestic help and later shifted to other more hazardous work including some who are pushed into prostitution. The absence of any regulatory control over the functioning of these agencies which are run on commercial lines for profit, according to the learned counsel, defeats the very spirit of the Juvenile Justice (Care and Protection of Children) Act 2000. She submits that while section 31 of the said Act vests the Juvenile Child Welfare Committees with extensive powers, the absence of appropriate rules and regulations for the exercise of that power has virtually rendered the said provision nugatory. She states that the Child welfare Committees functioning in Delhi have received a number of complaints regarding abuse of the children working as domestic helps in households. Verification of these complaints have, according to her, proved that the children have been subjected to various kinds of indignities and harassment including sexual abuse. The record of the committees, if summoned for perusal would, according to the learned counsel, enable this court to issue directions for effectuating the provisions of the Act.

Ms. Mukta Gupta, learned counsel for the respondent, on the other hand, submits that the Government of Delhi would have no objection to the issue raised before this Court being examined and appropriate guidelines being evolved regulating the exercise of powers by the Child Welfare Committees under the Act. She submits that the Child Welfare Committees can be asked to submit a report regarding the nature of the complaints received by them alleging abuse of children in domestic and other establishments and the remedial steps which the committees have taken in this regard. She further states that the State Government can examine the matter more closely in order to provide an appropriate statutory framework for the exercise of the powers by the Committees by framing of rules under Section 68 of the Act.

In the circumstances, therefore, we direct that the Child Welfare Committee in Delhi shall, before the next date of hearing, submit to this Court a detailed report regarding the complaints received by them about child abuse, in case where children are placed with households to work as domestic servants/help, the nature of the allegation as also the action which the committees have taken on the same.

The Secretary, Social Welfare Department, Government of Delhi shall also remain present and indicate whether any rules have been framed or can be framed in terms of Section 68 read with 31 of the Act aforementioned to regulate the exercise of the powers by the committees and in particular to regulate the functioning of the placement

agencies dealing with domestic child labour. The chairpersons of the two committees shall also be requested to remain present in the Court on that day along with the relevant record.”

7. Magnitude of the problem was taken note of in the orders of 25.10.2004 when the Chairman of Child Welfare Committee submitted their report in this behalf. We would be well-advised to reproduce that order as well:

“We have heard counsel for the parties at some length. The Secretary, Social Welfare Department, Govt. of Delhi and the Chairman of one of the Child Welfare Committees functioning in Delhi are both present in person in obedience to the direction issued by this court on 4<sup>th</sup> October, 2004. The Chairman of the Child Welfare Committee stated that there were a large number of complaints received by the Committee from time to time suggesting abuse of domestic child labour. She has filed before us a list of such cases in which complaints of abuse and maltreatment were received by the Committee. She submits that the Committee is often handicapped in dealing with such complaints because of lack of particulars regarding the placement agency and the employers.

The Secretary, Social Welfare Department, Govt. of Delhi, on the other hand, submits that the question whether rules can and ought to be framed to regulate the functioning of the placement agencies is a matter that shall have to be examined in greater detail at the Government level, before any definite step is taken in these proceedings. He seeks six weeks’ time to have the matter examined and to place on record an affidavit indicating the stand of the Delhi State Government in regard to the need and possibility of framing of rules under Sections 31 and 68 of the Juvenile Justice (Care and protection of Children) Act, 2000. These proceedings shall, therefore, stand adjourned to be posted again on 14<sup>th</sup> January, 2005, by which time the question whether rules can and ought to be framed under the Act aforementioned, shall be examined by the Government and a clearcut stand taken in that regard in an affidavit shall be filed in these proceedings.

Order be given dasti to both the parties.”

8. Jharna was ultimately traced out and the custody was handed over to the petitioner. Thereafter, this petition has proceeded to tackle

the issues to regulate the functioning of the placement agencies especially who were dealing with domestic child labour and provides women and children as domestic help so that such incidents do not occur in future through the instrumentalities of these placement agencies.

**W.P. (Crl.) No.82 of 2009**

9. The petitioner in this writ petition as 'Bachpan Bachao', another N.G.O. In this public interest litigation, the problem which is highlighted is that several thousand minors are kidnapped and trafficked from various states and brought to Delhi and sold for the purposes of prostitution, begging, drug peddling, slavery, forced labour including bondage, and for various other crimes and who are still stranded in various parts of Delhi against their wishes and are waiting to be rescued. Thus, prayer herein made to direct to take respondents to take appropriate measures for the immediate rescue and release of all such minor children. Further, prayer is also made to the effect that directions are issued to the respondent for the protection of fundamental rights of such children and for their proper rehabilitation, social reintegration and education who are released from various illegal placement agencies and other places in the NCT of Delhi. Direction is sought to the effect that the respondent should formulate and to bring into immediate effect a specific and stringent law to deal with such illegal placement agencies.

10. Highlighting the problem, all these placement agencies and absence of law to regulate them, it is averred that according to a survey, only 173 placement agencies are running in districts which is not correct at all. In fact, about 2300 illegal placement agencies are running at present in the GNCT of Delhi and in Saraswati Vihar area alone which comes under the jurisdiction of Saraswati Vihar Police Station (North West District) from where 39 children were rescued, there are more than hundred placement agencies which are running illegally. The most common areas in which illegal placement agencies are running without any fear or restrictions in Delhi are Saraswati Vihar, Shakurpu J.J. Colony, Rani Bagh, Punjabi Bagh, Rohini, Pitampura, Chirag Dilli, Malviya Nagar, Chitranjan Park, Govindpuri, Sangam Vihar, Khanpur, Kotla Mubarakpur, Jammia Nagar, Okhla, Tuglakabad, Seelampur, Usmanpur, Welcome Colony, Laxminagar, Model Town, Kingsway Camp, Lajpatnagar and Janakpuri. That most common states for human trafficking are State of Bihar, Jharkhand, Orissa, West Bengal, Chattisgarh, U.P and Nepal from where mostly girls are kidnapped and trafficked. The most vulnerable districts in various states are as follows:

Districts in Bihar	:	Gaya, Nawada, Aurangabad.
Districts in Jharkhand	:	Ranchi, Simdega, Gumla, Laterhar, Dumka, Godda, Pakur, Lohardugga.
Districts in West Bengal:		Midnapur, 24 Pargnas, Maldha, Silliguri.
Districts in U.P.	:	Gonda, Bahraich, Auraiya.

Districts in Nepal : Sihaha, Saptari, Sunsari, Makenpur,  
Kanchanpur, Jhapa and  
Mahendrapur.

11. The petitioner has also stated the circumstances under which this problem was brought to its notice and the steps are yet to be taken in that behalf. It is mentioned that on 09.01.2009, Hembahadur had approached the office of Bachpan Bachao Andolan (BBA) and requested to help in the rescue of his sister and sister-in-law from Ajay Thapa placement agency. In his application, he mentioned that his sister, sister-in-law and her two friends were promised to get job by Ajay Thapa. The said Hembahadur was placed by Ajay Thapa in a factory and his sister, sister-in-law and their two friends were sent to work as domestic help. For the last one year, Hembahadur was unable to contact his sister and her friends. Ajay Thapa refused to provide him the contacts/addresses of his sister and other girls. This raised serious doubts in Hembahadur's mind that the girls had been sold by Ajay Thapa and he got very concerned for their welfare and under these circumstances, he came in contact with BBA activists and decided to take steps for finding and rescuing the girls.
12. The petitioner approached the Delhi Commission for Women on 12.01.2009 and with its help, thereafter; a joint rescue operation was conducted on 13.01.2009. In the said operation, 35 girls and 03 boys were rescued from some of these placement agencies

already named above. 23 out of 35 girls and three boys were below the age of 14. During the raid, the team of Delhi Commission for Women and the activists of Bachpan Bachao Andolan and officials of Delhi Police saw a lot of objectionable material including pornographic CDs, illicit literature, pregnancy test kits and contraceptives, etc. raising doubts about the real purpose behind running of these placement agencies. All the rescued girls and boys were trafficked from Jharkhand and West Bengal. Three rescued girls told that they were not given food from last three days. Most of the girls were staying at the office of placement agencies and forced to sleep in the rooms of boys. A clear picture of the same can be ascertained from the CD containing news report by a TV channel and the transcripts of the report which is being filed along with this writ petition. It is also stated that DCW had first lodged a complaint before Police Station, Saraswati Vihar and then took them to Child Welfare Committee of Delhi Government, who sent these 23 minor girls to Nirmal Chaya and Nari Niketan for a short stay. The custody of three boys was given to Bachpan Bachao Andolan – Mukti Ashram.

It is in this backdrop that various prayers including those mentioned above have been made in this writ petition.

**W.P.(Crl.) No.879 of 2007**

13. This writ petition is filed by Shramjeevi Mahila Samiti, which is an N.G.O. operating in Kolkata, West Bengal. Similar problem of trafficking, kidnapping, forced labour and bondage of 298 women

and children is spelt out in this petition. These women and children were brought to Delhi from different villages of West Bengal. It is stated that on reaching Delhi, they were sent to certain households and some of them had been shifted from time to time in such a manner that the parents/relatives of the victims are now unable to get in touch with them. Not only the promised wages are not paid, but the women and children are being forcibly confined against their wishes and if any person attempts to get in touch with these victims, then those persons were threatened by the placement agencies. Moreover, the petitioner has even blamed the police force and has levelled the allegations that these placement agencies are doing aforesaid illegalities in collusion with police. According to the petitioner, they came to know of the problem when in May, 2007, over 150 families from West Bengal had approached the petitioner's organization and complained that their wives, sons and daughters had been taken by certain placement agents to Delhi after promising to provide them with employment and thereafter, these persons are not contactable and it is feared that their family members are being exploited. Accordingly, the petitioner prepared a chart of the complaints being made and a copy of the said chart dated NIL is attached. The parents/relatives of the trafficked victims brought to the notice of the petitioner that they have lost the contact with their wives/children and that when they tried to contact the placement agencies, they were not provided with the appropriate information regarding the whereabouts of their family members and some of

them were threatened also. That they fear for the lives and safety of their dear ones. They all said that the money which was proposed to be paid by the way of salary, was never paid and that only false assurances were given to them. The petitioner has prepared a compilation of over 150 complaints made to them by the parents/relatives of the trafficked victims and craves leave to refer to and rely on the said compilation. Some of the persons who were earlier employed and who had managed to get back to West Bengal had also met the petitioner's organization and even complained that they were physically compelled to do forced labour. Some of them complained of sexual abuse by the employer. Petitioner has included these complaints along with the earlier compilation mentioned. At the same time, 10 agents who had taken the persons to Delhi also contacted the petitioner organization. They complained that the placement agencies were not paying and not ensuring payment to the persons as promised. No accounts were being kept. Details of the whereabouts of the persons including minors were not being provided. That they had received complaints from the persons including minors of beatings and sexual abuse and they had witnessed these as well. Those who were unwilling to work were being forced to work. At the end of work the dues were not being paid nor any of the accounts were shown. Vouchers were also being forged with interpolations made in the vouchers regarding the amount paid so as to indicate larger amounts than the amounts that were actually paid. Some thumb impressions were taken on the vouchers, which did not appear



genuine. In some cases the cheques had bounced. The agents were also threatened by the placement agencies. The agents were told that unless they provide new labour, the persons currently working would not be allowed to leave. The agents had also complained that some of the children were “missing” and they feared for the lives and safety of these missing children.

14. Members of the petitioner-NGO, in these circumstances, came to Delhi on 01.07.2007 and met various authorities including Joint Labour Commissioner, Police, etc. However, their encounter with these authorities was of no help and the allegations of disinterest and inaction on their part are stated in detail, which need not be reproduced. Circumstances are being stated under which they could have rescued one minor girl, Kalpana Sardar, aged 12 years, who has been placed in the shelter home of Prayas in accordance with the orders of the Child Welfare Committee. She gave a statement in writing to the police station narrating her harrowing experience and malpractices adopted by the placement agencies to which she was sent to as domestic helps. Similar circumstances of two more minor girls having rescued by the petitioner are stated and various placement agencies are impleaded as respondents. Apart from the prayer in the nature of habeas corpus that 256 women and children be produced before this Court, it is also prayed that proper action should be taken against these agencies and recover the wages of, to rehabilitate, and to pay compensation to, the women and children concerned.

