

# Case Laws





**In the Supreme Court of India  
Civil Original Jurisdiction**

**Writ Petition (C) No. 75 of 2012**

***Bachpan Bachao Andolan ...Petitioner(s)***

***Versus***

***Union of India & Ors. ...Respondent(s)***

**With Contempt Petition (C) No.186/2013 in Writ Petition (C) No.75/2012**

**ORDER**

This matter has been listed pursuant to the direction given on 26th April, 2013, when the contempt petition filed in the writ petition by the petitioner, complaining of the manner in which a complaint made regarding a missing child was sought to be handled by the concerned police station, was being considered. It has also come up on account of the other directions which had been given for implementing the various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 ['Juvenile Act', for short].

On 17th January, 2013, when this matter came up for consideration, we had given an interim direction that in case a complaint with regard to any missing children was made in a police station, the same should be reduced into a First Information Report and appropriate steps should be taken to see that follow up investigation was taken up immediately thereafter.

An element of doubt has been raised on behalf of the State of Madhya Pradesh regarding the recording of First Information Report relating to a missing child, having regard to the provisions of Section 154 of the Code of Criminal Procedure, 1973 [“Cr.P.C.1, for short], which relates to information in cognizable cases. We do not, however, see any difficulty in the orders, which we have already passed. We make it clear that, in case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise. Accordingly, whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under Section 154 Cr.P.C. However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 Cr.P.C. , upon making an entry in the Book to be maintained for the purposes of Section 155 Cr.P.C., and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint. The Magistrate, upon receipt of the information recorded under Section 155 Cr.P.C., shall proceed, in the meantime, to take appropriate action under sub-section (2), especially, if the complaint relates to a child and, in particular, a girl child.

On the last occasion, when- the matter was taken up, we were informed by some of the States that the directions, which we had given in our Order dated 17th January, 2013, had been duly implemented and affidavits to that effect have also been filed. Some of the information given therein is seriously objected by Mr. H.S. Phoolka, learned counsel appearing for the petitioner. In any event, even if the figures shown are incorrect, in order to rectify the situation, we are inclined to accept the suggestion made by Ms. Shobha, learned advocate, appearing for the National Human Rights



Commission, that each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act. We are also inclined to accept the suggestion that there should be, in shifts, a Special Juvenile Officer on duty in the police station to ensure that the directions contained in this Order are duly implemented. To add a further safeguard, we also direct the National Legal Services Authority, which is being represented by its Member Secretary through Ms. Anitha Shenoy, learned advocate, that the paralegal volunteers, who have been recruited by the Legal Services Authorities, should be utilized, so that there is, at least, one paralegal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children, are dealt with.

Ms. Shobha learned counsel, has also made another useful suggestion regarding a computerized programme, which would create a network between the Central Child Protection Unit as the Head of the Organization and all State Child Protection Units, District Child Protection Units, City Child Protection Units, Block Level Child Protection Units, all Special Juvenile Police Units, all Police stations, all Juvenile Justice Boards and all Child Welfare Committees. The said suggestion should be seriously taken up and explored by the National Legal Services Authority with the Ministry of Women and Child Development. Once introduced, the website link should also be made known to the public at large. The State Legal Services Authorities should also work out a network of NGOs, whose services could also be availed of at all levels for the purpose of tracing and re-integrating missing children with their families which, in fact, should be the prime object when a missing child is recovered.

Various other suggestions have been made by Ms. Shobha in her written submission, regarding installation of computerized cameras, which can also be considered by all the concerned authorities.

A similar response has been made on behalf of the National Legal Services Authority, and similar suggestions have been made. The details as indicated in the response can always be worked out in phases by the Juvenile Justice Board and the Child Welfare Committees in consultation with the National Legal Services Authority, since each have a responsible role to play in the welfare of children, which, if the statistics given are to be believed, are difficult to accept. In fact, as has been pointed out by Mr. Phoolka, out of more than 3,000 children missing in 2011, only 517 First Information Reports had been lodged. The remaining children remain untraced and are mere slips of paper in the police stations.

One of the submissions, which has been made in the response filed by the NALSA, is with regard to the role of the police and the directions given by this Court, from time to time, in the case of Sampurna Behura vs. Union of India & Ors. [Writ Petition (C) No.473 of 2005]. Accordingly, in addition to what has been recorded, as far as the suggestions made on behalf of the National Human Rights Commission is concerned, we add that, as suggested on behalf of the NALSA, every found/recovered child must be immediately photographed by the police for purposes of advertisement and to make people aware of the missing child. Photographs of the recovered child should be published on the website and through the newspapers and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police. The Ministry of Home Affairs shall provide whatever additional support



by way of costs that may be necessary for the purpose of installing such photographic material and equipment in the police stations. Apart from the above, all the parties involved shall have due regard to the various directions given in Sampurna Behura's case [supra] where also provision has been made for a child to be sent to a Home and for taking photographs and publishing the same so that recovery could be effected as early as possible.

The other suggestion of NALSA is that a Standard Operating Procedure must be developed to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child, when the information suggests the commission of such offences. As part of the Standard Operating Procedure, a protocol should be established by the local police with the High Courts and also with the State Legal Services Authorities for monitoring the case of a missing child. In Delhi, such a protocol could be established with the help of the All India Legal Aid Cell on Child Rights, set up by NALSA, in association with the Delhi State Legal Services Authority, and the petitioner herein, Bachpan Bachao Andolan. In fact, the same could be treated as a nodal agency of the All India Legal Aid Cell on Child Rights.

We have given directions in regard to the utilization of the para-legal volunteers, which is one of the suggestions made on behalf of the NALSA.

As has been pointed out by Mr. Phoolka, learned counsel appearing on behalf of petitioner, an Office Memorandum was issued on 31st January, 2012, by the Ministry of Home Affairs, Government of India, by way of an advisory on missing children and the measures needed to prevent trafficking and for tracing of such children. In the said Office Memorandum missing child has been defined as a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person, who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well being is established. In case a missing child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child. The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the Legal Services Authorities updated. It may also be noted that, in cases where First Information Reports have not been lodged at all and the child is still missing, an F.I.R, should be lodged within a month from the date of communication of this Order and further investigation may proceed on that basis. Once a child is recovered, the police authorities shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and if, on investigation, such links are found, the police shall take appropriate action thereupon.

The State authorities shall arrange for adequate Shelter Homes to be provided for missing children, who are recovered and do not have any place to go to. Such Shelter Homes or After care Homes will have to be set up by the State Government concerned and funds to run the same will also have to be provided by the State Government together with proper infrastructure; Such Homes should be put in "place within three" months,



at the latest. Any private Home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply with all the provisions of the Juvenile Justice Act, including registration.

Having regard to the order passed herein, the contempt proceedings, which have been initiated by the petitioner, are dropped. In the event, all the States have not yet filed their status reports, the time for filing the same is extended till the next date.

We appreciate the efforts of the petitioner-organisation, Mr. H.S. Phoolka, learned counsel appearing on behalf of the petitioner, all the other counsel, who have appeared in this matter on behalf of the different Authorities, including NALSA and the National Human Rights Commission, and we hope that such interest will continue to subsist hereafter.

Let this matter be listed again after three months.

.....CJI.  
[ALTAMAS KABIR]  
.....J.  
[VIKRAMAJIT SEN]  
.....J.  
[S.A. BOBDE]

New Delhi,  
May 10, 2013.

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*“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.”*

*Kofi Annan*



IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

**WRIT PETITION (C) No.51 OF 2006**

*Bachpan Bachao Andolan ... Petitioner*

*Versus*

*Union of India & Others ... Respondents*

**JUDGMENT**

**Dalveer Bhandari, J.**

1. This petition has been filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman conditions. There are instances of sexual abuse on a daily basis, physical abuse as well as emotional abuse. The children are deprived of basic human needs of food and water.
2. It is stated in the petition that the petitioner has filed this petition following a series of incidents where the petitioner came in contact with many children who were trafficked into performing in circuses. The petitioner found that circus is one of the ancient forms of indigenous entertainment in the world, with humans having a major role to play. However, the activities that are undertaken in these circuses deprive the artists especially children of their basic fundamental rights. Most of them are trafficked from some poverty-stricken areas of Nepal as well as from backward districts of India. The outside world has no meaning for them. There is no life beyond the circus campus. Once they enter into the circuses, they are confined to the circus arena, with no freedom of mobility and choice. They are entrapped into the world of circuses for the rest of their lives, leading a vagrant tunnelled existence away from the hub of society, which is tiresome, claustrophobic and dependent on vicissitudes.
3. It is submitted that the petitioner is engaged in a social movement for the emancipation of children in exploitative labour, bondage and servitude. Bachpan Bachao Andolan has been able to liberate thousands of children with the help of the judiciary and the executive as well as through persuasion, social mobilization and education.
4. It is submitted that for the first time the petitioner came to know about the plight of children in Indian circuses way back in 1996. At that time, the petitioner had rescued 18 girls from a circus performing in Vidisha District of Madhya Pradesh. This was possible after a complaint made by a 12 year old girl, who managed to escape from the circus premises. Her complaint was that she and several other Nepalese girls had been trafficked and forced to stay and perform in the circus where they were being sexually abused and were kept in most inhuman conditions.
5. Following this incident, an organised attempt was made by the petitioner to understand and learn more about the problem of child labour in Indian Circuses and how to eradicate the same. This began in July 2002 with the initiation of a research on the problem of child labour in Indian circuses. The findings in the



abovementioned research were compiled in a report termed “Eliminating Child Labour from Indian Circuses”.

6. Once all the above facts and figures were established, the petitioner decided to implement a multi-pronged strategy to eradicate the practice of employing children in Indian circuses. Simultaneously, preparations were made to put across the problem in front of circus owners to make them aware of the moral and legal questions pertaining to the use of children in circuses. The petitioner initiated a dialogue with all the major circus owners and appealed to them to stop trafficking, bondage, Child labour and other violations of child rights. The Indian Circus Federation (for short ‘I.C.F.’) responded positively but ironically this body has a very thin representation from the circus industry with approximately less than 10% of the big circuses and probably less than 20% of all the circuses were members of this Federation.
7. It is submitted that the petitioner convened a meeting with the circus owners on the 18th and 19th August, 2003 where a few owners under the umbrella of I.C.F. agreed to make a declaration that there shall be no further use of children in the circuses in India and a full list of the children employed by them will be provided to the petitioner and that they would voluntarily phase out all the children from their circuses in a time bound manner. It was also decided that the petitioner and its partner Non-Governmental Organizations (for short, NGOs) in Nepal will help in repatriation and rehabilitation of liberated children.
8. The petitioner submitted that since the I.C.F. does not have enough influence even on its own members, the agreement did not get implemented. However, the petitioner kept on receiving information and complaints from several parents through the NGOs working in Nepal. The petitioner sent the staff of his organization to cross-check and reconfirm the facts in Bhairawa, Hetauda in Nepal and Siliguri in India and found that organized crime of trafficking of children for Indian circuses, particularly from Nepal is rampant. In February and March, 2004, the petitioner received complaints from many Nepalese parents whose children have been trapped in circuses for more than 10 years and had never been allowed to meet them on one pretext or the other even after repeated requests to the circus owners. Majority of the complaints were for the children in the Great Indian circus (a non-federation circus) which was found to be located in Palakkad, Kerala. In June, 2004, the petitioner came to know through credible NGOs and individuals working in Hetauda, Nepal that the daughters of 11 parents were trapped into Great Roman Circus in India. The petitioner has since then conducted several studies and interviews with various people who are engaged in circus.
9. The petitioner further found that life of these children begins at dawn with training instructors’ shouting abuses, merciless beatings and two biscuits and a cup of tea. After 3 to 5 shows and of lot of pervert comments of the crowds, the young girls are allowed to go back to their tents around midnight. Even then, life might have something else in store, depending upon the nature and mood swings of the circus owners and managers. If any child complains about the inadequate amount of food or the leaking tent in the rain or if a child is scared on the rope while performing the trapeze, he/she is scolded and maltreated by



the managers or employers and sometimes even caned on one pretext or the other.

