

**Bachpan Bachao and Ors. v. Union of India and Ors.
and
Shramjeevi Mahila Samiti v. State and Ors.
and
Kalpana Pandit v. State**

Decided on 24.12.2010 in the Delhi High Court

Background

This case dealt with three writ petitions pertaining to the problems of child trafficking and forced child labour and the regulation of placement agencies.

Petition filed by Kalpana Pandit

The first petition was filed by a poor domestic servant, Kalpana Pandit, after her daughter went missing when she was provided employment by a placement agency as domestic help. This petition brought to the forefront the issue of exploitation of children working as domestic help and children going missing in the process. It was noted by the court that many placement agencies would place children initially at some residence as domestic help, but such children would ultimately be forced into the flesh trade. Therefore, the court also deemed it proper to address this issue, treating the petition as public interest litigation.

Petition filed by Bachpan Bachao Andolan

The second petition was filed by Bachpan Bachao, an NGO. The petition highlighted the problem of several thousand minors being kidnapped and trafficked from various states and brought to Delhi and sold for the purposes of prostitution, begging, drug peddling, slavery, forced labour and various other crimes.

The petitioner prayed to the court to direct the government to:

1. take appropriate measures for the immediate rescue and release of all such minor children;
2. protect the fundamental rights of such children;
3. take steps for the proper rehabilitation, social reintegration and education for the children who are released from various illegal placement agencies and other places in the NCT of Delhi; and
4. formulate and to bring into immediate effect a specific and stringent law to deal with such illegal placement agencies.

Petition filed by Shramjeevi Mahila Samiti

The third petition was filed by Shramjeevi Mahila Samiti, an NGO operating in Kolkata, West Bengal, on the similar problem of trafficking, kidnapping, forced labour and bondage of 298 women and children. The petition brought to light the cases of women and children who were brought to Delhi from their villages and employed in various houses. Their place of employment was constantly changed so that their families were unable to contact them. Wages were not paid

and they were confined against their wishes. There were instances of physical and sexual abuse as well.

Observations made by the court

- In this case, the Delhi High Court observed that trafficking in women and children was the gravest form of abuse and exploitation of human beings.
- Poverty and lack of opportunity pave the way for 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. Some crimes that are commonly concurrent with child trafficking include domestic violence, child abuse or neglect, child sexual abuse and child pornography.
- The main laws dealing with child trafficking in India include the Immoral Trafficking Prevention Act, 1956, the Juvenile Justice (Care and Protection of Child) Act, 2000, and the Indian Penal Code, 1850. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, also referred to as the Palermo Protocol on Trafficking, deals with the problem of trafficking internationally.

Comment [P1]: Please check

Directions with regard to placement agencies

- The court observed that there are as many as 123 such agencies functioning in Delhi, engaged in placement of children in various establishments including as domestic help. There is 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, with some even pushed into prostitution. This defeats the very spirit of the Juvenile Justice Act. The child welfare committees formed under the Act and vested with extensive powers, have, in the absence of appropriate rules and regulations for the exercise of that power, been rendered hollow. As a result, the court gave various directions in its order dated 04.10.2004.
- The court directed the child welfare committees in Delhi to submit a detailed report regarding the complaints received by them about child abuse in cases where children are placed with households to work as domestic servants, and the action taken by the committees.
- The court also directed the Secretary, Social Welfare Department, Government of Delhi, to indicate whether any rules have been framed or can be framed under the Juvenile Justice Act to regulate the exercise of powers by committees and also to regulate the functioning of the placement agencies dealing with domestic child labour.
- The state government submitted a report stating that it was not possible to frame guidelines for monitoring the placement agencies under the Juvenile Justice Act. Instead, it was suggested that steps be taken for making registration under the Delhi Shops and

Establishments Act mandatory, whereby the placement agencies could also be regulated. The necessary amendment in the aforesaid Act has since been made.

Suggestions for the regulation of placement agencies

In order to regulate the manner in which placement agencies work, Ms Aparna Bhat, counsel for Kalpana Pandit, made the following suggestions:

Domestic workers who are placed by the agencies can be classified as children and adults. Children will be in the age group of 14 to 18 years and the adults above 18. The government must:

- 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 duly 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, reintegrated, or rehabilitated by the intervention of the child welfare committee.
- g) Ensure that in cases of abuse which are covered by the Penal Code, these agencies either collectively or individually help prosecute the perpetrator.

Suggestions given by the solicitor general

- The Solicitor General emphasised that every state government must have a set of guidelines for NGOs that want to assist in inquiries/fact-finding and rescue operations. The guidelines published in Bernard Boetoe's 'An NGO's practical guide in the fight against child trafficking' should be adopted.
- The police must also follow certain guidelines in conducting fact-finding and rescue operations to ensure confidentiality of the child and provide adequate care to the child through provision of basic necessities such as food and drinking water in the police station. It is important that no child be kept in the police station.

Directions issued by the court

- **Framing of comprehensive law:** The court observed that there was no comprehensive legislation to take care of the problem. 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 the feasibility of having a single legislation to regulate the problem of employment of children and adult women as domestic helps. Until that is achieved, the government must ensure that various enforcement agencies of different statutes work in a coordinated and cooperative manner. Necessary guidelines should be issued or rules framed in this behalf. A single-window enforcement agency should be created.
- **Registration of placement agencies:**
 - (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 that place women and children in homes located in Delhi.
 - (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 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 easy access by the child welfare committees as well as the Delhi Commission for Women. The information should be put up on the website. Until such time as this is done, the records should be made available to the commission and the committees.
- **Duties of the child welfare committees and Delhi Commission for Women:**
 - a) To go through the records provided by the Labour Department
 - b) To verify the information and to seek further information where information is found to be inadequate, by summoning the placement agencies
 - c) Use the services of Childline, a service set up by the Ministry of Women and Child Development, Union of India, to verify the information in appropriate cases
 - d) Entertain complaints made by the domestic worker herself/himself or through a guardian, an NGO, the employer, or the police in appropriate cases

- e) Decide the complaints made within a period of 30 days
- f) To hear the following types of cases:
 - i. Withholding of agreed wages
 - ii. Harassment including harassment by employer at the hands of the placement agencies
 - iii. Harassment and abuse by placement agency proprietor/staff at their premises or at workplace
 - iv. Non-compliance with the agreed terms
 - v. Abusive working conditions that are beyond the physical capacity of the child in cases where persons between ages 14 and 18 are employed
 - vi. Long hours of work
 - vii. Lack of basic facilities including medical care and food

Powers of the committee/commission:

- a) Summon the placement agencies or the employer on receiving a complaint
- 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 doing 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 complied 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 within 24 hours the local police or the committee/commission in cases where the domestic worker is missing
- 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

Directions to the police

The court also directed the police to fulfil its obligations under the Police Circular issued by DCP, Headquarters, New Delhi, which requires the Delhi Police to:

- a) regulate the functioning of placement agencies
- b) 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 photographs and contact addresses of the applicants, the details of previous employers, etc.

The court directed the administration at the highest level in Delhi Police to reconsider the feasibility of implementation of these instructions.