15. We may point out that by giving directions to the Police in this petition from time to time, most of the persons mentioned in the list in Annexure P-I have been rescued.

**Re: The Problem and Concerns:**

16. It is in the aforesaid factual backdrop of all the three cases, the issue with which we are concerned relates to the forced child labour and regulation of placement agencies. Because of the commonalities of this issue in these three petitions were listed together from time to time and common orders were passed therein from a particular stage. However, various directions were given in this behalf from time to time by this Court on the basis of which steps were taken by the official respondents. Before we take stock of those directions and also the measures, which have been taken by the respondents in addressing the issue, it would be necessary to understand the genesis of problem and the circumstances under which it arises.
17. Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. The Indian Constitution specifically bans the trafficking of persons. Article 23,

in the Fundamental Rights, Part III of the Constitution, prohibits “traffic in human beings and other similar forms of forced labour”. Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement/transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. **Trafficking shows phenomenal increase with globalization.** Increasing profit with little or no risk, organized activities, low priority in law enforcement etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs. Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex-based and (b) Non-sex-based. The former category includes trafficking for prostitution, Commercial sexual abuse, paedophilia, pornography, cyber sex, and different types of disguised sexual exploitation that take place in some of the massage parlours, beauty parlours, bars, and other manifestations like call girl racket, friendship clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labour, industrial labour, adoption, organ transplant, camel racing, marriage related rackets etc. But the growing trafficking in women is principally for the purpose of prostitution. Prostitution is an international problem. However, we are aware of the fact that it is legalized in

many countries around the globe. Unfortunately, society remains tolerant of this abominable crime against women. There are assorted ways of getting women into prostitution that are common to many countries; then there are particular unique methods varies to a country. Probably, the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions. In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all the concerned countries. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatization to the lifestyle. The two principal Indian laws that addresses the trafficking and prostitution in particular are the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) and the Immoral Traffic (Prevention) Act, 1986 (ITPA), colloquially called PITA, and amendment to SITA. Neither law prohibits prostitution per se, but both forbids commercialized vice and soliciting.

18. India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organized and a commercialized vice. However, it commits itself to opposing trafficking as enshrined in Article 23 of the

Constitution which prohibits trafficking in human beings. India is also a signatory to international conventions such as the Convention on Rights of the Child (1989), Convention on Elimination of all forms of Discrimination Against Women (1979), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) and the latest South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002). A trafficked victim is therefore, a victim of multiplicity of crimes, and extreme form of abuse and violation of human rights. The constitution of India, under Article 23 specifically prohibits trafficking in human beings. At present, the legal regime to trafficking of women and children for commercial sexual exploitation includes the following:

- A) Indian Penal Code, 1960;
- B) ITPA, 1956;
- C) J.J. Act, 2000;
- D) Special laws of various states;
- E) Rulings of Supreme Court and High Court.

19. There may be various problems while dealing with the issue of “trafficking”. These petitioners seek to highlight limited facets of children being compelled to perform in circus and illegal trafficking in children and failure on the part of the law enforcement agencies as well as the society to protect the fundamental rights of the children. The Government had itself

admitted the seriousness of the problem. The report prepared by Mr. Gopal Subramaniam, learned Solicitor General of India and submitted in Bachpan Bachao petition, it is stated that the trafficking in human beings is not a new phenomenon. Women, children and men have been captured, bought and sold in market places for decades. Human trafficking is one of the most lucrative criminal activities. Estimates of the United Nations state that 1 to 4 million people are trafficked worldwide each year. Trafficking in women and children is an operation which is worth more than \$10 billion annually. The NHRC Committee on Missing Children has the following statistics to offer:

- (a) 12.6 million (Governmental sources) and 100 million (unofficial sources) stated to be child labour;
- (b) 44,000 children are reported missing annually, of which 11,000 get traced;
- (c) About 200 girls and women enter prostitution daily, of which 20% are below 15 years of age.

International conventions exist to punish and suppress trafficking especially against women and children [Ref: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons also referred as the Palermo Protocol on Trafficking.] Trafficking is now defined as an organized crime against humanity. The convention being an international convention is limited to cross border trafficking but

does not address trafficking within the country. The definition of trafficking is significant:

“... The recruitment, transportation, transfer, harboring or receipt of persons by means of 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...”

It is further submitted by the learned Solicitor General that children under 18 years of age cannot give a valid consent. It is further submitted that any recruitment, transportation, transfer, harbouring or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used. Three significant elements constitute trafficking:

- (a) The action involving recruitment and transportation;
- (b) The means employed such as force, coercion, fraud or deception including abuse of power and bribes; and
- (c) The preliminary purpose being of exploitation including prostitution, etc.

Internationally, there is a working definition of child trafficking. The working definition is clear because it incorporates the above three elements. In June 2001, India has adopted the **PALERMO Protocol** to evolve its working definition of child trafficking.

The forms and purposes of child trafficking may be:-

- (a) Bonded labour;
- (b) Domestic work;
- (c) Agricultural labour;

- (d) Employment in construction activity;
- (e) Carpet industry;
- (f) Garment industry;
- (g) Fish/shrimp export;
- (h) Other sites of work in the formal and informal economy.

Trafficking can also be for illegal activities such as:-

- (a) Begging;
- (b) Organ trade;
- (c) Drug peddling and smuggling.

Trafficking can be for sexual exploitation, i.e.

- (a) Forced prostitution;
- (b) Socially and religiously sanctified forms of prostitution;
- (c) Sex tourism;
- (d) Pornography.

Child trafficking can be to aid entertainment in sports:-

- (a) Circus/dance troupes;
- (b) Camel jockeying.

Some problem of “trafficking” is highlighted only to show the plight of children and women, who are taken as domestic help by dubious placement agencies and forced them into flesh trade.

20. Coming back to the medium of placement agencies, poverty and lack of opportunity are major foundation of trafficking. Child



trafficking typically begins with a private arrangement between a trafficker and a family member, driven by the family economic plight and the trafficker's desire for profit and cheap labour. Someone comes along and says he or she has professions or jobs for the children and the parents believe it. Parents think that in letting children go they are doing something good for them; but someone takes them as and makes them domestic workers, and someone else takes all the money instead of giving them a salary. Some crimes that are commonly concurrent with child trafficking, or which child trafficking may initially appear to be are:

- A) Domestic violence;
- B) Child abuse or neglect;
- C) Child sexual abuse;
- D) Child pornography;
- E) Child labour violations.

21. In this order, however, our focus has to be on the issue as to how to have proper control of administration over the placement agencies so that the exploitation of children is obliterated/minimized to the possible extent, as that is the issue raised in these petitioners are preferred.

**Re: Regulating the Placement Agencies:**

22. The main concern of all the counsel in these writ petitions was that there was no comprehensive legislation regulating the placement agencies to take care of the menace. On the other hand, there

were multiple statutes and authorities under those statutes and the challenge was as to how to achieve the coordination to remove/disconnect them. It would be of use to mention that this has been the focus of the various proceedings in these writ petitions and directions were given from time to time. Though, it is not necessary to take note of all those orders, some of the important orders and directions passed in all these proceedings from time to time need a look, as that would pave the way for final direction, which we propose to issue in this order. In the order dated 04.10.2004, this Court had highlighted two issues, which arise in these writ petitions, viz., tracing and production of children on the one hand and functioning of different placement agencies working in NCT of Delhi on the other hand. However, directions were given to the Government of NCT, Delhi by that order, to provide framework within which the placement agencies could be regulated and monitored. Orders dated 04.10.2004 is the springboard and therefore, we reproduce the same:

“Two distinct issues arise for consideration in this writ petition. One of these relates to the tracing and production of the missing minor girl named Jharna Pandit. Reports submitted by the investigating agency from time to time show that steps to trace out the missing girl have been taken but without much success. Ms. Mukta Gupta counsel for the respondent submits that efforts to trace the missing minor will continue and that as and when she is recovered, she will be produced in this Court for appropriate orders. We need only say that the investigating agency shall take effective steps in the matter and report the progress to this Court from time to time.

The second question that arises for consideration, relates to the functioning of different placement agencies working in the NCT of Delhi. It is pointed out by Ms. Aparna Bhat that there are as many as 123 such agencies functioning in Delhi. These agencies apart from other placement work carried on by them engage themselves in placement of

children in various establishments including as domestic help. There is, according to Ms. Bhat, no statutory control over the functioning of these agencies. The result is that children who are either picked up from the streets or brought from various other States to Delhi are first placed as domestic help and later shifted to other more hazardous work including some who are pushed into prostitution. The absence of any regulatory control over the functioning of these agencies which are run on commercial lines for profit, according to the learned counsel, defeats the very spirit of the Juvenile Justice (Care and Protection of Children) Act 2000. She submits that while Section 31 of the said Act vests the Juvenile Child Welfare Committees with extensive powers, the absence of appropriate rules and regulations for the exercise of that power has virtually rendered the said provision nugatory. She states the Child Welfare Committees functioning in Delhi received a number of complaints regarding abuse of the children working as domestic helps in households. Verification of these complaints have, according to her, proved that the children working as domestic helps in households. Verification of these complaints have, according to her, proved that the children have been subjected to various kinds of indignities and harassment including sexual abuse. The record of the committees, if summoned for perusal would, according to the learned counsel, enable this Court to issue directions for effectuating the provisions of the Act.

Ms. Mukta Gupta, learned counsel for the respondent, on the other hand, submits that the Government of Delhi would have no objection to the issue raised before this Court being examined and appropriate guidelines being evolved regulating the exercise of powers by the Child Welfare Committees under the Act. She submits that the Child Welfare Committees can be asked to submit a report regarding the nature of the complaints received by them alleging abuse of children in domestic and other establishments and the remedial steps which the committees have taken in this regard. She further states that the State Government can examine the matter more closely in order to provide an appropriate statutory framework for the exercise of the powers by the Committees by framing of rules under Section 68 of the Act.

In the circumstances, therefore, we direct that the Child Welfare Committees in Delhi shall, before the next date of hearing, submit to this Court a detailed report regarding the complaints received by them about child abuse, in case where children are laced with households to work as domestic servants/help, the nature of the allegation as also the action which the committees have taken on the same.

The Secretary, Social Welfare Department, Government of Delhi shall also remain present and indicate whether any rules have been framed or can be framed in terms of Section 68 read with 31 of the Act aforementioned to

regulate the exercise of the powers by committees and in particular to regulate the functioning of the placement agencies dealing with domestic child labour. The chairpersons of the two committees shall also be requested to remain present in the Court on that day along with the relevant record.

Post on 25<sup>th</sup> October, 2004. Order Dasti.”

23. Pursuant to the aforesaid direction, the State Government filed the affidavit contending that it was not possible to frame guidelines for monitoring the placement agencies. Instead, it was suggested that steps would be taken for making registration under the Delhi Shops and Establishment Act mandatory, whereby the placement agencies could also be regulated. The necessary amendment in the aforesaid Act has since been made. No doubt, that may be a big step for regulating the placement agencies, the contour of the problem could not be checked merely with these amendments. The counsel for the petitioners impressed upon the Court that the Court should also pass certain guidelines as well. Before it could be done, counsel for the petitioners were asked to prepare a comprehensive note indicating the existing legislation or rules and in the absence of any legislation, to suggest the lines on which a fresh legislation can be enacted for this purpose. Order in this behalf was passed on 08.12.2006, which reads as under:

“After hearing Learned Counsel for the parties, it appears that the Writ Petition has been filed only for registering, regulating, monitoring and supervising the working of Placement Agencies that provide employment to women and children as domestic help.