10. There are no labour or any welfare laws, which protect the rights of these children. Children are frequently physically, emotionally and sexually abused in these places. The most appalling aspect is that there is no direct legislation, which is vested with powers to deal with the problems of the children who are trafficked into these circuses. The Police, Labour Department or any other State Agency is not prepared to deal with the issue of trafficking of girls from Nepal holding them in bondage and unlawful confinement. There is perpetual sexual harassment, violation of the Juvenile Justice Act and all International treaties and Conventions related to Human Rights and Child Rights where India is a signatory.
11. The petitioner submitted that this Court in the case of ***N.R. Nair & Others v. Union of India & Others*** (2001) 6 SCC 84 upheld the rights of animals who are being made to perform in these circuses after understanding their plight. The situation of children in circuses is no different if not worse.
12. The petitioner has made various attempts to regulate and improve the conditions of children in circuses including engaging the circus owners association. However, none of them have derived good results. It is categorically submitted that the petitioner does not want the circuses to be completely banned or prohibited but there is a strong need to regulate this as any other industry including ensuring safety and other welfare measures of all those who are working in circuses, particularly the children. Almost all the circuses employ at least 50 persons and therefore a large number of labour laws should be applied.
13. The petitioner seeks application of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and also suggests that intra-state trafficking of young children, their bondage and forcible confinements, regular sexual harassment and abuses should be made cognizable offences under the Indian Penal Code as well as under section 31 of the Juvenile Justice Act. Children Welfare Committees under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be empowered to award compensation to all those victims rescued from the circuses with a time bound rehabilitation packages and the State Government to create a fund of the same.
14. Mostly, these children are sold to the circus owners either by the agents or their relatives or sometimes the poor parents are lured into the web by promising high salaries, luxurious life etc. However, some exceptional circuses were also found (only 4) that treated their employees marginally better and allowed them to avail the privilege of limited movement outside the circus campus for limited time, but child labour was prevalent in these circuses as well and artists were not given minimum wages.
15. The petitioner has complained about living and working conditions of the children and has enumerated the following broad categories which are set out as under:

**i. Insufficient Space**



In almost all the circuses visited by the research team, the living conditions were quite similar, but nonetheless deplorable. There are separate sleeping arrangements for males and females, with the Company Girls segregated from the rest of the circus troupe by a boundary. There are also separate tents for the families working in the circuses. Usually 5 to 10 and sometimes even more people are crammed into a single tent, thus most of the child artists complain of insufficient space and lack of personal space and privacy.

**ii) Meals**

Most of the circuses provide two meals - lunch and dinner to the artists and tea also two times from the canteen run by the management. The quantity and quality of the food is variable, depending on the management. Most often, the food is inadequate to satisfy the appetite of young growing children.

**iii) Sleep Timings**

Sleep timings are also very erratic, depending upon the nature of the work being performed by the child artists, though on a general trend most go to bed at midnight after the last show is over, to be woken up at dawn for practise.

**iv) Poor Sanitation**

There are no proper toilets and bathrooms. Make-shift toilets are created on the circus ground near the tents and all the company girls have to share it and the stench around them is unbearable. In general, condition of sanitation in circuses is most pathetic. It also precipitates unhygienic conditions that could lead to diseases. Invariably all the artists voiced their dissatisfaction on the issue of sanitation and hygiene.

**v) No Health Care Personnel**

Another important issue concerning the artists is the lack of any health care personnel to look into their day-to-day health care needs as well as the accidents that are so common in the circuses. The manager or the keeper usually provides medication for common ailments such as fever, cold etc. and looks into the first-aid needs of the artists. For a serious medical condition or an accident during training or performance, the trainer or the manager usually accompanies the patient to the nearest medical help. The management bears the charges of the treatment during that time, but later deducts it from the salary of the incumbent. However, some managements do bear the medical bill of the artists if a mishap occurs during the performance or training.

Overall, it can be said that the living conditions inside the premises of the circus arena are squalid and deplorable, with no facilities and basic amenities being provided to the circus artists, not even proper sanitation.

**vi) High Risk Factor**



Nature of the activities in circuses is such that the risk factor for the artists is very high as accidents and mishaps during practise sessions and shows are common phenomenon. On top of that, there are no health care personnel employed by the circuses to look into the health care needs of the artists, even at the time of emergency. It was found that the lives of the children was endangered due to the risk factor involved in the circuses, especially those who were involved in items like ring of death, well of death, sword items, rope dance etc. They constituted 10% of the total number of children. Rest 60% fell in the medium risk category while 30% were not involved in any risky items. Moreover, some circuses either fail to or are ignorant about taking the necessary precautions, which further heightens the risk involved. In fact, the research team witnessed an accident while visiting one of the circuses.

**vii) Remuneration**

Besides paying meagre salaries to the children, the management of some circuses holds back the salaries of the children saying that they would be paid only to their parents when they visit them, which rarely happens. Salary accounts are often manipulated and the loss due to accidents or mishaps is not compensated.

**viii) Bound by Contract**

The child artists are brought to the circuses to be contracted for 3 to 10 years and once the contract is signed/agreed upon by the parents or guardians of the children, these young ignorant children are bound and indebted to the circus management and are unable to break away from the circus, even if they are discontented with their lives in the circus.

**ix) Daily Routine hindering their All-round Development**

In the circus, their daily routine starts with practising even before the sunrise (rigorous training session initially) mostly accompanied with verbal and physical abuse and harsh physical punishments at times, for the slightest error or no error at all. From afternoon onwards until midnight, they are on the stage, performing and enthralling the audience with their vivacity and wit. They cannot share their agony and grievances or raise their voice against the torturous life they are forced to lead. For them, there is no education, no play, no recreation and their life is confined to the circuses without any exposure to the outside world. All this prohibits them from knowing the other opportunities available, as they are aware of and are exposed to just one aspect of life, that is the aspect they see in the circuses they work in. Due to the cruel and inhuman attitude of the management in some circuses, which imposes restrictions on the children for meeting their folks, and also due to the traveling nature of the troupe, most of the children end up losing contact with their parents, especially those across the border or residing at far off places even within the country. And those fortunate few, who get a chance to meet their parents, do so once or twice a year, either when their parents visit or when they are allowed to go home. Consequently, they are exposed to a world which



hinders their psychological, spiritual and socio-economic development, with no knowledge of their rights, duties and scope for a better future and thus, are left with no other option but to continue working in the circuses for the rest of their lives. Instability in life, due to the circus's nomadic existence, makes it difficult for them to pursue formal education, resulting in a large number of illiterate children and adults in circuses.

16. The employment of the children in circus involves many legal complications and in that respect major complications are as under:
  1. Deprivation of the children from getting educated thereby violates their fundamental right for education enshrined under Article 21A of the Constitution.
  2. Deprivation of the child from playing and expression of thoughts and feelings, thereby violating the fundamental right to freedom of expression.
  3. Competency to enter into contract for working in circus.
  4. Violation of statutory provisions of law like Employment of Children's Act, 1938, The Children (Placing of Labour) Act, 1933, The Child Labour (Prohibition and Regulation) Act, 1986, Minimum Wages Act, 1976, The Prevention of Immoral Traffic Act, Equal Remuneration Act, 1976 and Rules made thereunder and the Bonded Labour System (abolition) Act, 1976 read with rules made thereunder, the Factories Act, 1948, Motor Transport Workers Act, 1961 etc.
  5. Existing labour laws and legitimacy of contracts of employment for children.
  6. The legitimacy of contracts of employment for children and working conditions.
17. The petitioner has given innumerable instances in the petition of abuse of children in the circuses. All those instances demonstrate under what horrible and inhumane conditions the children have to perform in the circuses.
18. The experiences of the petitioner are only a scratch on the surface and there are many children who are being trafficked regularly into circuses. While it is not the case of the petitioner that circuses should be completely banned and prohibited, there is a strong need to regulate this as any other industry including ensuring safety gears and other measures as are done in other countries.
19. The petitioner has filed the petition with the following prayers:
  1. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to frame appropriate guidelines for the persons engaged in circuses;
  2. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to conduct simultaneous raids in all the circuses by CBI to liberate the children and to check the gross violation of all fundamental rights of the children;



3. Issue a writ of mandamus or any other appropriate writ order or direction to appoint special forces in the borders to ensure action and to check on the cross border trafficking;
  4. Issue a writ of mandamus or any other writ order or direction applying the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and make intra-state trafficking of young children, their bondage and forcible confinements, regular sexual harassments and abuses cognizable offences under the Indian Penal Code as well as under section 31 of the Juvenile Justice Act.
  5. Issue a writ of mandamus or any other appropriate writ order or direction to empower child welfare committee under the Juvenile Justice (Care and Protection of Children) Act, 2000 to award compensation may be awarded to all those victims rescued from the circuses with a time bound rehabilitation package and the State Government to create a fund for the same;
  6. Issue a writ of mandamus or any other appropriate writ order or direction to lay out a clear set of guidelines prohibiting the employment/engagement of children up to the age of 18 years in any form in the circuses.
20. This court issued notices to the Union of India and other States and Union Territories. Replies have been filed on behalf of various States and the Union Territories.
21. Shri Gopal Subramaniam, the learned Solicitor General appearing for the Union of India has filed written submissions with the heading "The Indian Child : India's Eternal Hope and Future".
22. Learned Solicitor General has broadened the scope of this petition and has tried to deal with the problem of children trafficking. He submitted that:
1. Trafficking in human beings is not a new phenomenon. Women, children and men have been captured, bought and sold in market places for centuries. 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) to 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.
  2. International conventions exist to punish and suppress trafficking especially women and children. (Refer: 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 and a



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....”.

3. Exploitation shall include at a minimum, the exploitation of the prostitutes of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs.
4. It is submitted that children under 18 years of age cannot give 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 purpose being exploitation including prostitution.
5. 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.
6. 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.
7. Trafficking can also be for illegal activities such as:-
  - a. Begging;
  - b. Organ trade;
  - c. Drug peddling and smuggling;



8. Trafficking can be for sexual exploitation, i.e.
  - a. Forced prostitution;
  - b. Socially and religiously sanctified forms of prostitution;
  - c. Sex tourism;
  - d. Pornography;
9. Child trafficking can be to aid entertainment in sports:-
  - a. Circus/dance troupes;
  - b. Camel jockeying;
10. Trafficking can be for and through marriage. Trafficking can be for and through adoption. It is submitted that intervention is possible in cases of child trafficking only if fundamental principles are kept in mind. The fundamental principles are the following:-
  - a. The child has to perform to the best of his ability. The growth of a child to its potential fulfillment is the fundamental guarantee of civilization;
  - b. Empathy for troubled children by adopting non-discriminatory and attitudes free of bias;
  - c. Children must be protected in terms of well-being under all circumstances;
  - d. Right to freedom from all forms of exploitation is a fundamental right;
  - e. Confidentiality of the child in respect of the child's privacy must be maintained;
  - f. Trafficking is an organized crime which could have multiple partners including syndicates.
11. Intervention must be a joint initiative of government and non-governmental organizations which can be, in some cases, potential partners. An effective intervention must in all circumstances lead to effective and enduring protection of children from exploitation, abuse and violence.
23. According to the Solicitor General it is the bounden duty of the police to discharge its obligation. He 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 managed by police 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 the 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 good 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.
24. It is submitted that Articles 23, 39, 14 and 21 of the Constitution of India guarantee every child to be freed from exploitation of any form. Article 23 prohibits traffic in human beings, 'beggar' and other forms of forced labour.
25. Force, assault, confinement can be dealt with under sections 319 to 329 for simple and grievous hurt, sections 339 to 346 for wrongful restraint and wrongful confinement; sections 350 to 351 for criminal force and criminal assault; section 370 for import, export, removal, disposing/accepting, receiving, detaining of any person as a slave; section 361 to 363 kidnapping and abduction; section 365 for kidnapping, abduction for wrongful confinement; section 367 for kidnapping, abduction for slavery or to subject a person to grievous injury; sections 41, 416, 420 for fraud, cheating by personation; sections 465, 466, 468 and 471 for forgery and using forged documents as genuine; section 503 and 506 for criminal intimidation. It is submitted that a direction must be issued to the Commissioner of Police, Delhi and the State Governments and Union Territories that their police force are required to be sensitized to the above provisions while dealing with safety and freedom of children.
26. The Juvenile Justice (Care and Protection of Children) Act, 2000 was amended in 2006 by Act 33 of 2006. It is a special legislation for children and defines children as 'a person upto the age of 18 years'. The Juvenile Justice Act is built upon a model which addresses both children who need care and those who are in conflict with law.
27. According to the learned Solicitor General, the Goa Children's Act, 2003 must be viewed as a model legislation. He submitted that not only does it define child trafficking but also seeks to provide punishment for abuse and assault of children through child trafficking for different purposes such as labour, sale of



body parts, organs, adoption, sexual offences of pedophilia, child prostitution, child pornography and child sex tourism. All state authorities such as airport authorities, border police, railway police, traffic police, hotel owners are made responsible under the law for protection of children and for reporting offences against children. It is submitted that until a suitable legislation is enacted, directions of a preventive nature may be issued against the police authorities in all States to protect the rights of children.

