

Court on its Own Motion v. Government of NCT of Delhi and Ors.

In the Delhi High Court; decided on 15.07.2009

Background

This case was taken up by the Delhi High Court after an incident of three children being employed in a bulb-manufacturing unit in Nangloi, Delhi, was brought to its notice. The Child Labour (Prohibition and Regulation) Act, 1986, and other constitutional and statutory provisions relating to children were not being adequately implemented. There was a complete lack of coordination between different agencies of the Government of Delhi and other authorities.

Hence, the High Court, through a detailed order dated 24.9.2008, directed the National Commission for Protection of Child Rights (National Commission) to formulate an action plan for strict enforcement and implementation of Child Labour (Prohibition and Regulation) Act, 1986, and other related legislations. The National Commission was also directed to suggest measures regarding education, health and financial support for the rescued children.

The National Commission, after holding consultation with various stakeholders and conducting research, submitted to the High Court a 'Delhi Action Plan for Total Abolition of Child Labour'.

Delhi Action Plan for Total Abolition of Child Labour

According to the National Commission, the child labour profile in Delhi is of two types: namely, out-of-school children living with their parents in Delhi and migrant children from other states who have left their families behind. The Action Plan for Total Abolition of Child Labour is, therefore, based on two strategies targeting the two types of child labour present in Delhi.

Strategy for child labourers living with parents

This involves an area-based approach for elimination of child labour. It would cover all children in the age group of 6 to 14 years. It would be initiated as a pilot project in North-West District of Delhi. The objectives of this strategy would be:

1. To generate societal consensus on the issue of total abolition of child labour through universalisation of elementary education
2. To enroll all children in the age group of 6 to 14 years in schools and to withdraw them from work, while at the same time ensuring their retention in schools
3. To integrate older children withdrawn from work in classes according to their age through accelerated learning programmes
4. To build local institutions for protection of child rights by forming committees and Forums of Liberation of Child Labour (Youth and Teachers' Wings) as well as strengthening of VidyalayaKalyanSamitis

Strategy for Unaccompanied Migrant Child Labourers

The Strategy for Unaccompanied Migrant Child Labourers in Delhi is based on the Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour issued by Ministry of Labour and Employment, Government of India, 2008. This strategy contemplates constitution of a Steering Committee on Child Labour at the state level and a Task Force on Child Labour at district level.

Roles and responsibilities of different agencies

In order to ensure proper coordination amongst the different agencies of the Government of NCT of Delhi, the action plan defines the roles and responsibilities of various departments/authorities involved in the process in a consolidated manner.

Delhi Police

- a) Conduct and participate in raids to liberate child labourers
- b) Arrest the owners/employers of child labourers
- c) Hand over liberated child labourers to a children's home
- d) Lodge a police complaint against an employer employing child labour

Department of Labour

- a) Keep the areas where child labour is likely to be hired under active surveillance
- b) Liberate child labourers

- c) Recover a sum of Rs 20,000 from the employer of a child labourer and credit it to the District Child Labour Welfare Fund
- d) Take action against the employers of child labourers under the Delhi Shops and Establishments Act, 1954, Minimum Wages Act, 1948, Motor Transport Workers Act, 1961, Factory Act, 1948, Inter-State Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979, and Contract Labour (Regulation & Abolition) Act, 1970
- e) Designate nodal officers at senior level to the district-level Child Labour Task Force

Comment [P1]: Please check

Women and Child Welfare Department

- a) Generate awareness among the masses about the practice of child labour
- b) Take charge of liberated child labourers
- c) Issue letters to child welfare committees to nominate members to the district-level Child Labour Task Force

Education Department

- a) Offer free and compulsory education to liberated child labourers
- b) Provide the benefits of free midday meal scheme of the state government
- c) Set up, to begin with, 250 Alternative Innovative Education Centres in the areas with child labour concentration
- d) Make a monthly report on school-wise and class-wise attendance and dropouts corresponding to the number of children admitted. The report should also include the number and names of out-of-school children in the district (school-wise and class-wise)

Health Department

- a) Conduct complete medical examination of liberated child labourers and provide immediate medical treatment when required
- b) Furnish a clear certificate of age (issued by medical officers not below the rank of Government Assistant Surgeon) of the liberated child labourer to the investigating police officer or labour officer

Municipal Corporation of Delhi (MCD)

- a) Under its Slum Development Programme, the MCD should enhance the standard of living of all children living in the slums within its jurisdiction
- b) MCD schools should provide free and compulsory education to all rescued child labourers
- c) Conduct sensitisation/counselling programmes for slum-dwellers stressing the importance of education for their children and the long-term evil impacts of child labour

Deputy Commissioner of the Concerned District

- a) Ensure that no incidence of child labour is found within their jurisdiction
- b) Preside over monthly meetings of the district-level Task Force on Child Labour
- c) Obtain and regularly update a list of voluntary organisations dealing with the problem of child labour
- d) Ensure that Rs 20,000 per child labourer is recovered from the employer and credited along with Rs 5,000 to the District Child Labour Welfare Fund. Furnish utilisation certificate to the government about these funds on a half-yearly basis
- e) Take action under the Bonded Labour System (Abolition) Act, 1976, and the centrally sponsored plan Scheme for Rehabilitation of Bonded Labour, if the child labour is found to be forced labour/bonded labour

Directions given by the Delhi High Court

The Delhi High Court accepted the Delhi Action Plan. The High Court directed the Labour Department to begin implementing the Delhi Action Plan by accommodating, for the time being, about 500 children every month. The court made some clarifications and changes to the Delhi Action Plan:

- Under the Child Labour (Prohibition and Regulation) Act, only children below the age of 14 employed in occupations prohibited in the Schedule to the Act could be rescued. However, the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply to

children between the age of 14 years and 18 years, and to those children employed below the age of 14 years in non-scheduled occupations and processes.

- The recovery of the fine of Rs 20,000 would not have to await a conviction order for the offending employer. This would be recovered as arrears of land revenue and utilised for the educational needs of the rescued child even if the child crossed the age of 14 years.