According to Learned counsel for the Petitioner some steps need to be taken to ensure that some responsibility is placed upon the Placement Agencies and they should not be allowed to carry on their activities unchecked because several instances of abuse of women and children, who

have been employed as domestic servants, have come to the notice to the Petitioner and others.

Learned counsel for the Petitioner says that she will prepare a comprehensive note which indicates the existing legislation or Rules under which there is no existing legislation then the lines on which a fresh legislation can be enacted for this purpose.

Learned Counsel says that she will prepare the comprehensive note and give to the Learned Counsel for the State within three weeks. Learned counsel for the State will then give her reaction to the note.

It is made clear that the present Writ Petition pertains only to the registration, regulation, monitoring and supervision of Placement Agencies. List the matter on 23<sup>rd</sup> January, 2007.”

24. In response, Ms. Arpita Bhat, learned counsel appearing for the petitioner in WP(Crl.) No.619 of 2002 brought to the notice of this Court the legal position contained in different statutes in the following manner:

**REGISTRATION:**

As far as registration is concerned, the proposal of the Government to register them under the Delhi Shops and Establishments Act and make the registration mandatory is acceptable. However, following the registration process, a mechanism to regulate the manner in which the agencies function has to be created. The Petitioner makes the following proposal.

Domestic workers who are being placed by the agencies can be classified as children and adults. Children will be between the age group of 14 and 18 years and the adults persons above 18 above.

**CHILDREN:**

There are various dealing with the rights and welfare of children including children who are working. Three legislations which can be mentioned in this context are:

- i. The Child Labour (prohibition and regulation) Act, 1986;
- ii. The Bonded Labour System (Abolition) Act, 1976;
- iii. The Juvenile Justice (care and protection of children) Act, 2000;

## **CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986.**

It has been seen that domestic labour is not given the status of labour by any legislation. The Child Labour (Prohibition and Regulation) Act, 1986, sought to address the problem of child labour in the Country. The Act has serious flaws. Nevertheless it does seek to regulate and prohibit child labour under certain circumstances. The act applies to children upto the age of 14 years. The act thereafter classifies work into two broad categories, hazardous and non-hazardous sectors. It is submitted that while all the hazardous industries as classified by the Act does fall within the hazardous industry, there are a large number of sectors which are left out. In fact, the ideal approach, if at all the classification was necessary, would have been to classify on the basis of processes rather than the end product. From October 10, 2006, domestic work has also been classified as falling under hazardous work. In any event, even though, children below the age of 14 are prohibited from being employed, there is very little that the Act does to enable implementation of this principle. Some State Governments, understanding that domestic work was in fact making the child more vulnerable, took some initiatives and had passed some local notifications and guidelines which had been in force before the notification of the Central Government banning child labour from domestic work came into force. These are:

Tamil Nadu

Amendment to Schedule under Tamil Nadu Manual workers (regulation and Employment and Conditions of Work Act)  
Under this particular Amendment of January 28, 2000 Employment in Domestic Works was added to the said Schedule of the Act.

Karnataka

Effective from 1<sup>st</sup> April, 2004.

Amendment to the Minimum wages Act for the state of Karnataka, Stipulations have been laid out for the remuneration due to a domestic help based on the nature of the work as well as the number of hours put in.

**Washing Utensils – 45 minutes - ₹150**

**Washing Utensils, clothes house keeping, taking care of children-8 Hours, ₹1600**

There is also a notification issued by the Government of Karnataka banning employment of child domestics by Government employees.

Even though the law has come into force, there has not been any scheme or policy or guidelines which would

indicate the manner in which children already in employment would be rescued and rehabilitated. Since “domestic work” has been now classified as hazardous industry by the Act, the regulation mechanisms within the Act would come into play and the inspectors appointed under the Act are under a mandate to enforce the same. The modalities of enforcement would be as per the rules prescribed under the Act and the compensation payable would also be as per the provisions of the Act. The inspectors appointed under the Act is made payable to the children.

## **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000**

Children are governed by the Juvenile Justice (care and protection of children) Act, 2000. The Juvenile Justice Act, which is supposed to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles has certain mandates. The long title of the Act reads as under:

“To provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of , delinquent juveniles the Juvenile Justice Act, 1986 (53 of 1986) was enacted by Parliament. Several provisions of the Constitution including clause (3) of Article (15), clauses (e) and (f) of Article 39, Articles 45 and 47 also impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. On 20<sup>th</sup> November, 1989 General Assembly of the United Nations adopted the Convention on the Rights of the Child wherein a set of standards to be adhered to by all State parties in securing the best interests of the child has been prescribed. The Convention emphasizes social re-integration of child victims, to the extent possible, without restoring to judicial proceedings. The Government of India, having ratified the Convention, has found it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments. To achieve this objective the Juvenile Justice (Care and Protection of Children) Bill was introduced in the Parliament.

## **PREAMBLE**

“An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, any by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.”

Section 2(d) of the Act defines a child in need of care and protection. According to this definition:

“2. a)...

... ..

d) child in need of care and protection means a child-

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ii) who resides with a person (whether a guardian of the child or not) and such person-

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child.

(v) who does not have parent and no one is willing to take care of or whose parent have abandoned him or who is missing and run away child and whose parent cannot be found after reasonable injury,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal act,

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict, civil commotion or natural calamity;”



25. By an amendment in 2006, working children are also included under the definition of children who are in need of care and protection. Children who are placed as domestic servants clearly fall under the definition of the child in need of care and protection. To address the need of children who are in need of care and protection, the Act has created a quasi judicial institution called the Child Welfare Committee.

Section 29 of the Act creates the child welfare committee. As per Section 31 of the Act, the Committee shall have the final authority to dispose the cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

The CWC therefore has the authority to look into cases of children who are vulnerable not just to provide them redressal in cases of abuse but to also ensure that they are protected, cared and rehabilitated if required. The CWCs have under them various fit institutions which are set up by the Non-Governmental organizations as well as institutions set up by the Government to ensure that children are provided safe shelter with food and other basic amenities.

Since children who work are included under the definition of a “child in need of care and protection”, the authorities under the Act are under a mandate to ensure that these children are protected and rehabilitated. The CWCs also have been taking

action against individual employers who have been withholding wages, making children work in exploitative situation etc.

**ADULTS:**

With respect to adult women who are employed in various household, the regulating mechanism prescribed under the **Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979** can be adapted. The Act is notified and implemented in the State of Delhi.

This Act is an act to regulate the employment of inter-state migrant workers. Under this Act, there is compulsory licensing of contractors. It applies to every contractor who employs or who employed five or more inter-state migrant workers on any day in the preceding twelve months. Contractor is defined under Section 2(b) of the Act.

Section 2(b) reads as under:

“(b) “contractor”, in relation to an establishment, means a person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub-contractor, *Khatadar*, *sardar*, agent or any other person, by whatever name called, who recruits or employs workmen;”

26. While this Act has been made applicable primarily to workers in the formal sector, the definition of the contractor squarely covers the manner in which placement agencies function and in the absence of a direct legislation to deal with placement agencies for

the domestic help, the mechanisms within the act can be used. These mechanisms include licensing, grant, revocation, suspension and amendment of licenses, specifies duties of the contractor, recommends filing of reports which includes list of persons employed through the contractor with details of their wages, levies responsibility on the contractor to ensure that timely payments are made. A combined reading of the aforesaid legislations will empower the Government to:

- (a) Register the placement agencies both under the Shops and Establishments Act as and when registration becomes mandatory and under the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 with immediate effect;
- (b) Direct the licensing authorities under the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 to grant licenses to the placement agencies as “contractor” for a specified period of time and make them furnish records as per the requirements under the Act;
- (c) Direct the inspectors appointed under the Child Labour (Prohibition and regulation) Act, 1986 to ensure that children below 14 are not employed as domestic help and regulate the conditions of employment of children in the age group of 14-18;
- (d) Direct the Licensing authority under the Inter State Migrant Workmen (Regulation of Employment and

Conditions of Service) Act, 1979 to supply a copy of their records to the Child Welfare Committees who in turn will ensure that children who are placed by these contractors are cared for properly;

- (e) Ensure that the Child Welfare Committees are enabled by framing model rules with respect to working children and their rehabilitation needs;
- (f) Direct that children below 14 who are rescued are either repatriated, re-integrated or rehabilitated by the intervention of the Child Welfare Committee;
- (g) In cases of abuse which are covered by the Penal Code, these agencies either collectively or individually help prosecute the perpetrator.

27. The above legislations can be sued to register the agencies and monitor them to ensure that domestic workers are provided with protection as per guidelines, which have been placed on record by the Petitioner following discussions with the Government.

28. On the basis of the aforesaid legislative provisions, detailed suggestions were given by Ms. Arpita Bhat to tackle with the issue under the existing Labour Laws enumerated above. We will advert to these suggestions as well giving our directions.

29. We may point out that Mr. Colin Gonsalves, learned Senior counsel who appeared in WP (Crl.) No. 879 of 2007, also highlighted the

issue and gave some further and additional suggestions, which are contained in the written submissions filed by the petitioner in this writ petition.

30. Before we advert to these suggestions and direction, which are required to be issued on that basis, it would be necessary to comment that the State Government as well as other Governmental authorities have participated in these proceedings while playing the role of facilitator and has not acted in an adversarial manner. This positive attitude of the respondent needs to be commended. In fact, the counsel for the respondents as well as respondent authorities in great measure, joined the other counsel as well as the Court in finding the solution to the problems.
31. We may also record that Mr. Gopal Subramaniam, Solicitor General of India, who appeared in some stages of these proceedings had even prepared a comprehensive report on “**Indian Child : India’s Eternal Hope and Future**” in which not only the extent and ramification of the problem, some of the measures which are required to be taken to tackle the problem were also suggested. After highlighting the problem of trafficking of children and women and the magnitude thereof, the learned Solicitor General has suggested that every State Government must have a set of guidelines of NGO’s which want to assist in inquiries/fact-finding and rescue operations. These suggestions given in the said Report are as under:

**“12.** Every state government must have a set of guidelines for NGO’s which want to assist in inquiries/fact finding and rescue operations. It is submitted that the guidelines published in Bernard Boetoe’s **“An NGO’s PRACTICAL GUIDE IN THE FIGHT AGAINST CHILD TRAFFICKING”** are significant and should be adopted as valuable guidelines.

- a) Evaluation of existing or potential risks for the child involved, the NGO undertaking enquiry/investigation/fact-finding/rescue and, for eventual partners (persons, association etc) is important. Wrong information may be sent out to divert attention from a real case of trafficking. There is also a risk for those engaged in investigations and rescue operations of being trapped into false accusation;
- b) Never simulate being the trafficker alone, in order to establish proof (it can happen that the representative of an NGO judges that she/he can establish proof by playing the role of a client interested in purchasing children. This can easily turn against her/him and she/he may be obliged to prove at a later stage that she/he was in fact playing a role);
- c) Operate in a group of at least two or more persons if there is a plan to follow the traffickers or trace a deal as part of the preliminary enquiry if possible, identify people or groups who can be potential partners in fact-finding/investigation/rescuing the child or, in facilitating and participating in legal action for protecting the child and prosecuting the offender;
- d) Where accessibility to the child, her/his family/relatives/friends, people in neighborhood is possible, use non-threatening, non-intrusive questions with great care and sensitivity to seek any information;
- e) Evaluate the risk of further victimization of the child and evolve ways and means to become a companion and confidante for the victimized child;
- f) Maintain the confidentiality of the child, avoid taking pictures, videos, tape recording etc and under no circumstances should this be breached as it could endanger the child’s life;
- g) Be prepared to help the child in terms of immediate removal from victimization and ensuring trauma counseling;

- h) Reliability of the information received and the fact of trafficking must be confirmed by reaffirming the address/name/identity of person(s) involved (the child, the alleged offender(s), child's family surrounding in which the child is confined or kept etc.). It does not imply imputing any conclusion or judgment on the case;
- i) Be as precise as possible in relation to the elements that constitute a case of trafficking: on the description of the location, the dates, the time, the numbers, the nationality and the description of the persons present, their presumed age, their clothes, the vehicles used for transporting the victims, the length of the trips (night, day etc...); the brutality suffered, the food and drinks given, the financial transactions etc.;
- j) Put everything into writing, and indicate what is verified and what is assumed, what is direct testimony and what is indirect testimony through a third party, what are rumors etc. This will help analyze the information gathered, assessee areas/issues on which more information is required and devise ways of doing so. Written observation can go a long way in conducting further inquiry and investigation. Even while assisting in the prosecution of offenders as a witness, the written observations prove a great help. Never forget that at a later date the investigator will be called in the judicial process as a witness, and the information will be submitted for cross-examination by the counsel for the defence;
- k) Keep the witnesses and victims anonymous in the first written report. Only deliver the names when submitting to the police or the CWC or at the judicial stage;
- l) Be ready to pursue the case (complaint/FIR/evidence/cross-examination/psycho-legal support to the victim/rehabilitation and reintegration of the victim)."