28. Learned Solicitor General submitted that there is blatant violation of Child Labour (Prohibition and Regulation) Act, 1986, Children Pledging of Labour Act, 1933, the Bonded Labour System Abolition Act, 1976, the Factories Act, 1948, the Plantation Labour Act, 1951, the Mines Act, 1952, the Merchant Shipping Act, 1958, the Apprentices Act, 1961, the Motor Transport Workers Act, 1961, the Bidi and Cigar Workers (Conditions of Employment) Act, 1966, the West Bengal Shops and Establishment Act, 1963.
29. Learned Solicitor General submitted that each State Government must constitute committees for the purpose of preventing child labour. It is submitted that there should be an apex committee constituted by each State Government with the following:
  - (a) The Chief Secretary of the State;
  - (b) Secretary incharge of Child and Women Development;
  - (c) Director of Health and Family Welfare;
  - (d) Commissioner of Police of the State;
  - (e) Two Psychiatrists to be nominated by the Indian Psychiatric Society.
30. The State Government with the assistance of the said committee by a transparent process will constitute committees for each district consisting of health workers, police personnel, factory inspectors and people from the civil society/NGO. The committee will be able to inspect and determine whether there is forced employment of children.
31. All dhabas/restaurants must be prohibited from employing children. It is necessary that this stipulation which already exists must be effectively enforced.
32. Learned Solicitor General submitted that in the Ministry of Family Welfare and Child Development, a division needs to be created to deal with issues arising out of dissemination of publications which are harmful to young persons, publishing pornographic material in electronic form as well as the enforcement of section 293 of the Penal Code. It is submitted that a further research study must be undertaken on the efficacy of the provisions of the Young Persons Harmful Publications Act, 1956, Section 67 of the Information Technology Act, 2000 and Section 293 of the Penal Code.
33. The Transplantation of Human Organ Act, 1994 makes removal of human organs without authority and commercial dealing in human organs criminally liable.
34. In a brilliant study undertaken by the Government of India in coordination with UNICEF, areas relating to trafficking have been acknowledged. It is submitted that the central government acknowledges the increasing prevalence



of trafficking for the purpose of commercial sexual exploitation of children. In a study<sup>1</sup> published by the Department of women and child development, Ministry Human Resource Development, Govt. of India, the objectives were:-

- a) To obtain a better understanding of rescue and rehabilitation processes;
- b) To gain a more complete understanding of the involvement of the state, the judiciary, law enforcement agencies, and NGOs engaged in rescue and rehabilitation;
- c) To make recommendations on the need for developing guidelines for rescue and rehabilitation. These guidelines should represent a common denominator of nationally agreed standards in this area as well as take regional variations into account.

The following statistics are alarming:-

- i) There are an estimated two million children, aged between 5 and 15, forced into CSE around the world;
- ii) Girls between the ages of 10 and 14 years are most vulnerable;
- iii) 15% of commercial sexual workers in India are believed to be below 15 years old and 25% are estimated to be between the ages of 15 and 18;
- iv) 500,000 children worldwide are forced into this profession every year.

35. It is submitted that the report dealt with cross border trafficking in the following way:-

“Research on cross-border trafficking has indicated that 5000-7000 young Nepali girls were trafficked into India annually. This research also highlighted the fact that in the last decade, the average age of the trafficked girl has steadily fallen from 14 to 16 years to 10 to 14 years. These findings are supported by studies conducted by Human Rights Watch – Asia in 1995, which stated that the average age of Nepali girls trafficked into India dropped from 14 to 16 years in the 1980s to 10 to 14 years in 1991 despite the introduction of laws designed to combat trafficking of minors. Ghosh’s study estimated that Nepali children constitute 20 per cent (40,000) of the approximately 2,00,000 Nepalese commercial sexual workers in India. Young girls are trafficked from economically depressed neighbourhoods in Nepal and Bangladesh to the major prostitution centres in Delhi, Mumbai and Calcutta. Social workers have reported encountering children as young as nine in Kamathipura, a red light area in Mumbai.”

36. The promise of marriage, employment is often used for luring young children into sexual trade. The report also talks about the trafficking of children in urban brothels and the regional variations. The report describes how trafficking is undertaken.

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1 Rescue and Rehabilitation of Child Victims Trafficked for Commercial Sexual Exploitation, a Report of by UNICEF.



37. Trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is very low. Women and children do not usually come to the brothels on their own will, but are brought through highly systematic, organized and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker nor the child gets caught during transit. Different groups of traffickers include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organized and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of women in this business is restricted to recruitment at the brothels.
38. The typical profile of a trafficker is a man in his twenties or thirties or a woman in her thirties or forties who have travelled the route to the city several times and know the hotels to stay in and the brokers to contact. They frequently work in groups of two or more. Male and female traffickers are sometimes referred to as dalals and dalalis (commission agents) respectively and are either employed by a brothel owner directly or operate independently. Often collusion of family members forms an integral part of trafficking with uncles, cousins and stepfathers acting as trafficking agents. In March, 1994 Human Rights Watch Asia interviewed several trafficked victims of whom six were trafficked into India from Nepal with the help of close family friends or relatives. In each case, the victim complained of deception.
39. The Suppression of Immoral Trafficking Act was enacted after the Geneva Convention on Immoral Trafficking of Women and Children was signed by India in 1956. In order to have data on the success of rehabilitation strategies, delivery points in rehabilitation strategy would have to be strengthened as would be seen in the later parts of this report. It is submitted that a trafficker never blows the gaff. It is done in silence and quiet. It becomes necessary to involve police authorities by means of acute sensitization to a realm of illegality. Therefore, there has to be a special initiative taken by police with reference to children.
40. The Central Government has evolved the national plan of action to combat trafficking and commercial sexual exploitation of women and children in 1998.
41. It is submitted that there has now been a very careful realization that the plan for rescue and rehabilitation must be through a conceptual map. The said map gives a very good indication of the initiatives and possibly its positive and negative outcomes.
42. Learned Solicitor General submitted that a trafficked child can be brought before the Magistrate under two circumstances:
  - a) when the raid/search or removal takes place by a police action under section 15 of the ITPA or when the Magistrate herself/himself passes rescue orders;
  - b) the trafficked child can also be brought before the Magistrate as an accused under section 8A and 8B of the ITPA.



The following directions are necessary:-

- a. Every Magistrate before whom a child is brought must be conscious of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000;
  - b. He must find out whether the child is below the age of 18 years;
  - c. If it is so, he cannot be accused of an offence under section 7 or 8 of ITPA;
  - d. The child will then have to be protected under Juvenile Justice Authority;
  - e. The Magistrate has a responsibility to ascertain and confirm that the person produced before her or him is a child by accurate medical examination;
  - f. The definition of a child in section 2K means a juvenile or a child as a person who has not completed 18 years of age;
  - g. Once the age test is passed under section 17(2) establishes that the child is a child/minor less than 18 years of age, the Magistrate/Sessions Judge while framing charges must also take into account whether any offences have been committed under sections 342, 366, 366A, 366B, 367, 368, 370, 371, 372, 373, 375 and if so, he or she must also frame charges additionally;
  - h. The child should be considered as a child in the protection of the Child Welfare Act.
  - i. The child should be handed over to the Child Welfare Committee to take care of the child. The performance of the Child Welfare Committees must be reviewed by the High Court with a committee of not less than three Hon'ble Judges and two psychiatrists;
  - j. A child must not be charged with any offence under the ITPA or IPC;
  - k. A minor trafficked victim must be classified as a child in need of care and protection. Further, the Magistrate must also order for intermediate custody of minor under section 17(3) of the ITPA, 1956;
  - l. There should not be any joint proceedings of a juvenile and a person who is not a juvenile on account of section 18 of the Juvenile Justice (Care and Protection) Act, 2002;
  - m. It is necessary that Courts must be directed that the same lawyer must not represent the trafficker as well as the trafficked minor;
  - n. Evidence of child should be taken in camera. Courts must protect the dignity of children. The children's best interest should be the priority.
43. Learned Solicitor General submitted that Child Welfare Committees are empowered committees under section 31(1) of the Juvenile Justice Act. However, the standards employed by the Child Welfare Committees are not the same across the country. In order to set up uniform standards, the direction relating to review of Child Welfare Committees must be re-examined. All Superintendents of Jail must report upon a review within 15 days from today whether any person who is a child is in custody of the jail, if so, the said person must be produced



immediately before the Magistrate empowered to try offences under the Juvenile Justice (Care and protection) Act, 2000. The said Magistrate must set out a report in relation to the circumstances under which such a child has been lodged in jail to the Chief Justice of the concerned High Court. Thereafter the High Court may forward a report to this Court for passing of appropriate orders in relation to the welfare of the child.

44. Learned Solicitor General submitted that the power of rehabilitation is necessary. The said power has been conferred under section 33(3) of the Juvenile Justice (Care and Protection) Act, 2000. The said provision provides that:-

“..... After the completion of the enquiry if the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children’s home or shelter home till suitable rehabilitation is found for him or till he attains the age of 18 years.....”.

45. It is further submitted that rehabilitation will be the measure of success of the Juvenile Justice (Care and Protection) Act, 2000. Reintegration into society by means of confident and assertive occupations leading to a sense of self-worth will have to be devised. This requires innovative strategies and not any high flown claims to social development.
46. The Juvenile Welfare Board will have no competence to deal with cases of children who are in prostitution or have been trafficked. Such children are to be considered as children in need of care and protection. However, in states where the Child Welfare committees have not been constituted, these matters should be referred to the Juvenile Welfare Board. It is submitted that the book on Trafficking in Women and Children in India edited by Shanker Sen along with P.M. Nair, IPS is a useful document. In a report called “Abolition of Child Labour in India” submitted by the NCPCR to the planning commission, certain useful perspectives are to be found.
47. It is submitted that India is home to 19% of world’s children. More than one-third of the country’s population around 440 million is below 18 years. India’s children are India’s future. They are the harbingers of growth, potential fulfillment, change, dynamism, innovation, creativity. It is necessary that for a healthy future, we must protect, educate and develop the child population so that their citizenry is productive. Resources must be invested in children proportionate to their huge population.
48. As far as the total expenditure on children in 2005-2006 is concerned, it was 3.86% and in 2006-2007 it was increased to 4.91%. It is highly inadequate looking to the population of children.
49. In a report submitted by the Ministry of Women and Child Development, 40% of India’s children have been declared to be vulnerable or experiencing difficult circumstances. They are entitled to special protection under Articles 14, 15, 16, 17, 21, 23 and 24 of the Constitution. The concerns of child and the paradigm of child rights have been addressed suitably in various international conventions and standards on child protection including the UN Convention on the Rights of the Child (UNCRC), 1989, the UN Standard Minimum Rules for the



Administration of Juvenile Justice (the Beijing Rules), 1985, the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990, the Hague Convention on Inter Country Adoption, 1993. India has ratified the UN Convention on the Rights of the Child in 1992. The Convention inter alia prescribes standards to be adhered by all state parties in securing the best interest of the child.

