

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.

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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 4th 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 14th 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.

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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.

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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 25th 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 23rd 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 1st 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 20th 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 used 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.

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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 9th 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 9th 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.

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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