32. Thereafter the learned Solicitor General has suggested certain guidelines which police must follow in this behalf. Following suggestions are mooted in this Court, which are as under:

**“13.** The police must follow certain guidelines as well. It is submitted that the following guidelines should be mandated:-

- i. Care must be taken to ensure the confidentiality of the child and due protection must be given to her/him as a witness;
- ii. The detailed interview of the victim should be done preferably by crisis intervention centres/members of the Child Welfare Committee under the Juvenile Justice Act. There should be adequate breaks and intervals during the interview with a child victim:
- iii. If the police employ a child friendly approach to the entire investigation, the possibility of getting all relevant information gets higher. This can be done by having a supportive environment for the child at the police station wherein attention is paid to his needs. This can be done at the police station itself or at any other place co-managed by police and any NGO/CBO. Support persons for the child should be contacted and in their absence, any civil society group working with/for children or members of CWC (whoever the child feels comfortable with) could be asked to the present;
- iv. Due care must be maintained to attend to issues like interpreters, translators, record maintaining personnel, audio-video recording possibilities etc.;
- v. As far as possible, the same investigation officer must follow up the case from investigation stage to the trial stage;
- vi. There should be provision of food and water as well as toilet facilities for the child in the police station and the hospital;
- vii. No child should be kept in a Police Station;
- viii. Where a special juvenile police unit or a police officer has been designated to deal with crimes against children and crimes committed by children, cases relating to children must be reported by such officer to the Juvenile Justice Board or the child welfare committee or the child line or an NGO as the case may be. ”



33. Certain measures for proper implementation of Juvenile Justice (Care and Protection of Children) Act 2000 are suggested in the same report. Measures are also suggested for tackling the problem of child labour, child marriage, trafficking of children for begging, trafficking of illegal inter-country adoptions, exploitation of children for pornography, removal of human organs without authority that violates the provision of Transplantation of Human Organs Act, 1994. In the factories including hazardous industries, however, having in mind the scope of these writ petitions, we are not recording the same to express with the hope that these suggestions of the learned Solicitor General, who is the Law Officer of the Union of India, would also be given serious consideration by the competent authorities and effective steps would be taken to implement those suggestions.
34. Notwithstanding various laws and benevolent/welfare schemes, the reasons because of which the problem persists in is alarming magnitude as highlighted by the Ministry of Women and Child Development, are reproduced in the aforesaid report:

**"Lack of prevention**

Policies, programmes and structures to prevent children from falling into difficult circumstances are most lacking. This pertains both to policies to strengthen and empower poor and vulnerable families to cope with economic and social hardship and challenges and thus be able to take care of their children, as well as to efforts to raise awareness of all India's people on child rights and child protection situation.

**Poor planning and coordination**

- i) Poor implementation of existing laws and legislations;
- ii) Lack of linkages with essential lateral services for children, for example, education, health, police, judiciary, services for the disables, etc;
- iii) No mapping has been done for the children in need of care and protection or of the services available for them at the district city state levels;
- iv) Lack of coordination and convergence of programmes/services;
- v) Weak supervision, monitoring and evaluation of the juvenile justice system.

**Services are negligible relative to the needs**

- i) Most of the children in need of care and protection, as well as their families do not get any support and services;
- ii) Resources for child protection are meager and their utilization is extremely uneven across India;
- iii) Inadequate outreach and funding of existing programmes results in marginal coverage even of children in extremely difficult situations;
- iv) Ongoing large scale rural urban migration creates an enormous variety and number of problems related to social dislocation, severe lack of shelter and rampant poverty, most of which are not addressed at all;
- v) Lack of services addressing the issues like child marriage, female foeticide, discrimination against the girl child, etc;
- vi) Little interventions for children affected by HIV/AIDS, drug abuse, militancy, disasters (both manmade and natural), abused and exploited children and children of vulnerable groups like commercial sex workers, prisoners, migrant population and other socially vulnerable groups, etc;
- vii) Little interventions for children with special needs, particularly mentally challenged children."

**Poor infrastructure**

- i) Structures mandated by legislation are often inadequate:

- ii) Lack of institutional infrastructure to deal with child protection;
- iii) Inadequate number of CWCs and JJBs;
- iv) Existing CWCs and JJBs not provided with requisite facilities for their efficient function, resulting in delayed enquiries and disposal of cases.

**Inadequate human resources**

- i) Inappropriate appointments to key child protection services leading to inefficient and non-responsive services;
- ii) Lack of training and capacity building of personnel working in the child protection system;
- iii) Inadequate sensitization and capacity building of allied systems including police, judiciary, health care professions, etc;
- iv) Lack of proactive involvement of the voluntary sectors in child protection service delivery by the State UT Administrations;
- v) Large number of vacancies in existing child protection institutions.

**Serious service gaps**

- i. Improper use of institution in contravention to government guidelines;
- ii. Lack of support services to families at risk making children vulnerable;
- iii. Overbearing focus on institutional (residential care) with non-institutional (i.e. non-residential) services neglected;
- iv. Inter-state and Intra-state transfer of children especially for their restoration to families not provided for in the existing schemes.
- v. Lack of standards of care (accommodation, sanitation, leisure, food etc.) in all institutions due to lower funding;
- vi. Lack of supervision and commitment to implement and monitor standards of care in institutions;
- vii. Most 24-hourshelters do not provide all the basic facilities required, especially availability of shelter, food and mainstream education;

- viii. Not all programmes address issues of drug abuse, HIV/AIDS and sexual abuse related vulnerabilities of children;
- ix. None of the existing schemes address the needs of child beggars or children used for begging;
- x. Minimal use of non-institutional care options like adoption, foster care and sponsorship to children without home and family ties.
- xi. No mechanism for child protection at community level or involvement of communities and local bodies in programmes and services;
- xii. Serious services and infrastructure gaps leading to few adoptions;
- xiii. Cumbersome and time consuming adoption services;
- xiv. Lack of rehabilitation services for older children not adopted through regular adoption processes;
- xv. Aftercare and rehabilitation programme for children above 18 years are not available in all states, and where they do exist they are run as any other institution under the JJ Act, 2000.

35. The learned Solicitor General has conceded that the above needs to be addressed by the interventional order of this Court in exercise of its extra-ordinary jurisdiction under the Constitution of India. In fact, directions of the following nature are solicited:

**“70.** The above needs to be addressed by interventional orders of this Court in the exercise of its extraordinary jurisdiction under the Constitution. Points of implementation must be identified. Each state government must identify an officer who is responsible for implementation of schemes in relation to children. There must be a parallel linkage between a point of contact of the Collectorate/Executive Administration with a point in Legal Aid i.e. the Executive Chairman of the State Legal Services Authority and a point in the NGO sector/civil society. Similarly, points must be identified in each zila parishad and panchayat simiti and gram panchayats. In fact, the presiding officers of the gram nyayalayas may also be encouraged to identify children who are vulnerable and who need protection. The Integrated Child Protection Scheme is presently in place. It seeks to institutionalize essential services and strengthen structures; it seeks to enhance

capacities at all levels; it seeks to create database and knowledge base for child protection services; it needs to strengthen child protection at family and community level. The guiding principles are neatly formulated in this scheme. These must be implemented. The adoption programme will be governed by the following guiding principles:-

- i) Best interest of the child is paramount;
- ii) Institutionalisation (e.g. placement into residential care) of the child should be for the shortest possible period of time;
- iii) All attempts should be made to find a suitable Indian family within the district, state or country;
- iv) The child shall be offered for inter-country adoption only after all possibilities for national adoption, or other forms of family based placement alternatives such as placement with relatives (kinship care), sponsorship and foster care arrangements have been exhausted;
- v) All institutions should disclose details about children in their care and make sure that those free for adoption are filed and recorded with the State Adoption Resource Agency (SARA) and CARA, with all supporting documentation of authorization of such adoption from CWC;
- vi) Inter-state coordination to match the list of Prospective Adoptive Parents (PAPs) with that of available children should be done by SARAs;
- vii) No birth mother/parent(s) should be forced/coerced to give up their child for monetary or any other consideration;
- viii) Adoption process from the beginning to end shall be completed in the shortest possible time;
- ix) Monitoring, regulating and promoting the concept and practice of ethical adoptions in the country should be ensured;
- x) Agencies involved in the adoption process should perform their duties in a transparent manner, following rules of good governance and adhering to the professional and ethical code of conduct. Those agencies shall be reporting to and will be subject to rigorous auditing and supervision by responsible state bodies.

**72.** The ICPS programmes are now brought under one umbrella and are as follows:

- a) Care, support and rehabilitation services through child-line;
- b) Open shelters for children in need in urban/semi urban areas;
- c) Family based non-institutional care through sponsorship, foster care, adoption and aftercare.

xxx xxx xxx

**75.** In view of the directions suggested, the Child Welfare Committee must directly come under the supervision of the District Judge/Judge of the High Court, it is submitted that the above implementation must also be overseen by a Court-monitored mechanism.

**76.** There must be an annual report by CARA. The said report must be scrutinized by a secretary incharge of family and social welfare. On 9<sup>th</sup> September, 2009, an office memorandum was issued by the Ministry of Home Affairs.

**77.** It is submitted that the said scheme requires to be implemented by all the States. In view of the above circular dated 9<sup>th</sup> September, 2009, it is submitted that a court direction is necessary to implement the said circular. This Court may direct that the said officer memorandum may be implemented by all the State Governments and monthly reports be sent to the central government.

xxx xxx xxx

**83.** It is submitted that implementation of schemes for children must not be vitiated by humoresque choices but based on the ethos and spirit of republic and constitutionalism. It is submitted that the ichonography of child rights will require not only active cooperation but a recognition of reality that children are undoubtedly the harbingers of future. The safely to a society lies in the manner of discovering the ignipotent character of youth and children and particularly their capacity to be genuine, authentic, individuals of self-worth and self-esteem. A society which ignores children or is unconcerned about child rights will always bear the ignominy of being a partial and selective society carrying the impost of elitism. In India where rural poor exist and children work in dhabas, it is necessary that a mere imprecation towards charity is inadequate, a trusted infrustrable right and ethos must emanate from constitutional provisions. It is submitted that constitutional provisions are not only intended to be invocative, they must be evocative in action. It is

respectfully submitted that rescue operations for children must not be mere ligatures but must actually be meaningful reintegrative steps into mainstream of society. This requires conscious participation of the Government, the civil society and those who are going to envision the reforms for educating the poor and the weaker sections of society. It is submitted that any intervention would prevent malversation in the implementation of schemes launched bonafidee. Ultimately, it is in the delivery of the schemes and the manner in which delivery takes place fully that governance measures its success. It is further submitted that a continuing monitoring of these directions is essential so that the initiative taken by the Central Government must not be reduced into marcescent hopes. Under these circumstances, it is submitted that suitable directions may be issued by this Court in the larger interest of justice.

**84.** It is submitted that a direction be issued that all the Central Government/State Governments/Union Territories will cooperate to bring into effect the direction suggested above.”