50. Learned Solicitor General submitted that the millennium development goals cannot be secured unless child protection is an integral part of programmes, strategies and plans for their achievement. The newly constituted Ministry of Women and Child Development has rightly remarked that child protection is an essential part of the country's strategy to place 'Development of the child at the Centre of the 11th Plan'. The National Plan of Action for Children articulates a rights agenda for the development of children.
51. Learned Solicitor General further submitted that the existing child protection mechanisms have to be first noticed. The delivery points however need to be strengthened. To review the delivery of these programmes, there must be nodal agencies. Points of responsibility have to be identified and strengthened. The programme for juvenile justice is to enable children in need of care and protection and those in conflict with law to be secured. The central governments provide financial assistance to the state governments/UT administrations for establishment and maintenance of various homes, salary of staff, food, and clothing for children in need of care and protection of juveniles in conflict with law. Financial assistance is based on proposals submitted by States on a 50:50 cost sharing basis.
52. It is submitted by the learned Solicitor General that in order to give effect to the programme for juvenile justice, it is necessary that nodal points have to be identified. The child welfare committee is one such body, but it is necessary that the working of the child welfare committee must be overseen by either the Executive Chairman of the Legal Services Authority or by the High Court itself. It is also necessary that the financial assistance being provided for children in need and care must result in tangible results to the children whose future is sought to be rehabilitated. For that purpose, it is appropriate that a Court monitored mechanism is established. For every juvenile home, a District Judge or a Judge nominated by the Chief Justice of the High Court should be a visitor. There must be periodic internal reports which are given to the High Court and just as in case of prisons, juvenile homes must be monitored by courts and their living conditions must also be carefully examined.
53. It is also submitted by the learned Solicitor General that the point of responsibility for overseeing the conditions in the juvenile home must also be shared by the District Magistrate of each district. It is necessary that there should be dual reporting – one to the Judicial Section of the High Court; and the other to the District Magistracy and onwards to the State Government. Each State Government must open a Juvenile Justice Cell which will receive periodic reports of juvenile homes, the number of children, the status of children, the manner of rehabilitation and the current status. The State Government must also ensure that therapeutic help as well as psychiatric assistance wherever necessary is offered to the juveniles on a top priority basis. District Collectors must submit



their reports to the Secretary of the Department concerned who in turn must report to the Chief Secretary. The Chief Secretary must be constructively responsible for the administration of the programme for juvenile justice and also must supervise the monetary spending and the manner in which the money spent has been duly accounted. Thus a certification programme for spending monies based on central schemes must be introduced. This certification must be by an independent authority that will ensure that the monies allocated have in fact been spent for the benefit and welfare of the children. If the home is situated within a panchayat area, then the chairman of the panchayat or the zila parishad must be also made responsible for certifying that all the monies which were intended for the home in terms of grants or subventions have been duly utilised.

54. It is further submitted by the learned Solicitor General that the Integrated Child Protection Programme for Street Children is also a scheme by which NGOs are supposed to run 24 hour shelters and to provide food, clothing, shelter, non-formal education, recreation, counseling, guidance and referral services for children. Considering the vulnerability of the children, all NGOs must be directed to be registered with the concerned Collector. There must be a database of every NGO including details of all the functionaries of the NGO with full particulars including their addresses. In order to enable the enrolment in schools of street children, vocational training, occupational placement and to mobilize preventive health services including reduction of drug and substance abuse, a nodal point is necessary. The nodal point must be either a Sub Divisional Magistrate/Executive Magistrate whose work will be countersigned by a subordinate Judge appointed by the District Judge of the District. Similarly, database must be maintained in relation to the children, their parentage, present status and the present condition of their educational qualifications and whether they are capable of vocational training. It is important that occupational therapists must be able to assess on the basis of modern IQ and aptitude tests about the way in which such children can be taken forward to mainstream living by offering vocational guidance. Offering children under difficult circumstances, relevant support is an obligation and should not be a matter of charity fortuitousness in terms of magnanimous dispensation.

55. Learned Solicitor General also gave suggestions as under:

**Child-line services are provided for children in distress:** These should be catalogued and there should be a central registry which will provide information about the status of the child-line services at the local level. It should be the District Magistrate who must be responsible for the effect running of the child-line service. All District Magistrates in the country must post on the website their child-line service number and must give effective publicity to the services available and invite members of civil society to report any child in distress at numbers.

**Shishu Griha to promote in-country adoption:** Details of the working of the said scheme need to be collected and a database must be maintained in respect of orphans/ abandoned / destitute infants or children upto 6 years. The adoptive parents must be obliged to give reports to the District Judge who will in turn



examine whether the adoptive parents have taken care of the child failing which adequate court-monitored measures may be necessary.

**Schemes for working children in need of care and protection:** This scheme is very important. Children who are engaged as domestic labour, working at roadside dhabas and mechanic shops have to be rescued and a bridge education has to be provided including vocational training.

This must be undertaken again by identifiable points of responsibility. It is necessary that an Executive Magistrate must be allocated a certain area to be covered where children are rescued. This should be undertaken by a District Magistrate dividing his district in suitable divisions where such Executive Magistrates can rescue working children. They need to be rehabilitated. It is important that rescue will be effective only when there is scope for rehabilitation. It should not happen that in the name of rehabilitation children are put in detention homes or remand homes. That would be an act of cruelty.

56. Learned Solicitor General further gave suggestions including Pilot Project to combat the trafficking of women and children for commercial sexual exploitation as under:

**Pilot Project to combat the trafficking of women and children for commercial sexual exploitation:** This is a source and destination area for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to hometown and legal services, etc.

**Central Adoption Resource Agency (CARA):** It is an autonomous body under the Ministry of Women and Child Development to promote in-country adoption and regulate inter-country adoption. CARA also helps both Indian and foreign agencies involved in adoption of Indian children to function within a regulated framework, so that such children are adopted legally through recognised agencies and no exploitation takes place.

**National Child Labour Project (NCLP) for rehabilitation of child labourers:** Under the Scheme, project societies at the district level are fully funded for opening up of Special Schools/Rehabilitation centers provide non-formal education, vocational training, supplementary nutrition, stipends, etc. to children withdrawn from employment.

The Ministry of Women and Child Development has actually in an outstanding report identified the shortcomings and gaps in existing child protection institutions. The reasons for limitations in effective implementation of programmes have been properly identified. The reasons are as follows:

**Lack of Prevention:** Policies, programmes and structures to prevent children from falling into difficult circumstances are mostly 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.



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### **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 disabled etc;
- iii) No mapping has been done of the children in need of care and protection or of the services available for them at the district, city and 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 meagre 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 functioning, resulting in delayed enquiries and disposal of cases.

### **Inadequate human resources**

- i) Inappropriate appointments to key child protection services leading to inefficient and nonresponsive 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-hour shelters 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 old 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.

57. It is further submitted by the learned Solicitor General that 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.

58. Learned Solicitor General further submitted that 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 Samiti 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. Institutionalization (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 Adoption 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.
59. The most outstanding feature of this scheme which needs to be implemented on a full-time and firm basis is the government civil society partnership. This will involve active involvement of the voluntary sector, research and training institutions, law college students, advocacy groups and the corporate sector. It



should be the duty of the Health Secretary of each state government including under the chairmanship of the Health Secretary, Government of India to have a blueprint for implementing the Government – Civil Society initiative. It is necessary that there must be a 6- monthly strategy plan which must be prepared by the state government and also by the central government in this regard.

60. 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.
61. It is necessary that poor families must be discouraged from placing their children into institutional care as a poverty coping measure. Institutionalized children have to be re-integrated into families. The following portion of the sponsorship scheme is relevant:-
- “3.1 It is submitted that this can be monitored by a representative of the Comptroller and Auditor General/Accountant General of each State as well as the Health Secretary incharge of Child Development in each State.”
62. The scheme shall provide support for foster care through the Sponsorship and Foster Care Fund available with the District Child Protection Society. The Child Welfare Committee either by itself or with the help of SAA, shall identify suitable cases and order placement of the child in foster-care. Once the Child Welfare Committee orders the placement of the child in foster care, a copy of the order shall be marked to the DCPS for release of funds and to SAA for follow up and monitoring. The SAA shall periodically report about the progress of the child of the Child Welfare committee and DCPS.
63. 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.
64. 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.
65. The provisions of the Right of Children to Free and Compulsory Education Act, 2009 are material. By virtue of Section 3 of the Act, every child of the age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. The Central Government has notified the Act in the Gazette on 27th August, 2009 and the Act has been brought into force with effect from 1st April, 2010. It may also be noted that Chapter 6 of the Act has special provisions for protection of the right of children. The National Commission for Protection of Child Rights has already been constituted. The said Commission now receives a statutory status by virtue of this Act. In view of the performance of the present National Commission for Protection of



Child Rights, which has taken pioneering efforts, it is expected that on a close interface between the National Commission for Protection of Child Rights, the State Governments and the Ministry of Women and Child Development, positive outcomes should actually be worked out.

66. It is, therefore, necessary that a coordinated effort must be made by the three agencies, namely, the Commission, the Ministry and the State Governments. Learned Solicitor General submitted that the recommendations be implemented by the concerned agencies. In the State/Union Territory, the responsibility must be vast either on the Chief Secretary or a Secretary Incharge of Children, Women and Family Welfare. It would be open to the State Government in appropriate cases to nominate a special officer for the said purpose not lower than the rank of a Secretary to the State Government. Each State must issue a circular effectively indicating how the recommendations will be implemented. We accept the submissions of the learned Solicitor General and direct that the said circular shall be issued within 4 weeks from today and a compliance report be filed by the Chief Secretary of each State to this Court.
67. From the above comprehensive submissions made by the learned Solicitor General it is abundantly clear that the Government of India is fully aware about the problems of children working in various places particularly in circuses. It may be pertinent to mention that the right of children to free and compulsory education has been made a fundamental right under Article 21A of the Constitution Now every child of the age of 6 to 14 years has right to have free education in neighbourhood school till elementary education.
68. We have carefully mentioned comprehensive submissions and suggestions given by the learned Solicitor General and others. We plan to deal with the problem of children's exploitation systematically. In this order we are limiting our directions regarding children working in the Indian Circuses. Consequently, we direct:
  - (i) In order to implement the fundamental right of the children under Article 21A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.
  - (ii) The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children be kept in the Care and Protective Homes till they attain the age of 18 years.
  - (iii) The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification.
  - (iv) The respondents are directed to frame proper scheme of rehabilitation of rescued children from circuses.
  - (v) We direct the Secretary of Ministry of Human Resources Development, Department of Women and Child Development to file a comprehensive affidavit of compliance within ten weeks.



69. This petition is directed to be listed for further directions on 19th July, 2011.

.....J.  
(DALVEER BHANDARI)

.....J.  
(A.K. PATNAIK)

New Delhi;  
April 18, 2011

□□□

*"It is by standing up for the rights of girls and women that we truly  
measure up as men"*

*- Desmond Tutu*



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***  
***VERSUS***  
**UNION OF INDIA & OTHERS . . . *Respondent***

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

Resopondent : 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***  
***VERSUS***  
**STATE & Others . . . *Respondent***

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

Respondent : 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***  
***VERSUS***  
**STATE . . . *Respondent***

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

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

**CORAM :-**

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

**HON'BLE MR. JUSTICE AJIT BHARIHOKE**



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

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

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

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

2. Kalpana Pandit is the petitioner in this case whose daughter is espoused by social activist/Advocate, Ms. Aparna Bhat. The petitioner is a domestic servant (illiterate lady), driven by poverty, working as domestic servant in various houses from time to time to earn the minimum livelihood for her family and sustaining the family for fulfilling the daily needs. Her family has roots in West Bengal. However, due to acute poverty and incapable to get any employment, she came to Delhi sometime in 1995-96, i.e. five to six years ago before filing this writ petition. The respondent No.4, viz., Sahyog Placement Sanstha is a placement agency, which makes arrangements for providing domestic helps to the residents of this city. Sometime in March, 1999, the petitioner handed over her daughter to this Sanstha, whose sole proprietor is Sunita Sen, for placement of her daughter as domestic help in some residence. The reason was that the petitioner had fallen serious sick for a long duration, which compelled her to stay at home, as she was not able to work because of the said sickness. Family, in any case, needed sustenance as there was nobody else to support the family financially, no alternative was left to the petitioner to compel her daughter Jharna to take up work.
3. Jharna started working as domestic help at the residence of respondent No.4. She believed that her daughter would be safe and secure with Sunita Sen. According to the petitioner, she did not know that Sunia Sen, who is one of placement agent would place Jharna as domestic help in other people"s houses.
4. It is averred in the petition that in April 1999 when the petitioner recovered from her illness, she went to the house of Sunita Sen to meet her daughter and then only she came to know that Jharna was working as housemaid at the residence of some Mr. & Mrs. Kaul in Noida, Uttar Pradesh. She was shocked and surprised as no prior consent of the petitioner was obtained before taking such a step and she was not even informed about this. The petitioner pleads that with great difficulty, she managed to get the phone number of her daughter"s employer and tried to contact her daughter, Jharna on that phone. However, she was not permitted to talk with Jharna. The petitioner was disturbed and tensed at the



sudden disappearance of her daughter, but could not be able to comprehend whom to approach for the help. She went to the respondent No.4 again and respondent No.4 had arranged the petitioner to talk with her daughter Jharna on telephone. However, she had no idea where the respondent No.4 had called. She was concerned and worried about the safety of her growing daughter and wanted to meet her on the occasion of Raksha Bandhan. She along with her son went to the Noida house, the address whereof was provided to the petitioner on phone.

However, she could not be able to meet her daughter there. She made repeated attempts for this purpose by visiting Noida again and again, but didn't succeed. Her continues requests made to respondent No.4 also did not yield any results. She even tried to approach Mehrauli Police Station, but was not provided with any help or guidance there as well. While she was reconciling with the tragedy that had struck her, after a lapse of one and a half years or so, she was informed that her daughter Jharna was missing since 29.08.2000 and the missing complaint had been lodged by Jharna's employer on 06.09.2000 to enquire about her daughter. The petitioner was shocked to hear this and got in touch with the respondent No.4. The respondent No.4 even refused to hand over the copy of the alleged missing complaint. In these circumstances, the petitioner had no other option left but to approach the police station and to seek help to trace her daughter. She lodged an FIR in the Vasant Kunj Police Station on 02.02.2001 under Section 363 of Indian Penal Code. That was registered as FIR No.50 of 2001. However, according to her, no concrete steps were taken to investigate the allegation mentioned in the FIR. The petitioner, viz., had approached the Juvenile Welfare Board (JWB) and filed a case. The JWB acted promptly on the petitioner's complaint and summoned the respondent No.4 to attend the hearings but they did not consider it as important enough to attend the hearing and give the information they had regarding the whereabouts of the petitioner's daughter. However, case did not progress much due to non-appearance of the respondent No.4. The JWB had at last addressed a letter to the Deputy Commissioner of Police, Crime Branch on 27.08.2001 and requested for a thorough investigation into the incident, but no headway was made. She waited for quite some time, as she was in dark about the whereabouts of her daughter, Jharna. On 23.05.2002, she filed the instant petition in the nature of habeas corpus seeking direction against the respondent No.4 to produce the petitioner's daughter, Jharna forthwith. The State of NCT Delhi is impleaded in petition as the respondent No.1, the Commissioner of Police as respondent No.2, S.H.O., Vasant Kunj Police Station as respondent No.3, Sahyog Placement Sanstha (owned by Ms. Sunita Sen) as respondent No.4 and Juvenile Welfare Board was impleaded as respondent No.5.

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



Police to carry out further investigation and trace out the petitioner's daughter. The Court also directed the employer of Jharna, viz. Mr. Veer Kaul and Mrs. Pammi Kaul to be impleaded as respondents. The matter went on from time to time, thereafter giving directions to the police time and again to trace out the missing girl, Jharna.

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

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

The second question that arises for consideration, relates to the functioning of different placement agencies working in the NCT of Delhi. It is pointed out by Ms. Arpana Bhatt that there are as many as 123 such agencies functioning in Delhi. These agencies apart from other placement work carried on by them engage themselves in placement of children in various establishments including as domestic help. There is, according to Ms. Bhatt, no statutory control over the functioning of these agencies. The result is that children who are either picked up from the streets or brought from various other States to Delhi are first placed as domestic help and later shifted to other more hazardous work including some who are pushed into prostitution. The absence of any regulatory control over the functioning of these agencies which are run on commercial lines for profit, according to the learned counsel, defeats the very spirit of the Juvenile Justice (Care and Protection of Children) Act 2000. She submits that while section 31 of the said Act vests the Juvenile Child Welfare Committees with extensive powers, the absence of appropriate rules and regulations for the exercise of that power has virtually rendered the said provision nugatory. She states that the Child



welfare Committees functioning in Delhi have received a number of complaints regarding abuse of the children working as domestic helps in households. Verification of these complaints have, according to her, proved that the children have been subjected to various kinds of indignities and harassment including sexual abuse. The record of the committees, if summoned for perusal would, according to the learned counsel, enable this court to issue directions for effectuating the provisions of the Act.

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

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

The Secretary, Social Welfare Department, Government of Delhi shall also remain present and indicate whether any rules have been framed or can be framed in terms of Section 68 read with 31 of the Act aforementioned to regulate the exercise of the powers by the committees and in particular to regulate the functioning of the placement agencies dealing with domestic child labour. The chairpersons of the two committees shall also be requested to remain present in the Court on that day along with the relevant record."

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

"We have heard counsel for the parties at some length. The Secretary, Social Welfare Department, Govt. of Delhi and the Chairman of one of the Child Welfare Committees functioning in Delhi are both present in person in obedience to the direction issued by this court on 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.

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

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



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

Districts in Bihar	:	Gaya, Nawada, Aurangabad.
Districts in Jharkhand	:	Ranchi, Simdega, Gumla, Laterhar, Dumka, Godda, Pakur, Lohardugga.
Districts in West Bengal	:	Midnapur, 24 Pargnas, Maldha, Silliguri.
Districts in U.P.	:	Gonda, Bahraich, Auraiya.
Districts in Nepal	:	Sihaha, Saptri, Sunsari, Makanpur, Kanchanpur, Jhapa and Mahendrapur.

11. The petitioner has also stated the circumstances under which this problem was brought to its notice and the steps are yet to be taken in that behalf. It is mentioned that on 09.01.2009, Hembahadur had approached the office of Bachpan Bachao Andolan (BBA) and requested to help in the rescue of his sister and sister-in-law from Ajay Thapa placement agency. In his application, he mentioned that his sister, sister-in-law and her two friends were promised to get job by Ajay Thapa. The said Hembahadur was placed by Ajay Thapa in a factory and his sister, sister-in-law and their two friends were sent to work as domestic help. For the last one year, Hembahadur was unable to contact his sister and her friends. Ajay Thapa refused to provide him the contacts/addresses of his sister and other girls. This raised serious doubts in Hembahadur's mind that the girls had been sold by Ajay Thapa and he got very concerned for their welfare and under these circumstances, he came in contact with BBA activists and decided to take steps for finding and rescuing the girls.
12. The petitioner approached the Delhi Commission for Women on 12.01.2009 and with its help, thereafter; a joint rescue operation was conducted on 13.01.2009. In the said operation, 35 girls and 03 boys were rescued from some of these placement agencies already named above. 23 out of 35 girls and three boys were below the age of 14. During the raid, the team of Delhi Commission for Women and the activists of Bachpan Bachao Andolan and officials of Delhi Police saw a lot of objectionable material including pornographic CDs, illicit literature, pregnancy test kits and contraceptives, etc. raising doubts about the real purpose



behind running of these placement agencies. All the rescued girls and boys were trafficked from Jharkhand and West Bengal. Three rescued girls told that they were not given food from last three days. Most of the girls were staying at the office of placement agencies and forced to sleep in the rooms of boys. A clear picture of the same can be ascertained from the CD containing news report by a TV channel and the transcripts of the report which is being filed along with this writ petition. It is also stated that DCW had first lodged a complaint before Police Station, Saraswati Vihar and then took them to Child Welfare Committee of Delhi Government, who sent these 23 minor girls to Nirmal Chaya and Nari Niketan for a short stay. The custody of three boys was given to Bachpan Bachao Andolan – Mukti Ashram.

It is in this backdrop that various prayers including those mentioned above have been made in this writ petition. W.P.(Crl.) No.879 of 2007

13. This writ petition is filed by Shramjeevi Mahila Samiti, which is an N.G.O. operating in Kolkata, West Bengal. Similar problem of trafficking, kidnapping, forced labour and bondage of 298 women and children is spelt out in this petition. These women and children were brought to Delhi from different villages of West Bengal. It is stated that on reaching Delhi, they were sent to certain households and some of them had been shifted from time to time in such a manner that the parents/relatives of the victims are now unable to get in touch with them. Not only the promised wages are not paid, but the women and children are being forcibly confined against their wishes and if any person attempts to get in touch with these victims, then those persons were threatened by the placement agencies. Moreover, the petitioner has even blamed the police force and has levelled the allegations that these placement agencies are doing aforesaid illegalities in collusion with police. According to the petitioner, they came to know of the problem when in May, 2007, over 150 families from West Bengal had approached the petitioner's organization and complained that their wives, sons and daughters had been taken by certain placement agents to Delhi after promising to provide them with employment and thereafter, these persons are not contactable and it is feared that their family members are being exploited. Accordingly, the petitioner prepared a chart of the complaints being made and a copy of the said chart dated NIL is attached. The parents/relatives of the trafficked victims brought to the notice of the petitioner that they have lost the contact with their wives/children and that when they tried to contact the placement agencies, they were not provided with the appropriate information regarding the whereabouts of their family members and some of them were threatened also. That they fear for the lives and safety of their dear ones. They all said that the money which was proposed to be paid by the way of salary, was never paid and that only false assurances were given to them. The petitioner has prepared a compilation of over 150 complaints made to them by the parents/relatives of the trafficked victims and craves leave to refer to and rely on the said compilation. Some of the persons who were earlier employed and who had managed to get back to West Bengal had also met the petitioner's organization and even complained that they were physically compelled to do forced labour. Some of them complained of sexual abuse by the employer. Petitioner has included these complaints along with the earlier compilation mentioned. At



the same time, 10 agents who had taken the persons to Delhi also contacted the petitioner organization. They complained that the placement agencies were not paying and not ensuring payment to the persons as promised. No accounts were being kept. Details of the whereabouts of the persons including minors were not being provided. That they had received complaints from the persons including minors of beatings and sexual abuse and they had witnessed these as well. Those who were unwilling to work were being forced to work. At the end of work the dues were not being paid nor any of the accounts were shown. Vouchers were also being forged with interpolations made in the vouchers regarding the amount paid so as to indicate larger amounts than the amounts that were actually paid. Some thumb impressions were taken on the vouchers, which did not appear genuine. In some cases the cheques had bounced. The agents were also threatened by the placement agencies. The agents were told that unless they provide new labour, the persons currently working would not be allowed to leave. The agents had also complained that some of the children were "missing" and they feared for the lives and safety of these missing children.

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

**Re: The Problem and Concerns:**

16. It is in the aforesaid factual backdrop of all the three cases, the issue with which we are concerned relates to the forced child labour and regulation of placement agencies. Because of the commonalities of this issue in these three petitions were listed together from time to time and common orders were passed therein from a particular stage. However, various directions were given in this behalf from time to time by this Court on the basis of which steps were taken by the official respondents. Before we take stock of those directions and also the measures, which have been taken by the respondents in addressing the issue, it would be necessary to understand the genesis of problem and the circumstances under which it arises.



17. Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives. The Indian Constitution specifically bans the trafficking of persons. Article 23, in the Fundamental Rights, Part III of the Constitution, prohibits “traffic in human beings and other similar forms of forced labour”. Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement/transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. **Trafficking shows phenomenal increase with globalization.** Increasing profit with little or no risk, organized activities, low priority in law enforcement etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs. Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex-based and (b) Non-sex-based. The former category includes trafficking for prostitution, Commercial sexual abuse, paedophilia, pornography, cyber sex, and different types of disguised sexual exploitation that take place in some of the massage parlours, beauty parlours, bars, and other manifestations like call girl racket, friendship clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labour, industrial labour, adoption, organ transplant, camel racing, marriage related rackets etc. But the growing trafficking in women is principally for the purpose of prostitution. Prostitution is an international problem. However, we are aware of the fact that it is legalized in many countries around the globe. Unfortunately, society remains tolerant of this abominable crime against women. There are assorted ways of getting women into prostitution that are common to many countries; then there are particular unique methods varies to a country. Probably, the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions. In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all the concerned countries. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatization to the lifestyle. The two principal Indian laws that addresses the trafficking and prostitution in particular are the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) and the Immoral Traffic (Prevention) Act, 1986 (ITPA), colloquially called PITA, and amendment to SITA. Neither law prohibits prostitution per se, but both forbids commercialized vice and soliciting.
18. India is said to have adopted a tolerant approach to prostitution whereby an individual is free to carry on prostitution provided it is not an organized and a commercialized vice. However, it commits itself to opposing trafficking



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

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

19. There may be various problems while dealing with the issue of “trafficking”. These petitioners seek to highlight limited facets of children being compelled to perform in circus and illegal trafficking in children and failure on the part of the law enforcement agencies as well as the society to protect the fundamental rights of the children. The Government had itself admitted the seriousness of the problem. The report prepared by Mr. Gopal Subramaniam, learned Solicitor General of India and submitted in Bachpan Bachao petition, it is sated 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) a 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 - Rs. 150**