36. Since the respondent/Government itself had volunteered and exhorted this Court to issue directions of the nature aforesaid by conceding that this Court has power to issue such directions in exercise of its extraordinary power under Article 226 of the Constitution, we hereby direct the Government of NCT of Delhi as well as Government of India to take steps in the manner suggested above treating the same as directions of this Court given in this order.

37. In addition, based on the suggestions given by the learned counsel for the petitioners in all these writ petition, we hereby give the following directions summarized as under:

- (i) There is no comprehensive legislation to take care of the problem and multiple statutes with multiple authorities – for lack of coordination and disconnect

among them – are not able to tackle the issue effectively. Therefore, there is a need to study this aspect, viz., feasibility of having a legislation to regulate employment of problem of children and adult women, who are working as domestic helps. Emphasis should be laid on the regulation of placement of agencies who provide such helps. We are making these observations also for the reason that the existing laws do not provide an effective speedy remedial which could ensure that women and children are able to;

- (a) Seek recovery and wages,
- (b) Ensure freedom of movement,
- (c) Access shelter option in case of abuse before being able to go home.

Feasibility of having control of SDMs of the areas on these placement agencies should also be worked out.

- (ii) Till that is achieved, which is allowing term measure, immediate concerned respondent authority to ensure as to how various enforcement agencies of different statutes are able to work in a coordinated and cooperative manner. Necessary guidelines should be issued or rules framed in this behalf. If possible, single window enforcement agency be created so that the the NGO on behalf of such victims are able to



approach the said agencies instead of knocking the doors of different authorities.

(iii) For more effective implementation of the Juvenile Justice (Care and Protection of Children) Act 2000 and Delhi Commission for Women Act, following directions are issued:

(a) Labour Department will register all placement agencies. The registration process will be within a finite period of time. Failure to register within that prescribed time should invite penal action which can be prescribed by this Court.

(b) The registration process should not only be for agencies located in Delhi but also for all the agencies, who are placing women and children in homes located in Delhi. This suggestion is made in view of the apprehension expressed during discussions with the Labour Department that as soon stringent laws are brought into effect in Delhi, the agencies may shift out to the NCR region.

(c) The registration information should require:

1) Details of the agencies;

- 2) Number of persons, who are employed through the agencies, their names, ages and their addresses;
- 3) Details of salaries fixed for each person;
- 4) Addresses of the employers;
- 5) Period of employment;
- 6) Nature of work;
- 7) Details of the Commissions received from the employers.

(d) The information should be available for access to the Child Welfare Committee as well as the Delhi Commission for Women. During the discussions, the Labour Department had indicated that the information would be put up on the website. Till such time, the information should not be put up on the website, the records may be made available by the labour Department to the Commission and the Committee.

38. Various suggestions given by the petitioner in W.P. (Crl.) No.619 of 2002 and to take such remedial steps, which are necessary for implementation thereof, should be taken in consideration as

stated by the petitioner & as stated in paragraph 38 onwards herein be treated as the direction of this court. We also direct the respondent authorities to consider the following suggestions at the earliest :

**Duties of the Commission and the Committee:**

- a) The Committee and the Commission will have a duty to go through the records provided by the Labour Department.
- b) The Committee and the Commission will verify the information and the cases where information is found to be inadequate, seek further information from the placement agencies after duly summoning them. The Committee shall be authorized to sue the services of 'Childline', a service set up by the Ministry of Women and Child Development, Union of India and managed by NGOs to verify the information in appropriate cases. The Commission shall identify agencies who would assist them in verifying information with respect to adult women.
- c) The Committee and the Commission shall entertain complaints made by the domestic worker herself/himself or through her/his guardian, NGOs managing 'childline' services, the employer or the police in appropriate cases.
- d) The Committee or the Commission shall decide the complaints made within a period of 30 days.

### **Adjudication of the Complaints:**

The Committee and the Commission may hear the following types of cases:

- a) Withholding of agreed wages;
- b) Harassment including harassment by employer at the hands of the placement agencies;
- c) Harassment and/abuse by placement agency proprietor/staff at their premises or at work place;
- d) Non-compliance of the agreed terms;
- e) Abusive working conditions which is beyond the physical capacity of the child in cases where persons between the ages 14 and 18 are employed.
- f) Long hours of work;
- g) Lack of basic facilities including medical care and food.

### **Powers of the Committee/Commission:**

- (a) A committee and the commission will have powers to summon the placement agencies or the employer as the case may be on a complaint made by the domestic worker or her guardian or any person employing her;
- (b) Direct payment of wages as per agreed terms and in appropriate cases impose fines;
- (c) Direct payment of compensation in cases where severe injuries are caused to the domestic worker during the course of the work;
- (d) Direct medical assistance;

- (e) Direct the placement agency to comply with the agreement with the employer or return the commission where the terms are not complies with;
- (f) Impose fines on the placement agencies where it is found that terms of the agreement are not followed;
- (g) Direct legal aid to the child/woman where a criminal offence has happened;
- (h) Direct employers to inform the local police or the Committee/Commission in cases where the domestic worker is missing within 24 hours;
- (i) In cases where a domestic worker has been placed in a home against her wishes, enable her to leave her employment and direct the agency to return the commission paid by the employer back to the employer.

39. The Petitioner in W.P. (Crl.) No.879 of 2007 has referred to Police Circular issued by DCP, Headquarters, New Delhi. This Circular requires the Delhi Police to:

- a) regulate the functioning of placement agencies;
- b) to ensure proper screening of domestic workers being recruited by placement agencies by maintaining the register of all such agencies;
- c) Ensure that the agencies enroll applicants on the basis of formal applications containing full details including the

photographs and contact addresses of the applicants, the details of previous employers, etc.

d) Verification of domestic workers is to be done by the Police.

The DCP has filed the response wherein it is stated that the matter was examined in detail and the guidelines stated in the Circular cannot be implemented as Delhi Police is already too overburdened with the law and order, security, inquiries and investigations, etc. It is also mentioned that to keep a check on the maintenance of registers, etc. of the placement agencies would not be feasible in the current scenario of heightened security concern. It is stated that the Circular is merely an executive instruction and non-compliance thereof cannot entail any penal consequence on the placement agencies. We are of the opinion that once such a circular is issued, it does not behove Delhi Police now to wriggle out of that on the pretext that this was for internal instructions and thereby refusing to adhere to the same. We, therefore, direct that the administration at the highest level in Delhi Police shall reconsider the feasibility of implementation of the instructions contained in the said.

40. Another direction, which is sought by this petitioner pertains the dues of 83 domestic workers, which are yet to be recovered from the placement agencies or the employers. It is submitted that since the children were exploited without Police or Labour Department acting to protect them, the Government of NCT, Delhi

be directed to pay the entire dues at the earliest and recover the same from the placement agencies or employers. However, such directions cannot be issued without dealing with this issue at length that too on the basis of proper pleadings. Therefore, we give liberty to the petitioner to file appropriate writ in this behalf.

41. The petitioner has also pointed out that 12 children are still missing and have not been recovered. We direct the Police to register the F.I.R. in all these cases of remaining persons and take proper investigation into the matter and also take steps to locate those children at the earliest. During the investigation, help of the petitioner can also be sought. It would be more appropriate if the interrogation of concerned persons in the placement agencies is done in the presence of the petitioner.
42. These writ petitions are disposed of in the aforesaid terms. However, if any clarification for further consequential directions is needed, the petitioners are given liberty to approach this Court by means of Miscellaneous applications in these writ petitions.

**(A.K. SIKRI)  
JUDGE**

**(AJIT BHARIHOKE)  
JUDGE**

**DECEMBER 24, 2010**

*pmc*

## **Annexure III**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(CRL) 2069/2005 and CrI. M.A. No.10762/2009**

**SAVE THE CHILDHOOD FOUNDATION ..... Petitioner**

**Through: Mr. H.S. Phoolka, Sr. Adv. with Mr. Bhuwan Ribhu and Mr. Anand Kumar, Advs.**

**Versus**

**UNION OF INDIA and ORS. .... Respondents**

**Through: Mr. Sachin Datta and Mr. Abhimanyu Kumar, Advs. for UOI.**

**Ms. Meera Bhatia, Adv. for UOI.**

**Ms. Monika Garg, Adv. for NCPCR.**

**Mr. Pawan Sharma with Mr. Harsh Prabhakar and Mr. Jaikush Hoon, Advs. For R-3.**

**AND**

**W.P.(CRL) 82/2009 and CrI. M.A. No.10391/2011**

**BACHPAN BACHAO and ORS. .... Petitioner**

**Through: Mr. H.S. Phoolka, Sr. Adv. with Mr. Bhuwan Ribhu and Mr. Anand Kumar, Advs.**

**Versus**

**UOI and ORS. .... Respondents**

**Through: Ms. Meera Bhatia, Adv. for UOI.**

**Mr. Baldev Malik and Mr. Arjun Malik, Advs. for UOI.**

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**



## **ORDER**

**28.05.2012**

**1. Status report dated 27.01.2012 is filed by the Labour Department. In this, it is mentioned that certain issues have remained unresolved and further directions are sought. In the first instance, Mr. Pawan Sharma, learned counsel for respondent No.3 points out that in the order dated 27.04.2011, the Court had given the following directions:?(iii) The MCD/GNCTD shall publish advertisements in prominent newspapers that if establishment is found employing children as labourers, their licenses would be cancelled. Let advertisements be published in widely circulated newspapers within two weeks hence?.**

**2. The suggestion of the Labour Department is that where the licences issued are withdrawn, it would lead to unemployment of the existing workers in that unit also. Further the order did not lay down the circumstances and modalities for revoking of the cancellation. In view of difficulties faced in the implementation of the afore quoted directions, it is suggested that an establishment which is found employing child labour should be sealed. The aforesaid direction is modified and the modified direction would read as under:**

**2/4**

**Notwithstanding any other law being in force, if an establishment is found employing child labour, the establishment may be sealed and / or its registration or licence issued by any authority, to conduct business, may be suspended or cancelled till such time that it pays all the dues including `20,000/- as rehabilitation compensation in accordance with the judgment of Hon?ble Supreme Court of India in M.C. Mehta Vs. State of Tamilnadu and other dues including minimum wages, in respect of the children so rescued?.**

**3. The other suggestion which is made is that the arrears of minimum wages and other dues would be paid to the parent / guardian of the respective child. In case the child is a destitute and is given shelter in the shelter home run by the government, the money would be placed in a fixed deposit in the name of the child in a nationalized bank by the Delhi Child Labour Rehabilitation-cum-Welfare Society to be paid to the child on attaining the age of 18 years. The difficulty in carrying out this direction is mentioned by the Labour Department stating that parent / guardians of most of the children rescued in the NCT of Delhi live in other states and after they are rescued the children are to be sent back to their parents / guardians in the other states for rehabilitation. Sometimes delay takes place in repatriation of the child and in these circumstances, it is proposed that if a child is not restored to the parent / guardian, within one month of the child?s arrival in the shelter home, the Child Welfare Committee constituted under**

**3/4**

**the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 should initiate steps for repatriation of the child within 15 days thereafter through the Resident Commissioner of the respective State posted in the NCT of Delhi. We consider this suggestion to be reasonable and give direction in terms thereof.**

**4. The latest status report as directed on the last date of hearing shall be filed in the meantime.**

**5. Crl. M. A. No.10762/2009 also stands disposed of. List again on 30th July, 2012.**

**W.P.(CRL) 82/2009 Renotify on 30th July, 2012.**

**ACTING CHIEF JUSTICE RAJIV SAHAI ENDLAW,**

**MAY 28, 2012**

## Annexure IV

TO BE PUBLISHED IN PART-IV OF THE DELHI GAZETTE EXTRAORDINARY  
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI  
LABOUR DEPARTMENT  
5 SHAMNATH MARG, DELHI 110054

No. Addl. LC/Misc(2)/12/Lab/ Part File/ 1138

Dated: 25/9/14

### ORDER

No. F Addl. LC/Misc(2)/12/Lab/ Part File/ -- This executive order is issued in compliance of order dated 24<sup>th</sup> December, 2010 and subsequent order dated 18<sup>th</sup> December, 2013 of the Hon'ble High Court of Delhi in WP (Crl.) 82/2009 titled as Bachpan Bachao Andolan v. Union of India and others.