Washing Utensils, clothes house keeping, taking care of children-8 Hours, Rs. 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 sued to register the agencies and monitor them to ensure that domestic workers are provided with protection as per guidelines, which have been placed on record by the Petitioner following discussions with the Government.
28. On the basis of the aforesaid legislative provisions, detailed suggestions were given by Ms. Arpita Bhat to tackle with the issue under the existing Labour Laws enumerated above. We will advert to these suggestions as well giving our directions.
29. We may point out that Mr. Colin Gonsalves, learned Senior counsel who appeared in WP (Crl.) No. 879 of 2007, also highlighted the issue and gave some further and additional suggestions, which are contained in the written submissions filed by the petitioner in this writ petition.
30. Before we advert to these suggestions and direction, which are required to be issued on that basis, it would be necessary to comment that the State Government as well as other Governmental authorities have participated in these proceedings while playing the role of facilitator and has not acted in an adversarial manner. This positive attitude of the respondent needs to be commended. In fact, the counsel for the respondents as well as respondent authorities in great measure, joined the other counsel as well as the Court in finding the solution to the problems.
31. We may also record that Mr. Gopal Subramaniam, Solicitor General of India, who appeared in some stages of these proceedings had even prepared a comprehensive report on **"Indian Child : India's Eternal Hope and Future"** in which not only the extent and ramification of the problem, some of the measures which are required to be taken to tackle the problem were also suggested. After highlighting the problem of trafficking of children and women and the magnitude



thereof, the learned Solicitor General has suggested that every State Government must have a set of guidelines of NGO"s which want to assist in inquiries/fact-finding and rescue operations. These suggestions given in the said Report are as under:

“12. Every state government must have a set of guidelines for NGO"s which want to assist in inquiries/fact finding and rescue operations. It is submitted that the guidelines published in Bernard Boetoen"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 and 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 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 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**



*“One person can make a difference, and every person should try”*  
*-John F. Kennedy*



**Supreme Court of India**

**WRIT PETITION (CRL.) NOS. 745-54 OF 1950**

***Gaurav Jain***

**vs**

***Union Of India & Ors***

**Bench: K Ramaswamy**

DATE OF JUDGMENT: 09/07/1997

**ORDER**

“Frailty, the name is woman”, was the ignominy heaped upon women of Victorian Era by William Shakespeare in his great work ‘Hamlet’. The history or sociology has, however, established the contrary, i.e., ‘fortitude’, thy name is woman; ‘caress’, thy name is woman; ‘self-sacrifice’, thy name is woman; tenacity and successful pursuit, their apathetically is women. Indira Gandhi, Margaret Thatcher, Srimovo Bhandarnaike and Golda Meir are few illustrious women having proved successful in democratic governance of the respective democratic States. Amidst them, still, a class of women is trapped as victims of circumstances, unfounded social sanctions, handicaps and coercive forms in the flesh trade, optimised as ‘prostitutes’, (for short, ‘fallen women’). Seeking their redemptions, a few enlightened segments are tapping and doors of this Court under Article 32 of the Constitution, through a public spirited advocate, Gaurav Jain who filed, on their behalf, the main writ petitions claiming that right to be free citizens; right not to be trapped again; readjusted by economic empowerment, social justice and self-sustenance thereby with equality of status, dignity of person in truth and reality and social integration in the mainstream are their magna carta. An article “A Red light trap: Society gives no chance to prostitutes’ offspring” in ‘India Today’ dated July 11, 1988 is founded as source material and has done yeoman’s service to ignite the sensitivity of Gaurav to seek improvement of the plight of the unfortunate fallen women and their progeny. Though Gaurav had asked for establishing separate educational institutions for the children of the fallen women, this Court after hearing all the State Governments and Union Territories which were then represented through their respective standing counsel, observed on November 15, 1989 in Gaurav Jain vs. Union of India & Ors. [1990 Supp. SCC 709] that “segregating children of prostitutes by locating separate schools and providing separate hostels” would not be in the interest of the children and the society at large. This Court directed that they “should be segregated from their mothers and be allowed to mingle with others and become a part of the society”. Accepting the suggestion from the Bar and rejecting the limited prayer of the petitioner, this Court had ordered that “Children of prostitutes should, however, not be permitted to leave in inferno and the undesirable surroundings of prostitute homes”. This was felt particularly so in the case of young girls whose body and mind are likely to be abused with growing age for being admitted into the profession of their mothers. While this Court did not accept the plea for separate hostels for children of prostitutes, it felt that “accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified”. In that view, instead of disposing of the writ



petition with a set of directions, this Court constituted a Committee comprising S/Shri V.C. Mahaja, R.K. Jain, Senior Advocates and others including M.N. Shroff, Advocate, as its Convenor, and other individuals named in the Order; the Court directed the Committee to submit its report giving suggestions for appropriate action. Accordingly, the report was submitted. Arguments were heard and judgment was reserved but could not be delivered. Resultantly, it was released from judgment. We have re-heard the counsel on both sides. The primary question in this case is: what are the rights of the children of fallen women, the modules to segregate them from their mothers and others so as to give them protection, care and rehabilitation in the mainstream of the national life? And as facet of it, what should be the scheme to be evolved to eradicate prostitution, i.e., the source itself; and what succour and sustenance can be provided to the fallen victims of flesh trade? These are primary questions we angulate for consideration in this public interest litigation.

The Preamble, an integral part of the Constitution, pledges to secure 'socio-economic justice' to all its citizens with stated liberties, 'equality of status and of opportunity', assuring 'fraternity' and 'dignity' of the individual in a united and integrated Bharat. The fallen women too are part of citizenry. Prostitution in society has not been an unknown phenomenon; it is of ancient origin and has its manifestation in various forms with varied degrees unfounded on so-called social sanctions etc. The victims of the trap are the poor, illiterate and ignorant sections of the society and are the target group in the flesh trade; rich communities exploit them and harvest at their misery and ignominy in an organised gangsterism, in particular, with police nexus. It is of grave social concern, increasingly realised by enlightened public spirited sections of the society to prevent gender exploitation of girl children. The prostitute has always been an object and was never seen as complete human being with dignity of person; as if she has had no needs and aspirations of her own, individually or collectively. Their problems are compounded by coercion laid around them and torturous treatment meted out to them. When they make attempts either to resist the prostitution or to relieve themselves from the trap, they succumb to the violent treatment and resultantly many a one settle for prostitution. Prostitute is equally a human being. Despite that trap, she is confronted with the problems to bear and rear the children. The limitations of trade confront them in bringing up their children, be it male or female. Their children are equally subjected to inhuman treatment by managers of brothels and are subjected to discrimination, social isolation; they are deprived of their right to live normal life for no fault of their own. In recent times, however, there has been a growing body of opinion, by certain enlightened sections of the society advocating the need to no longer treat the fallen women as a criminals or as an object of shocking sexual abuse; they are victims of circumstances and hence should be treated as human beings like others, so as to bring them into the mainstream of the social order without any attached stigma. Equally, they realise the need to keep their children away from the red light area, particularly girl children and have them inducted into respectable and meaningful avocations and/or self-employment schemes. In no circumstances, they should continue to be in the trap of flesh trade for commercial exploitation. They need to be treated with humanity and compassion so as to integrate them into the social mainstream. If given equal opportunity, they would be able to play their own part for peaceful rehabilitation, live a life with happiness purposefully, with meaningful right to life, culturally, socially and



economically with equality of status and dignity of person. These constitutional and human rights to the victims of fallen track of flesh trade, need care and consideration of the society. This case calls upon to resolve than human problem with caress and purposeful guidelines, lend help to ameliorate their socio-economic conditions, eradicate social stigma and to make available to them equal opportunities for the social order.

Equally, the right of the child is the concern of the society so that fallen women surpass trafficking of her person from exploitation; contribute to bring up her children; live a life with dignity; and not to continue in the foul social environment. Equally, the children have the right to equality of opportunity, dignity and care, protection and rehabilitation by the society with both hands open to bring them into the mainstream of social life without pre-stigma affixed on them for no fault of her/his. The Convention on the Right of the Child, the fundamental Rights in Part III of the Constitution, Universal Declaration of Human Rights, the Directive Principles of the State Policy are equally made available and made meaningful instruments and means to ameliorate their conditions - social, educational, economical and cultural, and to bring them into the social stream by giving the same opportunities as had by other children. Thus, this case calls for a careful and meaningful consideration with diverse perspectives, to decide the problems in the light of constitutional and human rights and directions given to the executive to effectuate them on administrative side effectively so that those rights become real and meaningful to them.

Let us, therefore, first consider the rights of the fallen women and their children given by the Constitution and the Directive Principles, the Human Rights and the Convention on the Right of Child, before considering the social ignominy attached to them and before looking for remedy to relieve them from the agony and make them equal participants in normal social order. Article 14 provides for equality in general. Article 21 guarantees right to life and liberty. Article 15 prohibits discrimination on the grounds of religious race, caste, sex or place of birth, or of any of them. article 15(3) provides for special protective discrimination in favour of woman and child relieving them from the moribund of formal equality. It state that “nothing in this article shall prevent the State from making any special provision for women and children”. Article 16(1) covers equality of opportunity in matters of public employment. Article 23 prohibits traffic in human beings and forced labour and makes it punishable under Suppression of Immoral Traffic in Women and Girls Act, 1956 which is renamed in 1990 as the Immoral Traffic (Prohibition) Act (for short, the ‘ITP Act’). article 24 prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age.

Article 38 enjoins the State to secure and protect, as effectively as it may, a social order in which justice - social, economic and political, shall inform all the institutions of national life. It enjoins, by appropriate statutory or administrative actions, that the state should minimise the inequalities in status and provide facilities and opportunities to make equal results. Article 39(f) provides that the children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 46 directs the State to promote the educational and economic interests of the women and weaker sections of the people



and that it shall protect them from social injustice and all forms of exploitation. Article 45 makes provision for free of exploitation. Article 45 makes provision for free and compulsory education for children, which is now well settled as a fundamental right to the children upto the age of 14 years; it also mandates that facilities and opportunities for higher educational avenues be provided to them. The social justice and economic empowerment are firmly held as fundamental rights of every citizen.

Article 1 of the Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2 provides that everyone, which includes fallen women and their children, is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 provides that everyone has the right to life, liberty and security of person. Article 4 enjoins that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. The fallen victims in the flesh trade is no less than a slave trade. Article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The fallen/trapped victims of flesh trade are subjected to cruel, inhuman and degrading treatment which are obnoxious, abominable and an affront to Article 5 of the Universal Declaration and Article 21 of the Indian Constitution. Equally, Article 6 declares that everyone has the right to recognition everywhere as a person before the law.

The victims of flesh trade are equally entitled before the law to the recognition as equal citizens with equal status and dignity in the society. Article 7 postulates that all are equal before the law and are entitled, without discrimination, to equal protection of the law. So, denial of equality of the rights and opportunities and of dignity and of the right to equal protection against any discrimination of fallen women is violation of the Universal Declaration under Article 7 and Article 14 of the Indian Constitution.

Article 8 of the Universal Declaration provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or the law. The Supreme Court of India, which is the sentinel in the qui vive, is enjoined to protect equally the rights of the poor, the deprived, the degraded women and children trapped in the flesh trade, kept in inhumane and degrading conditions, and to grant them the constitutional right to freedoms, protection, rehabilitation and treatment by the social engineering, in law, constitution and appropriate administrative measures so as to enable them to work hand-in-hand to live with dignity and without any stigma due to their past conduct tagged to them by social conditions, unfounded customs and circumstances which have become blot on the victims and their children. They too are entitled to full equality, fair and adequate facilities and opportunities to develop their personality with fully grown potentiality to improve their excellence in every walk of life. Article 51-A of the Constitution enjoins duty on every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform and to strive toward excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.



Preamble to the Declaration of the Right of the Child adopted by the UNO on November 20, 1959, provides that the child by reason of his or her physical or mental immaturity, needs special safeguards and care including her appropriate legal protection before as well as after birth. Recalling the provisions of Declaration of Social and Legal Principles relating to Protection and Welfare of the Children with Special Reference to Foster or Placement and Adoption Nationally and Internationally; the General Assembly Resolution 41/85 of December 3, 1986; the United Nations adopted Standard Minimum Rules for the administration of Juvenile Justice (The Beijing Rules) dated November 29, 1985. India is a signatory to the Declaration and has the same and effectively participated in bringing the Declaration in force. Article 3 (1) postulates that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration. Article 3 (2) enjoins to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally and all the appropriate measures in that behalf shall be taken by the State. Article 3 (3) postulates that the state shall ensure the availability of institutional services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their self as well as competent supervision. Article 4 obligates by appropriate legislative, administrative or other measures, implementation of the right recognised in the Convention. The State has undertaken to implement economic, social and cultural rights, such measures to the maximum extent of the available resources and where needed within the framework of international co-operation.

Article 6 postulates that State Parties recognise that every child has the inherent right to life which is already granted by Article 21 of the Constitution of India which has been interpreted expansively by this Court to make the right to life meaningful, socially, culturally, economically, even to the deprived segments of the society with dignity of person and in pursuit of happiness. Article 6(2) enjoins to ensure development of the child and Article 7(2) postulates that the state shall ensure implementation of these rights in accordance with law and their obligations. Article 9 (3) envisages that the state shall respect the right of the child who is separated from her parents to maintain personal relations and contact with her parents on regular basis. Article 14(2) provides that the state shall respect the rights and duties of the parents, and when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. article 17(2)(e) enjoins the state to encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-bearing in mind the provisions of Articles 13 and 18. Article 18(1) provides that the state shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents and State have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. Sub-para (2) postulates that for promoting the rights set forth in this Convention, parents, legal guardian or the State in



the performance of their child-rearing responsibilities, shall ensure the development of institutions, facilities and services for the care of children.

Article 19(1) provides that the State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child. Equally, sub-para (2) of Article 19 postulates protective measures, as may be appropriate, should include effective procedure for the establishment of social programme to provide necessary support for the child and for those who have the care of the child as well as for other forms of prevention etc. Article 20 which is material for the purpose postulates as under:

- “1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, Kafala or Islamic Law, adoption, or if necessary placement in suitable institutions for the case of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethic, religious cultural and linguistic background.”

Article 28 recognises the right of the child to education and with a view of achieving this right progressively and on the basis of equal opportunity, the state shall in particular:

- (a) make primary education compulsory and available free to all;
- (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) make educational and vocational information and guidance available and accessible to all children; and
- (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29 envisages that the State Parties agree that the education of the child shall be directed to:



- (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations;
- (c) the development of respect for the child's parents, his or her own cultural identity, languages and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and
- (e) the development of respect for the natural environment.

Article 32 recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Articles 34, 36 and 37(a) are equally relevant and read as under:

"34. State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

36. State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

37. State Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment for life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;"

Article 8 of the Declaration on the Right to Development provides that the State shall undertake at the national level, all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that



women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injuries.

The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 enjoins by Article 1, prohibition of discrimination of women. Article 5 enjoins to modify social and patterns of conduct of men and women with a view to achieving elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women. Article 12 prescribes discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services, including those related to family planning. Article 13 prescribes discrimination and directs that the State Parties shall eliminate discrimination against women in other areas of economic and social life in order to ensure on the basis of equality of men and women, the same rights, in particular, the right to family benefits, the right to participate in recreational activities, sports and all aspects of cultural life. Article 16(d) enjoins the State to ensure on the basis of equality of men and women, the same rights and responsibility as parties, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount. In *Madhu Kishwar & Ors. vs. State of Bihar & Ors.* [(1996) 5 SCC 125], this Court considered the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and held the same to be integral scheme of the Fundamental Rights and the Directive Principles. Article 2(e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the Constitution, international Conventions and the Protection of Human Rights Act, to prevent gender- based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2(f) read with Articles 3, 14, and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian constitution and the Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedoms. Human Rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth - cultural, social and economical. All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights. It would, therefore, be imperative to take all steps to prohibit prostitution. Eradication of prostitution in any form is integral to social weal and glory of womanhood. Right of the child to development hinges upon elimination of prostitution. Success lies upon effective measures to eradicate root and branch of prostitution.

Section 2 (a) of the Immoral Traffic (Prevention) Act, 1956 (for short, the 'ITP Act') defines 'brothel' to mean any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purpose of sexual exploitation or abuse, for the gain of another person or for the mutual gain of two



or more prostitutes. The essential ingredient, therefore, is a place being used for the purpose of sexual exploitation or abuse. The phrase 'for the purpose of' indicates that the place being used for the purpose of the prostitution may be a brothel provided a person uses the place and ask for girls, where the person is shown girls to select from and where one does engage or offer her body for promiscuous sexual intercourse for hire. In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove is that a girl/lad should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of prostitution would be drawn from diverse circumstances established in a case. Sexuality has got to be established but that does not require the evidence of more than one customer and no evidence of actual intercourse should be adduced or proved. It is not necessary that there should be repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it. The prosecution has to prove only that in a premises a female indulges in the act of offering her body for promiscuous sexual intercourse for hire. On proof thereof, it becomes a brothel.

The Juvenile Justices Act, 1986 (for short, the 'JJ Act') was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. The pre-existing law was found inadequate to tie over social knowledge, instrument, delinquency or improvement of the child. The Act sought to achieve a uniform legal framework for juvenile justice in the country as a whole so as to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile courts to deal adequately with the subject. The object of the Act, therefore, is to provide specialised approach towards the delinquent or neglected juvenile to prevent recurrence of juvenile delinquency in its full range keeping in view the developmental needs of the child found in the situation of social maladjustment. That aims is secured by establishing observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles. The JJ Act is consistent with the right of the child to development; the established norms and standards for the administration of juvenile justice and special mode of investigation, prosecution, adjudication and disposition of the juvenile. The JJ Act provides for care, treatment and rehabilitation by developing appropriate linkage and co-operation between formal system of juvenile justice and voluntary agencies engaged in the welfare of the neglected or socially mal-adjusted children; it specifically defines the areas of the responsibilities etc. Section 2(a) defines 'begging'. Section 2(b) defines 'Board' to mean Juvenile Welfare Board constituted under Section 4. Terms 'Brothel', 'prostitute', 'prostitution' and 'public place' have been adopted as defined in ITP Act. 'Competent authority' or 'Juvenile court' as the case may be, is defined under Section 2(d). Section 2(f) defines 'fit person' or 'fit institution' to mean any person or institution (not being a police station or jail) found fit by the competent authority to receive and take care of a juvenile entrusted to his or its care and protection on the terms and conditions specified by the competent authority. 'Guardian' in relation to a juvenile has been defined under Section 2(g). 'Juvenile' has been defined under Section 2(h) to mean a boy who has not attained the age of



sixteen years or a girl who has not attained the age of eighteen years. 'Juvenile Court' and 'Juvenile Home' have been defined in Section 1(i) and 2(j) respectively. 'Neglected juvenile' which is more relevant for the purpose of this case, has been defined in Section 2(1) to mean a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitution or any other person who leads an immoral, drunken or depraved life; (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. 'Prostitution' means the sexual exploitation or abuse of persons for commercial purposes and the expression 'prostitute' shall be construed as it is defined under Section 2(f) of ITP Act. After the amendment to the ITP Act, 'prostitution' means sexual exploitation or abuse of person for commercial purpose.

Therefore, prostitution is not confined, as in the ITP Act, to offering of the body to a person for promiscuous sexual intercourse. Normally, the word 'prostitution' means an act of promiscuous sexual intercourse for hire or offer or agreement to perform an act of sexual intercourse or any unlawful sexual act for hire as was the connotation of the Act. It has been brought within its frame, by amendment, the act of a female and exploitation of her person by an act or process of exploitation for commercial purpose making use of or working up for exploitation of the person of the women taking unjust and unlawful advantage of trapped women for one's benefit or sexual intercourse. The word 'abuse' has a very wide meaning everything which is contrary to good order established by usage amounts to abuse. Physical or mental mal-treatment also is an abuse. An injury to genital organs in an attempt of sexual intercourse also amounts to sexual abuse. Any injury to private parts of a girl constitutes abuse under the JJ Act. 'Public place' means any place intended for use by, or accessible to the public and includes any public conveyance. It is not necessary that it must be public property. Even if it is a private property, it is sufficient that the place is accessible to the public. It must be a place to which public, in fact, resorts or frequents.

The Probation Officer is kept in-charge for enforcement of the provisions of the Act. Section 4 of the JJ Act deals with 'Juvenile Welfare Boards' under Chapter III titled 'Competent Authority and Institutions for Juvenile'. It postulates that the State Government by official notification may constitute for any area specified in the notification, one or more Juvenile Welfare Boards for exercising the powers and discharging the duties conferred or imposed on such Board in relation to neglected Juveniles under the JJ Act. The powers of the Juvenile Courts, defined in Section 5, have been reiterated in Section 7. Section 9 deals with 'Juvenile homes'.

It enjoins the State Government to establish and maintain as many juvenile homes as may be necessary for the reception of neglected juveniles under the JJ Act. Every juvenile home to which a neglected juvenile is sent under the JJ Act shall not only provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also to provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral danger or exploitation and shall also perform such other functions as may be prescribed to ensure all-round growth and development of his personality. Sections



10 and 11 deal with establishment of special or observation homes for delinquent juveniles, details of which needs no elaboration. Section 12 touches upon the need for After-care organisations. Under Section 13 in Chapter III, if any police officer or any other person or organisation authorised by the State Government in this behalf, by general or special order, is of opinion that a person is apparently a neglected juvenile, such police officer or other person or organisation may take charge of that person for bringing him before a Board for rehabilitation, care and protection of the child. Section 14 deals with special procedure to be followed when neglected juvenile has parents. Section 15 regulates inquiry regarding the neglected juvenile, the details of which are not material. The question, therefore, is: what procedure is efficacious to prevent prostitution, bring the fallen women and their children into the social mainstream by giving care, protection and rehabilitation?

Three Cs, viz., counselling, cajoling and coercion are necessary to effectively enforce the provisions of ITP Act and JJ Act. By Order dated May 2, 1990, this Court, after hearing the counsel, passed an order to set up an Advisory Committee to make suggestions for eradicating child prostitution and to point out social aspects for the care, protection, treatment, development and rehabilitation of the young victims, children and girls prostitutes from red light area and get them free from the abuses of prostitution; to amend the existing law or enact a new law, if so warranted; to prevent sexual exploitation of children and to take various measures for effective enforcement thereof. It is seen that the Committee constituted by this Court under the chairmanship of Shri V.C. Mahajan travelled far and wide to have a look into the field of operation of the governmental agencies and has suggested nodal programme for the eradication of the twin facets of prostitution, viz., protection, care and rehabilitation of the fallen women and neglected juveniles. The Committee has opined that the problem of child prostitution does not stand by itself and is a component of overall phenomenon in the country. It highly concentrates on identified red light areas as well as on areas which are not so clearly identified. Though the problem of prostitution is mainly found in large cities, but in the urban areas and some rural areas, the problem gives frequent recurrence. Among the fallen women, the child prostitutes constitute major bulk of the component. Child prostitutes constitute 12 to 15% of prostitutes in any area. On account of the social sanctions, women are exploited by the monstrous customs of Devdasis, Jogins and Venkatans is known by other names in different parts of the country. The unfounded social and religion based sanctions are only camouflage; their real motive is to exploit the unfortunate women. Most of them belong either to Scheduled Castes or Backward Classes coming from socio-economically lower groups. They are prevalent highly in Karnataka, Maharashtra and Andhra Pradesh. The specific areas in major cities are identified as red light areas as well as some semi-urban but rural areas. The number of red light areas having increased in recent times, brothel based prostitution is on the vane but there is an increasing trend towards decentralised mode of prostitution. 86% of the fallen women hail from Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Bihar, Maharashtra, Uttar Pradesh, Assam, Gujarat, Goa, Madhya Pradesh, Kerala, Meghalaya, Orissa, Punjab, Rajasthan and Delhi, Delhi receives prostitutes from about 70 districts in the country; Bombay from 40 districts; Bangalore from 70 districts; Calcutta from 11 districts, Hyderabad from 3 districts etc. There is growing evidence that the minimum number of prostitutes get into flesh trade either



voluntarily or by organised gangster force women and girls by offering rosy future to innocent fallen women and trap them often with the connivance of the police. The Committee has also identified ten types of prostitutes like Street walkers, religious prostitutes, prostitutes in brothel, singing and dancing girls, bar nude, massage parlour and some are call girls. Comprehensive study conducted by another Committee in six metropolitan cities, viz., Delhi, Bombay, Calcutta, Madras, Hyderabad and Bangalore, reveals the age group of the prostitutes below 20 years of age are 75%, 21 to 30 years are 40%, 30 to 35 years are 18% and above 35 years 12%. At the time of induction into the prostitution, 9% are below 15 years; 24.9% between 16 to 18 years, 27.7% between 19 to 21 years; and 32.9% are above 22 years. At the time of entry, therefore, 15% of the fallen girls are in the category of neglected juveniles, about 25% are minors between the age group of 16 to 18 years. The major reasons for induction of prostitution are poverty and unemployment or lack of appropriate rehabilitation etc. All abhor social stigma; 16% due to family tradition and 9% due to illiteracy. 94.6% prostitutes are Indians while 2.6% are Nepalis and 2.7% are Bangladeshis. 84.36% are Hindus; are Muslims and 3.5% are Christians. In terms of caste classification, Dalits and Tribes constitute 36%, Other Backward Classes 24% and others 40%. In terms of marital status, only 10.6% of the prostitutes are married; 34.4% are unmarried and 54.2% are divorcee or widows. In terms of education level; 70% of them are illiterates while 4% only are literates. Only 24% of the prostitutes are educated at primary and secondary level while 1.4% have higher qualifications. Therefore, prostitution is primarily due to ignorance illiteracy, coercive trapping or scare of social stigma. In India, they enter into the prostitution between the age of 16 to 19 years and lose market by the time they become 35 years of age. Thereafter such persons either manage brothels or develop contact with high leads. Recent trend is that ladies from higher levels of income are initiated into the prostitution to sustain sufficient day-to-day luxurious style of life so as to ensure continuous economic support for their well-being.