Whereas, the Hon'ble High Court of Delhi vide the above said order has, inter alia, directed the Govt. of National Capital Territory of Delhi to issue executive directions for the regulation of Private Placement Agencies providing domestic workers in the National Capital Territory of Delhi and to prevent the exploitation of such domestic workers employed through such private placement agencies in the National Capital Territory of Delhi;

And Whereas, in compliance thereof and to regulate the private placement agencies as aforesaid, the following order is issued by the Government of National Capital Territory of Delhi, namely:-

#### **1. Short title, extent and commencement:**

- (a) This order may be called the Delhi Private Placement Agencies (Regulation) Order, 2014.
- (b) This order shall extend to all Private Placement Agencies providing domestic workers in the National Capital Territory of Delhi whether their office/ place of business is situated within the National Capital Territory of Delhi or outside thereof.
- (c) This order shall come into effect on the date of its notification in the Delhi Gazette.

My

[ ]

## **2. Definitions:**

(i) "Domestic Worker" means a person of the age of 18 years or more engaged to do domestic work through a private placement agency and includes a person by whatever name and designated, within an employment relationship, but does not include:-

(a) a person who performs domestic work only sporadically; and

(b) a person employed through a contractor.

(ii) "private placement agency" means a person or body of persons other than a government agency, department or organisation engaged in the business of providing domestic workers at the residence of a person;

(iii) Labour department means the Labour department of the Govt. of NCT of Delhi

(iv) Commission means the Delhi Commission for Women constituted under section 3 of the Delhi Commission for Women Act, 1994

(v) Committee means the Child Welfare Committee constituted under section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000

## **3. Registration:**

The owner/ Proprietor/ Managing Partner/ Managing Director of a private placement agency providing domestic workers doing business in the National Capital Territory of Delhi shall register it with the Labour Department under the Delhi Shops & Establishment Act, 1954 or the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, within thirty days of the publication of this order in the Delhi Gazette whereupon a registration certificate will be issued to the Private Placement Agency under the said Act. The applicant seeking registration shall furnish following details such as, namely:-

AY



- (a) Details of the private placement agency;
- (b) Number of persons/ domestic workers, who are employed through the agency, their names, age and their addresses;
- (c) Details of the salaries fixed for each person;
- (d) Addresses of the employers;
- (e) Period of employment;
- (f) Nature of work; and
- (g) Details of the Commissions received from the employers.

#### **4. License for running private placement agency-**

(i) The owner/ Proprietor/ Managing Partner/ Managing Director of such private placement agency shall, within fifteen days of issuance of the registration certificate by the Labour Department, also apply and obtain a license to run such private placement agency, from the Deputy Labour Commissioner of the district where its office/ place of business/establishment is situated in the prescribed form and shall fulfil such conditions as stated in the license.

(ii) The applicant seeking license shall enclose a copy of the registration certificate issued by the Labour Department, Govt. of NCT of Delhi under the Delhi Shops & Establishment Act, 1954 or Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, with the application and shall also furnish following details such as, namely:-

- (a) Details of the private placement agency;
- (b) Number of persons/ domestic workers, who are employed through the agency, their names, age and their addresses;
- (c) Details of the salaries fixed for each person;
- (d) Addresses of the employers;
- (e) Period of employment;

47



(f) Nature of work; and

(g) Details of the Commissions received from the employers.

(iii) The above said information shall be uploaded on the website of the Labour Department and shall be shared with the Child Welfare Committees and Delhi Commission of Women for verification and seeking further necessary information.

**5. Issuance of Passbook to domestic worker:** The owner/ Proprietor/ Managing Partner/ Managing Director of the Private Placement Agency shall ensure that a pass book is issued to every domestic worker, affixed with a passport size photograph of the worker, duly attested by the Owner/ Proprietor/ Partner/ Director/ manager of the private placement agency and indicating the following in Hindi, namely:-

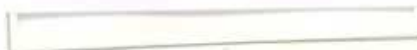
- (a) The name, age and address of the domestic worker;
- (b) The name of the employer and address and of the house/s where the domestic worker is employed;
- (c) The proposed period of employment and the periodicity;
- (d) The proposed rate and periodicity of payment, provided that no wage period shall exceed one month;
- (e) The details of Bank Account number of the domestic worker in which the payment shall be made;
- (f) The return fare payable to the domestic worker on the expiry of period specified in clause (ii) above:

Provided that no fare shall be payable if the period of actual employment is less than twelve months.

(g) Name and address of the next of kin of the domestic worker.

**6. Agreement to be in writing-** Agreement for engagement of domestic worker by the employer through Private Placement Agency shall be in writing.

AV



**7. Penalty for non compliance:** In the event of non-compliance or violation of any provision of this Order penalty of Rs. 50,000/- shall be imposed which shall be recovered as arrears of land revenue upon the Private Placement agency/ its Owner/ Proprietor / Partner/ Director and the Labour Department may further cancel the registration certificate or license of such private placement agency whereupon it shall not be allowed to carry on business or operate in the National Capital Territory of Delhi.

In case any person is found not in possession of licence and registration and/or has not got his agency or himself registered in terms of and/or under the provisions of this order or is found to supply domestic workers without licence or registration, the said person shall be prosecuted under relevant provisions of Law.

**8. Duties of the Delhi Commission for Women and the Child Welfare Committee:** The Delhi Commission for Women and Child Welfare Committee shall perform the following duties by virtue of the order of the Hon'ble High Court of Delhi, namely:-

- (a) The Commission and the Committee will go through the records provided by the Labour Department.
- (b) The Commission and the Committee will verify the information provided and in cases where information is found to be inadequate, seek further information from the private placement agencies after duly summoning them. The Committee shall be authorized to use the services of 'Childline', a service set up by the Ministry of Women and Child Development, Government of India and managed by NGOs to verify the information in appropriate cases. The Commission shall identify agencies who would assist them in verifying information with respect to adult women.
- (c) The Commission and the Committee shall entertain complaints made by the domestic worker herself/ himself or through her/his guardian, NGOs managing childline services, the employer or the police in appropriate cases.
- (d) The Commission and the Committee shall decide the complaints made within a period of 30 days.

**9. Adjudication of Complaints by the Delhi Commission for Women and the Child Welfare Committee:** The Delhi Commission for Women

*Amf*

and the Child Welfare Committee, shall adjudicate the following Complaints by virtue of the aforesaid directions of the Hon'ble High Court of Delhi, namely:-

- (a) Withholding of agreed wages not less than the Minimum Wages notified by the Labour Department, GNCT of Delhi from time to time
- (b) Harassment including harassment by employer at the hands of the private placement agencies;
- (c) Harassment and/abuse by private placement agency proprietor/staff at their premises or at work place;
- (d) Non-compliance of the agreed terms;
- (e) Abusive working conditions which is beyond the physical capacity of the child in cases where persons between the ages 14 and 18 are employed.
- (f) Long hours of work; and
- (g) Lack of basic facilities including medical care and food.

**10. Powers of the Delhi Commission for Women and the Child Welfare Committee :** The Delhi Commission for Women and Child Welfare Committee will have the following powers by virtue of the aforesaid directions of the Hon'ble High Court of Delhi, namely:-

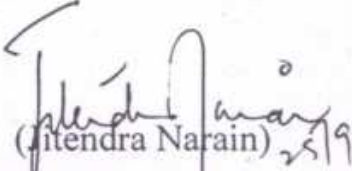
- (a) The Committee and the Commission will have powers to summon the private placement agencies or the employers as the case may be on a complaint made by the domestic worker or her guardian or any person employing her;
- (b) Direct payment of wages not less than the Minimum Wages notified by the Labour Department, GNCT of Delhi from time to time as per agreed terms and in appropriate cases impose fines;
- (c) Direct payment of compensation in cases where severe injuries are caused to the domestic workers during the course of the work;
- (d) Direct medical assistance;

*Amf*



- (e) Direct the private placement agency to comply with the agreement with the employer or return the commission where the terms are not complied with;
- (f) Impose fines on the private placement agencies where it is found that terms of the agreement are not followed;
- (g) Direct legal aid to the child/ woman where a criminal offence has been committed;
- (h) Direct employers to inform the local police or the Committee/Commission in cases where the domestic worker is missing within 24 hours;
- (i) In cases where a domestic worker has been placed in a home against her wishes, enable her to leave her employment and direct the agency to return the commission paid by the employer back to the employer.

By order and in the name of the  
Lt. Governor of National  
Capital Territory of Delhi,

  
(Jitendra Narain) 25/9

Secretary-cum-Commissioner, Labour

No. Addl. LC/Misc(2)/12/Lab/ Part File/ 1938

Dated: 25/9/14

Copy forwarded to:-

1. Dy. Secretary, GAD, Government of Delhi(2 copies), for publication in Delhi Gazette Extraordinary Part-IV in today's date
2. Secretary to Government of India, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi.
3. Pr.Secretary to the Lt. Governor, Government of NCT of Delhi.
4. Secretary to Delhi State Assembly, Government of NCT of Delhi for kind information of the Chairman and the Deputy Chairman.

AY



5. OSD to Chief Secretary, Government of NCT of Delhi.
6. Secretary-cum-Labour Commissioner, Government of NCT of Delhi, 5-Sham Nath Marg, Delhi-110054.
7. Heads of all Departments, Government of NCT of Delhi.
8. Spl. Labour Commissioner, Additional Labour Commissioner and Joint Labour Commissioner, GNCT of Delhi.
9. All district JLC/DLCs, GNCT of Delhi.
10. Delhi Commission for Women, C-Block, 2<sup>nd</sup> Floor, Vikas Bhawan, I.P. Estate, New Delhi-110002.
11. All Child Welfare Committees, Delhi.
12. System Analyst to upload this order on the website of Labour Department.
13. Librarian, Office of Labour Commissioner, Government of NCT of Delhi.
14. Asstt. Director (Planning & Statistics), Labour Department, Government of NCT of Delhi for publication on the website of the Department, in the Labour Statistics and for laying on the table of the Vidhan Sabha.
15. Guard File.

  
Additional Commissioner (Labour)

(दिल्ली राजपत्र भाग- IV (असाधारण) में प्रकाशनार्थ)  
राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार  
(श्रम विभाग)  
5-शामनाथ मार्ग, दिल्ली-100 054.

सं.एफ.अति0एलसी/विविध (2)/12/श्रम/पार्ट फाइल/ 1938

दिनांक: 25/9/14

आदेश

सं.एफ.अति0एलसी/विविध (2)/12/श्रम/पार्ट फाइल/ .- यह कार्यपालिक आदेश, दिनांक 24 दिसम्बर, 2010 के आदेश में तथा बचपन बचाओं आन्दोलन बनाम भारत संघ तथा अन्य नामक रिट याचिका (आ0) 82/2009 में माननीय दिल्ली उच्च न्यायालय, के दिनांक 18 दिसम्बर, 2013 के अनुवर्ती आदेश के अनुपालन में जारी किया गया है।

जबकि उपरोक्त आदेश के अनुसार दिल्ली के माननीय उच्च न्यायालय ने राष्ट्रीय राजधानी क्षेत्र दिल्ली में घरेलू नौकरों को उपलब्ध कराने वाली निजी प्लेसमेंट एजेंसियों के विनियमन के लिए और राष्ट्रीय राजधानी क्षेत्र दिल्ली में ऐसी प्लेसमेंट एजेंसियों के माध्यम से नियोजित ऐसे घरेलू नौकरों के शोषण को रोकने के लिए राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार को कार्यपालिक निदेश जारी करने के निदेश दिए गए हैं;

और जबकि उस पर अनुपालन में तथा यथाउल्लिखित निजी प्लेसमेंट एजेंसियों के विनियमन के लिए राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार द्वारा निम्नलिखित आदेश जारी किए जाते हैं, अर्थात् :-

1. **संक्षिप्त शीर्षक, विस्तार एवं प्रारंभ :-**

- (क) इन आदेशों को दिल्ली निजी प्लेसमेंट एजेंसी (विनियम) आदेश, 2014 कहा जाए।
- (ख) यह आदेश राष्ट्रीय राजधानी क्षेत्र दिल्ली में घरेलू नौकरों को उपलब्ध कराने वाली समस्त निजी प्लेसमेंट एजेंसियों पर विस्तारित होगा, चाहे उनके कार्यालय/व्यवसाय का स्थान राष्ट्रीय राजधानी क्षेत्र दिल्ली में स्थित हो या उसके बाहर स्थित हो।
- (ग) यह आदेश दिल्ली राजपत्र में अपनी प्रकाशन की तिथि से प्रभावी होगा।

2. **परिभाषाएं :-**

- (i) "घरेलू नौकर" का अर्थ निजी प्लेसमेंट एजेंसी के माध्यम से घरेलू काम पर लगे व्यक्ति जिसकी उम्र 18 वर्ष या उससे ज्यादा है और इसमें ऐसे रोजगार से संबंधी किसी भी नाम व पदनाम वाला व्यक्ति भी सम्मिलित है, परन्तु इसमें निम्न सम्मिलित नहीं हैं:-
  - (क) कभी कभार घरेलू काम करने वाला व्यक्ति; तथा

20/9/14

- (ख) किसी ठेकेदार के माध्यम से नियोजित व्यक्ति।
- (ii) "निजी प्लेसमेंट एजेंसी" का अर्थ किसी व्यक्ति के आवास पर घरेलू नौकर उपलब्ध कराने के व्यवसाय में संलिप्त किसी सरकारी एजेंसी, विभाग या संगठन के अलावा कोई व्यक्ति अथवा व्यक्तियों के निकाय से है;
- (iii) "श्रम विभाग" का अर्थ राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार के श्रम विभाग से है;
- (iv) "आयोग" का अर्थ दिल्ली महिला आयोग अधिनियम, 1994 की धारा 3 के अन्तर्गत गठित दिल्ली महिला आयोग से है;
- (v) समिति का अर्थ किशोर न्याय (बच्चों की देखभाल और संरक्षण) अधिनियम, 2000 की धारा 29 के अन्तर्गत गठित बाल कल्याण समिति से है।

### 3. पंजीकरण:

राष्ट्रीय राजधानी क्षेत्र दिल्ली में घरेलू नौकर उपलब्ध कराने का व्यवसाय कर रही निजी प्लेसमेंट एजेंसी के स्वामी/प्रोपराइटर/प्रबंध साझीदार/प्रबंध निदेशक को दिल्ली राजपत्र में इस आदेश के प्रकाशन के तीस दिन के भीतर दिल्ली दुकान एवं संस्थापना अधिनियम, 1954 अथवा राज्य प्रवासी कामगार (रोजगार का विनियम तथा सेवा की शर्त) अधिनियम, 1979 के अन्तर्गत श्रम विभाग में अपना पंजीकरण कराना होगा, तत्पश्चात् इस अधिनियम के अन्तर्गत निजी प्लेसमेंट एजेंसी को पंजीकरण प्रमाण पत्र जारी किया जाएगा। पंजीकरण के इच्छुक आवेदक को निम्नलिखित विवरण प्रस्तुत करना होगा, अर्थात् :-

- (क) निजी प्लेसमेंट एजेंसी का विवरण;
- (ख) एजेंसी के माध्यम से नियोजित व्यक्तियों/घरेलू नौकरों की संख्या, उनका नाम, आयु और उनके पते;
- (ग) प्रत्येक व्यक्ति के लिए नियत किए गए वेतन का विवरण;
- (घ) नियोक्ताओं के पते;
- (ङ) रोजगार की अवधि;
- (च) कार्य का स्वरूप; तथा
- (छ) नियोक्ताओं से प्राप्त कमीशन का विवरण।

3/1/2015

4. निजी प्लेसमेंट एजेंसी चलाने के लिए लाइसेंस :-

- (i) ऐसी निजी प्लेसमेंट एजेंसी के स्वामी/प्रोपराइटर/प्रबंध साझेदार/प्रबंध निदेशक को श्रम विभाग द्वारा पंजीकरण प्रमाण पत्र जारी होने के पन्द्रह दिन के भीतर, निर्धारित प्रपत्र में जहां उनका कार्यालय/व्यवसाय/संस्थापना स्थित है, उस जिले के उप-श्रम आयुक्त से ऐसी निजी प्लेसमेंट एजेंसी चलाने के लिए लाइसेंस प्राप्त करना होगा और लाइसेंस में उल्लेख की गई ऐसी शर्तों को पूरा करना होगा।
- (ii) लाइसेंस के इच्छुक आवेदक को आवेदन के साथ दिल्ली दुकान एवं संस्थापना अधिनियम, 1954 अथवा अन्तर्राज्यीय प्रवासी कामगार (रोजगार का विनियम तथा सेवा की शर्तें) अधिनियम, 1979 के अन्तर्गत श्रम विभाग, राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार द्वारा जारी पंजीकरण प्रमाण पत्र की प्रति संलग्न करनी होगी और निम्नलिखित विवरण भी प्रस्तुत करने होंगे, अर्थात् :-
- (क) निजी प्लेसमेंट एजेंसी का विवरण;
- (ख) एजेंसी के माध्यम से नियोजित व्यक्तियों/घरेलू नौकरों की संख्या, उनका नाम, आयु और उनके पते;
- (ग) प्रत्येक व्यक्ति के लिए नियत किए गए वेतन का विवरण;
- (घ) नियोक्ताओं के पते;
- (ङ) रोजगार की अवधि;
- (च) कार्य का स्वरूप; तथा
- (छ) नियोक्ता से प्राप्त कमीशन का विवरण।
- (iii) उक्त दी गई जानकारी श्रम विभाग की वेबसाइट से अपलोड की जाएगी और सत्यापन और आवश्यक जानकारी लेने के लिये बाल कल्याण समितियां और दिल्ली महिला आयोग के साथ आदान-प्रदान की जाएगी।

5. घरेलू कामगार को पासबुक जारी करना

निजी प्लेसमेंट एजेंसी के स्वामी/मालिक/प्रबंध साझेदार एवं प्रबंध निदेशक सुनिश्चित करेगा कि प्रत्येक घरेलू नौकर को जारी की गई पास बुक पर नौकर/नौकरानी की पासपोर्ट आकार की फोटो लगी हो। प्राइवेट प्लेसमेंट एजेंसी मालिक/स्वामी/साझेदार द्वारा विधिवत् प्रमाणित हो और हिन्दी में निम्नलिखित दर्शाया हो, अर्थात् :-

- (क) घरेलू नौकर का नाम, आयु तथा पता;
- (ख) नियोक्ता का नाम और पता जिस घर/घरों पर घरेलू नौकर लगाया गया है;
- (ग) रोजगार की प्रस्तावित अवधि और कितनी बार;
- (घ) भुगतान की प्रस्तावित दर तथा अवधि, कोई भी मजदूरी अवधि एक माह से अधिक नहीं होगी;

20/5/24

- (ड) घरेलू नौकर के बैंक खाते का विवरण, जिसमें भुगतान किया जाएगा;
- (घ) उक्त खंड (ii) में विनिर्दिष्ट अवधि के व्यतीत होने पर घरेलू नौकर/नौकरानी को देय वापसी भाड़ा;
- (छ) घरेलू नौकर के नजदीकी रिस्तेदार का नाम और पता।

6. करार लिखित में होगा :-

निजी प्लेसमेंट एजेंसी के माध्यम से नियोक्ता द्वारा घरेलू नौकरानी/नौकर लगाने का करार लिखित में होगा।

7. अनुपालन न करने पर दंड :- अनुपालन न करने की स्थिति में या इस आदेश के किसी भी उपबंध का उल्लंघन करने पर निजी प्लेसमेंट एजेंसी/इसके मालिक/स्वामी/साझेदार/ निदेशक पर 50,000 रुपये का दंड जिसे भूराजस्व की ऐरियर की तरह वसूला जाएगा और श्रम विभाग द्वारा ऐसी प्राइवेट प्लेसमेंट एजेंसी का पंजीकरण प्रमाण पत्र या लाइसेंस भी रद्द किया जा सकेगा। इस पर उसे दिल्ली राष्ट्रीय राजधानी क्षेत्र में कारोबार करने या चलाने की अनुमति नहीं होगी।

वैसी स्थिति में जबकि कोई व्यक्ति बिना लाइसेंस अथवा/और रजिस्ट्रेशन का पाया जाएगा और/अथवा उसने अपनी एजेंसी या अपने आपका रजिस्ट्रेशन इस आदेश के प्रावधानों के तहत नहीं करवाया होगा अथवा घरेलू कामगारों की सप्लाई बिना लाइसेंस या रजिस्ट्रेशन के करता पाया गया, उस पर संबंधित कानूनी प्रावधानों के तहत कार्यवाई की जाएगी।

8. दिल्ली महिला आयोग तथा बाल कल्याण समिति के कर्तव्य :- दिल्ली महिला आयोग तथा बाल कल्याण समिति माननीय दिल्ली उच्च न्यायालय के आदेश से आधार पर निम्नलिखित कार्य करेंगे, अर्थात् :-

- (क) श्रम विभाग द्वारा उपलब्ध कराए गए अभिलेख की आयोग तथा समिति पूरी तरह जाँच करेंगे;
- (ख) आयोग तथा समिति उपलब्ध कराई गई जानकारी का सत्यापन करेंगे और जिन मामलों में अपर्याप्त जानकारी उपलब्ध कराई जाती है, उन मामलों में उन्हें विधिवत् बुलाने के बाद निजी प्लेसमेंट एजेंसियों से और जानकारी मांगेगी। समिति, महिला एवं बाल विकास मंत्रालय, भारत सरकार द्वारा स्थापित उपयुक्त मामलों तथा सूचना को सत्यापन करने के लिये स्वयं सेवी संगठनों के प्रबंधाधीन एक सेवा "चाइल्ड लाइन" की सेवाओं का प्रयोग करने के लिये प्राधिकृत होगी। आयोग उन अभिकरणों की पहचान करेगी, जो वयस्क महिलाओं के संबंध में सूचना सत्यापन करने के लिये उनकी मदद करेगी;
- (ग) आयोग और समिति घरेलू नौकरानी/नौकर द्वारा की गई या उसके अभिभावक द्वारा की गई या चाइल्ड लाइन सेवा का प्रबंध कर रहे स्वयंसेवी संगठनों, नियोक्ता या उपयुक्त मामलों में पुलिस के माध्यम से की गई शिकायतें स्वीकार करेंगे।
- (घ) आयोग और समिति 30 दिन की अवधि के भीतर शिकायतों का फैसला करेंगे।

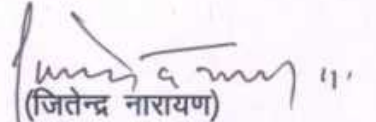
30/1/24

9. दिल्ली महिला आयोग तथा बाल कल्याण समिति द्वारा शिकायतों का निर्णय :- दिल्ली महिला आयोग तथा बाल कल्याण समिति माननीय दिल्ली उच्च न्यायालय के पूर्वोक्त निदेशों के आधार पर निम्नलिखित शिकायतों का निर्णय करेंगे, अर्थात्:-
- (क) तय की गई मजदूरी जो श्रम विभाग राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार द्वारा समय समय पर निर्धारित न्यूनतम मजदूरी से कम न हो, के रोकने पर;
- (ख) उत्पीड़न, जिसमें निजी प्लेसमेंट एजेंसियों के माध्यम से नियोक्ता द्वारा उत्पीड़न किया जाना भी शामिल है;
- (ग) निजी प्लेसमेंट एजेंसी के स्वामी/स्टाफ द्वारा उनके परिसरों या कार्य स्थलों पर उनका उत्पीड़न तथा/दुरुपयोग;
- (घ) निश्चित शर्तों की अवहेलना;
- (ङ) वे घातक कार्य स्थितियां, जो बच्चे की शारीरिक क्षमता से अधिक हैं, उन मामलों में जिनमें 14 से 18 वर्ष की आयु के व्यक्ति काम पर लगाए गए हैं;
- (च) कार्य के अधिक घंटे; तथा
- (छ) मूलभूत सुविधाओं का अभाव जिनमें चिकित्सीय देखभाल और भोजन सहित।
10. दिल्ली महिला आयोग तथा बाल कल्याण समिति की शक्तियां:- दिल्ली महिला आयोग तथा बाल कल्याण समिति के पास माननीय दिल्ली उच्च न्यायालय के पूर्वोक्त निदेशों के आधार पर निम्नलिखित शक्तियां होंगी, अर्थात् :-
- (क) समिति और आयोग के पास घरेलू नौकर/नौकरानी या उसके अभिभावक या उसे काम पर रखने वाले किसी व्यक्ति की किसी शिकायत पर निजी प्लेसमेंट एजेंसियां या नियोक्ताओं को, जैसी भी स्थिति हो, बुलाने की शक्तियां होंगी;
- (ख) निश्चित शर्तों के अनुसार मजदूरी का जो श्रम विभाग राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार द्वारा समय समय पर निर्धारित न्यूनतम मजदूरी से कम न हो, भुगतान करने का निदेश देना तथा उपयुक्त मामलों में अर्थदंड लगाना;
- (ग) कार्य के दौरान घरेलू नौकर/नौकरानी को गंभीर चोटें आने के मामलों में क्षतिपूर्ति राशि भुगतान करने का निदेश देना;
- (घ) चिकित्सा सहायता हेतु निदेश देना;
- (ङ) निजी प्लेसमेंट एजेंसी का नियोक्ता के साथ हुए करार को अनुपालन कराने के लिये निदेश देना या उन मामलों में कमीशन लौटाना, जिनमें शर्तों का पालन नहीं हुआ;
- (च) निजी प्लेसमेंट एजेंसियों पर अर्थदंड लगाना, जिनमें यह पाया जाता है कि करार की शर्तों का पालन नहीं हुआ है।

22/4/25

- (छ) उस बाल/महिला को कानूनी सहायता देने का निदेश देना, जिसमें कोई दंडात्मक अपराध हुआ है;
- (ज) जिन मामलों में घरेलू नौकर 24 घंटे के भीतर गुम है, उन मामलों में स्थानीय पुलिस या समिति/आयोग को सूचित करने के लिये नियोक्ताओं को निदेश देना;
- (झ) जिन मामलों में किसी घरेलू कामगार/नौकरानी को उसकी इच्छाओं के विपरीत अपनी नौकरी छोड़ने के लिये किसी घर में रखा गया है और नियोक्ता द्वारा भुगतान की गई कमीशन उसे लौटाने के लिये एजेंसी को निदेश देना।

राष्ट्रीय राजधानी क्षेत्र दिल्ली  
के उपराज्यपाल के आदेश से तथा उनके नाम पर,

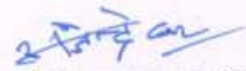
  
(जितेन्द्र नारायण)  
सचिव एवं आयुक्त (श्रम)  
मार्च 11

सं.एफ.अति0एलसी/विविध (2)/12/श्रम/पार्ट फाइल/

दिनांक:

प्रतिलिपि निम्न को सूचनार्थ प्रेषित—

1. उप-सचिव, सामान्य प्रशासन विभाग, दिल्ली को आज के असाधारण राजपत्र भाग-4 में प्रकाशनार्थ । दो प्रतियां
2. सचिव, श्रम मंत्रालय, भारत सरकार, श्रम शक्ति भवन, रफी मार्ग, नई दिल्ली ।
3. प्रधान सचिव, माननीय उपराज्यपाल, रा.रा.क्षे., दिल्ली सरकार ।
4. सचिव, दिल्ली विधान सभा, रा.रा.क्षे., दिल्ली सरकार, माननीय अध्यक्ष एवं उपाध्यक्ष के सूचनार्थ ।
5. मुख्य सचिव के विशेष कार्य अधिकारी, रा.रा.क्षे., दिल्ली सरकार, प्लेयर्स बिल्डिंग, दिल्ली सचिवालय दिल्ली ।
6. सचिव एवं आयुक्त (श्रम) रा.रा.क्षे., दिल्ली सरकार ।
7. दिल्ली सरकार के सभी विभागाध्यक्ष को सूचनार्थ ।
8. विशेष आयुक्त (श्रम), अतिरिक्त आयुक्त (श्रम), रा.रा.क्षे., दिल्ली सरकार ।
9. सभी जिला संयुक्त एवं उप-श्रमायुक्त, रा.रा.क्षे., दिल्ली सरकार ।
10. दिल्ली महिला आयोग, सी ब्लॉक 2 तल विकास भवन आईपी एस्टेट नई दिल्ली - 110002 ।
11. सभी बाल कल्याण समिति, रा.रा.क्षे., दिल्ली सरकार ।
12. प्रणाली विश्लेषक, श्रम विभाग, श्रम विभाग की वेबसाइट पर इस आदेश को अपलोड करने के लिए ।
13. पुस्तकालयाध्यक्ष, श्रमायुक्त कार्यालय, 5- शामनाथ मार्ग, दिल्ली-110054
14. सहायक निदेशक (योजना), श्रम विभाग, दिल्ली को सांख्यिकी व वेबसाइट में शामिल करने के लिए तथा विधानसभा के पटल पर रखने के लिए ।
15. गार्ड फाईल ।

  
अतिरिक्त आयुक्त, (श्रम)



## **Annexure V**

**Versus**

**UNION OF INDIA and ORS. .... Respondents**

**Through: Mr. V.K. Tandon, Adv. with Mr. Rajinder Dhar, Addl. Labour Commissioner for GNCTD.**

**Ms. Meera Bhatia, Adv. for UOI.**

**SI Jagdeep Malik, PS Geeta Colony.**

**Insp. Anil Kumar, ATO/PS Bawana.**

**Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata, Adv. for MCD.**

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**O R D E R**

**05.11.2014**

**1. Vide order dated 24th September, 2008 in this petition as well as in W.P.(C) No. 9767/2009, W.P.(C) No.15090/2006, W.P.(C) No.4125/2007 and W.P.(C) No.4161/2008, directions were issued to the National Commission for Protection of Child Rights (NCPCR), for formulation of a detailed action plan for strict enforcement and implementation of Child Labour?(Prohibition?and?Regulation)?Act,?1986 and other related legislations, in consultation with various stakeholders and after conducting research and survey and to also suggest measures for timely recovery and proper utilization of funds collected under the directions in M.C. Mehta Vs. State of Tamil Nadu AIR 1997 SC 699.**

**2. In accordance with the aforesaid direction, a Delhi Action Plan for Total Abolition of Child Labour was prepared and presented to this Court. This Court, vide judgment dated 15th July, 2009, accepted the aforesaid plan called the Delhi Action Plan, which provides a detailed procedure to be followed by the Labour Department for interim care and protection of rescued children and directed all authorities concerned to immediately implement the same. The Government of National Capital Territory of Delhi was directed to file the First Action Taken Report.**

**3. This Court thereafter has been supervising and goading implementation of the Delhi Action Plan and Status Reports were filed from time to time.**

**4. However the petitioner, from time to time continued to point out the deficiencies and lackadaisical approach of the authorities concerned.**

**5. Ultimately vide order dated 16th July, 2014 the petitioner was requested to come up with constructive proposals for crossing the hurdle of the deficiencies pointed.**

**6. The petitioner, in compliance therewith, has on 4th August, 2014 made the following suggestions:-**

**(i) all enforcement agencies should understand Child Labour as meaning the system of employing or engaging a child to provide labour or service to any person, for any payment or benefit, paid to the child or to any other person exercising control over the said child;**

**(ii) constitution of a Steering Committee on Child Labour at the State level headed by the Divisional Commissioner, to ensure compliance of all laws and Court directions;**

**(iii) action on complaints of a child labour within 24 hours of the receipt of the complaint and latest within three days if number of child labour are above 100;**

**(iv) compulsory registration of all factories and other places of production employing young labour, by the Labour Department;**

**(v) conducting at least 20 large scale child rescue operations per month and laying down a target of rescuing at least 500 children in a month;**

**(vi) the police, while registering FIR in a case of child labour should also invoke Sections 370, 370A of the IPC, Sections 23 and 26 of the Juvenile Justice (Care and Protection of Children) Act, 2000, Sections 3 and 14 of Child Labour (Prohibition and Regulation) Act, 1986, Section 16 of Bonded Labour System (Abolition) Act, 1976 and on rescue of girl children, if any sexual exploitation is found, appropriate provisions of the Protection of Children from Sexual Offences Act, 2012**

**(vii) intensive investigation by the Investigating Officer throughout the chain of trafficking;**

**(viii) collection of material evidence in respect of age, as per Rule 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 by the Investigation Officer and for providing proper counselling by the officer of Child Welfare Committee before recording statement under Section 164 Cr.P.C. before the Metropolitan Magistrate;**

**(ix) laying down a target of completing investigation within 45 days from the rescue of the child, so that necessary formalities for rehabilitation and compensation can be completed within the said time;**

**(x) the Investigation Officer should forward the cases of child labour to the appropriate authorities / department for recovery of due back wages, compensation for victims and if applicable, compensation under Section 357A Cr.P.C.;**

**(xi) police officials having custody of child should produce the child before the Sub Divisional Magistrate, Child Welfare Committee, Metropolitan Magistrate and Dy. Labour Commissioner;**

**(xii) constitution of teams at the District Level under the supervision of Steering Committee of Delhi for identification of child labour and for such identification drives to be conducted at least once in a month;**

**(xiii) Dy. Labour Commissioner to immediately initiate proceedings for recovery of due wages of rescued child;**

**(xiv) sealing of premises from where children have been rescued;**

**(xv) immediate recovery of Rs.20,000/- from the employer of child labour as an arrear of land revenue;**

**(xvi) action including of sealing of establishment / cancellation or suspension of license failing the recovery of fine within one week;**

**(xvii) if the facts and circumstances in which child labourers are found for drawing the presumption that child labour is forced / bonded labour within the meaning of Bonded Labour System (Abolition) Act, 1976 and action thereunder;**

**(xviii) Divisional Commissioner to preside over the meetings of the Steering Committee on monthly basis;**

**(xix) Divisional Commissioner to formulate schemes for providing incentives, scholarship etc. to children from Delhi who are unable to continue their education; and,**

**(xx) for formulation of schemes for identification, rescue and withdrawal of child labour engaged or employed in begging or selling various items at traffic junctions.**

**7. The counsel for the Government of National Capital Territory of Delhi under instructions from Mr. Rajinder Dhar, Addl. Labour Commissioner present in Court states that the aforesaid suggestions of the petitioner are found to be within the ambit of Delhi Action Plan and have been accepted by the Government of National Capital Territory of Delhi and will be implemented.**

**8. We bind the respondent to the aforesaid statement.**

**9. The counsel for the petitioner states that in view of the above no further orders are necessary.**

**10. We accordingly dispose of this petition.**

**11. We also take this occasion to convey our appreciation for the sustained efforts put in by the petitioner, during the last nearly nine years since when these proceedings are pending, for the cause of eliminating child labour and for saving childhood. We also place on record our deep pleasure for the public recognition of the works of Mr Kailash Satyarthi, one of the trustees of the petitioner, by the conferment of Nobal Peace Prize on him.**

**CHIEF JUSTICE**

**RAJIV SAHAI ENDLAW, J**

**NOVEMBER 05, 2014**



**Bachpan  
Bachao  
Andolan**

L-6, Kalkaji, New Delhi-110019  
Ph.: +91 11 49211111-12 | Fax: +91 11 49211138  
Email: [info@bba.org.in](mailto:info@bba.org.in) | Website: [www.bba.org.in](http://www.bba.org.in)