The Mahajan Committee report indicates that in two villages in Bihar and some village in West Bengal, parents send their girl children to earn in prostitution and the girls in turn send their earnings for maintenance of their families. It further indicates that certain social organisations have identified the poverty as the cause for sending the children for prostitution in expectation of regular remittance of income from prostitution by the girls who have already gone into the brothels. It is also an inevitable consequence that over years the fallen women are accustomed to certain life-style and in terms of expenditure they need certain amount of money for their upkeep and maintenance. When they bear children, it becomes additional burden for them. They are led or caught in the debt traps. The managers of the brothel are generally ladies. They do not allow the girls to bear children. In case of birth against their wishes, the unfortunate are subjected to cruelty in diverse forms. In the process of maintaining the children, again they land themselves in perpetually growing burden of debt without any scope to get out from the bondage. Thereby, this process lends perpetuity to slavery to the wile of prostitution. To support their children for education etc. 44% of them desire to leave the red light traps and 43% of them express their despondence languishing between hope and despair. Most of those who want to leave, have given the reasons to save their children for prostitution and protection of the future their children, fear of contacting the venereal diseases, the fear of their children following the



path; some of them expressed dislike the profession, social stigma and their yearning is to start new life. Those who want to remain in prostitution have given absence of alternatives source of income, their social non-acceptability, family customs, poverty, ill-health and their despondence as the reasons and, thus, they want to continue in the prostitution as the last resort for their livelihood. They do not like to remain in red light area and the profession but lack of alternative source of livelihood is the prime cause of their continuation in the profession. If alternatives are available and society is inclined to receive them, they will gladly shed off their past and start with a clean slate as a fresh lease of life with renewed vigorous hope and aspiration to live a normal life, with dignity of person; respect for the personality, equality of status; crave for fraternity and acceptability in the social mainstream. Therefore, it would be imperative to provide a permanent cure to the malady. There would be transition from the liberation from the prostitution to start with fresh lease of life. This period should be taken care of by providing behavioral corrections by constant interaction, counselling, cajoling and coercion as the last resort for assurance of social acceptability inculcating faith in them. An avenue to earn sufficient income for rehabilitation rekindles their resolve to start with fresh lease of life, without which their craving to shed off the past and to start with a new lease of life would remain a distant dream and a futile attempt. Therefore, the rubicon has to be bridged between the past and the hope to make them realise their desire as normal citizenry, by providing opportunity and facilities. Provision of opportunities and facilities is input of the constitutional guarantee to the disadvantaged, deprived and denied people. The directive principles of the Constitution, in particular Articles 38, 39, and all relevant related Articles enjoin the State to provide them as impregnable in built right to life guaranteed by Article 21 and equality of opportunities with protective discrimination guaranteed in Article 14 the genus and its species, Articles 15 and 16 and the Preamble, the arch of the Constitution by legislative and administrative measures.

Therefore, it is the duty of the State and all voluntary non-government organisations and public spirited persons to come in to their air to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf. Marriage is another object to give them real status in society. Acceptance by the family is also another important input to rekindle the faith of self-respect and self-confidence. Housing, legal aid, free counselling assistance and all other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with foul atmosphere. Law is a social engineer. The courts are part of the State steering by way of judicial review. Judicial statesmanship is required to help regaining social order and stability. Interpretation is effective armoury in its bow to steer clear the social malady, economic reorganisation as effective instruments remove disunity, and prevent frustration of the disadvantaged, deprived and denied social segments in the efficacy of law, and pragmatic direction pave way for social stability peace and order. This process sustains faith of the people in rule of law and the democracy becomes useful means to the common man to realise his meaningful right to life guaranteed by Article 21.



V.C. Mahajan Report States that an organisation by name Prerana, selected Kamathipura red light area, Bombay, where 14 lanes are in the occupation of the Managers of the brothels and has occupation of the Managers of the brothels and has located a centre for counselling. Therein, they organise regular counselling and service center for the fallen woman and do work for the children. The national plan of action for the girl child in the SAARC Decade of the Girl Child (1991-2000) was launched as a project for the welfare and development of the girl children including adolescent girls and street children in particular. an interdepartmental monitoring committee was also set up under this plan in some of the red light areas. The provisions of Integrated Child Development Services Scheme were extended. A number of voluntary agencies have also been involved in the care, rehabilitation and advocacy to retrieve prostitutes including child prostitutes. The rehabilitation and welfare organisation is to be initiated. Women found in the flesh trade, should be viewed more as victims of adverse socio-economic circumstances rather than as offenders in our society. Prostitution in five star hotels is a license given to persons from higher echelons. The commercial exploitation of sex may regarded as crime but chose trapped in custom oriented prostitution and gender printed prostitution should be viewed as victims of gender oriented vulnerability. that could be arrested by not only law enforcing agencies but by constant counselling and interaction by the NGOs impressing upon them the need to shed off the path and to start with a new lease of life. The ground realities should be tapped with meaningful action imperatives, apart from the administrative action which aims at arresting immoral traffic of women under ITP Act through inter-State or interpol arrangements and the nudal agency like the CBI is charged to investigate and prevent such crimes. We are concerned in this case more with the rehabilitation aspect than with prevention of the crime. Therefore, we emphasis on the review of the relevant law in this behalf, effective implementation of the scheme to provide self-employment, training in weaving, knitting, painting and other meaningful programmes to provide the fallen women the regular source of income by self-employment or, after vocational education, the appropriate employment generating schemes in governmental, semi-governmental or private organisations.

The customary initiation of women in the practice of Devadasi, Jogins and Venkatansins is prevalent in Andhra Pradesh, Karnataka and Maharashtra areas : in particular the practice of prostitution is notorious. It is an affront to the human dignity and self-respect but the pursuit of customary beliefs traps the fair sex into this glorified self-sacrifice and ultimately leads to prostitution service in the temples and charitable institutions etc. which is a crime against humanity, violation of human rights and obnoxious to constitution and Human Rights Act. They are void under Article 13 of the Constitution of India and punishable under the law. They are to the Constitutional scheme. Fundamentalists and proponents of these practices are constitutional criminals. The unfounded customs cannot ave legal sanction. On the other hand, penal enactments provide for abolition thereof. Instead of progressive outlook, regressive unfortunate tendency, of late, is raising its ugly head to glorify these ignominious practices which is leading not only to abetment of commission of the crime, but also misleading the unfortunated illiterate and weaker sections of he society, to be taken in seriously by he later by their false promises or false theories such as God's ordain which finds easy acceptance by the poor and illiterate and is acted upon. Every right thinking



person should condemn such attempts apart from prohibiting initiation of the nasty practice wherein the eldest girl child in particular families, is offered as Devadasi or Jogin or Venkatasin, by whatever local name they are called. They are making the lives of the girl miserable ; in the guise of prosperous future and custom, the girl is detained in prostitution for no fault of her. This is prevalent in particular six districts of Karnataka, viz., Raichur, Bijapur, Belgaum Dharwar, Bellary and Gulbarga where their number is identified as 21,306. In Andhra Pradesh, in five districts, namely, Medak, Karimnager, Nizamabad, Nalgonda and Warangal, such girls are known as Jogins As per the survey conducted in 1996, as many as 16,300 Jogins were found in that State. Similarly in Maharashtra, they are found in large number, in particular in Marathawada and Vidarba regions. The common features of such women is that predominantly they are from Scheduled Castes, Scheduled Tribes and other backward Classes. The eldest girl in every family is being offered as Devadasi, Jogin or Venkatasin. Sometimes, they do redeem the pledge made to the Gods or Goddesses, etc. Original families of these Devadasis, Jogins or Venkatasins were by and large poor. They are primarily agricultural having no access to credit facilities or literacy. The eldest girl in each family is driven to prostitution. The system has been in existence for years as a result of lack of awareness about the exploited segments of the Devadasis etc. Many families which dedicate their girls, do so due to the pursuit of customary practices. Economic rehabilitation is one of the factors that prevent the practice of dedication of the young girls to the prostitution as Devadasis, Jogins or Venkatasins. Their economic empowerment and education gives resistance to such exploitation ; however, economic programmes are necessary to rehabilitate such victims of customs or practices. They are being rehabilitated with the help of vocational training centres set up in Maharashtra giving preferential admission into educational training institutes ; they are admitted into informal adult education. In Maharashtra, educational training centres have been opened for devadasis. In Karnataka, Devadasi women have been assisted under DWCRA schemes in various districts. in particular six district, where an extensive devadasi rehabilitation programme is in full force. The Karnataka State Woman's Development Corporation and the Karnatak State Scheduled Castes and Scheduled Tribe Development Corporation are implementing this programme in the aforesaid six districts where the phenomenon of devadasi system is being observed ; training is imparted in hand-weaving, 50% subsidy is given in weaving ; good work-shed is given to them free of costs ; income assistance like micro-business enterprises, rope and basket making etc. are being provided to devadasi woman for rehabilitating them. Training in production of soap, chalk making Khadi and weaving activities is being imparted in Andhra Pradesh. Karnataka State also has taken the lead in forming self-helping group of devadasis ; a thrift and saving programme is being implemented in some areas. Social Welfare Departments should undertake these rehabilitation programmes for the fallen victims of social practice so that the foul practice is totally eradicated and the fallen women are redeemed from the plight and are not again trapped into the prostitution. In Andhra Pradesh, the State Government is providing housing sites or house facilities to devadasi women ; they are getting free treatment in hospitals. Devadasi women aged about 60 years and above are being given pension. In order to improve literacy, adult literacy programmes are being organised for them. The NGOs in these three States are playing important role in implementation of various programmes and they are largely concentrating on generating awareness among these persons and their economic rehabilitation. It would,



therefore, be meaningful if rehabilitation programmes are launched and implementation machinery is set not only to eradicate the fertile source of prostitution but also for successful rehabilitation of the fallen women who are the victims of circumstances to regain their lost respect to the dignity of person to sustain equality of status, economic and their social empowerment. Children of the world are innocent, vulnerable and dependent. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and co-operation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning the children, excluding good foundation of life for them, is a crime against humanity. The children cannot wait till tomorrow ; they grow everyday ; along with them grows their sense of awareness about the surroundings. Tomorrows is no answer ; the goal of their present care, protection and rehabilitation is the need of the hour. We have already dealt with the rights assured to them by the constitution, the Directive Principles and the Convention on the Right of the Child. The United Nations Declaration on the Rights of the Child made on November 20, 1959, has formulated and given 10 principles in that behalf. Principle No.1 provides that the child shall enjoy all the rights set forth in the Declaration. All children, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether himself or of his family. Principle No.2 postulates that the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. Principle No.3 postulates that the child shall be entitled from his birth to name and a nationality. Principle No.4 postulates among other things that the child shall enjoy the benefits of the social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided to him. Principle No.5 provides that the child who is physically, mentally or socially handicapped shall be given special treatment, education and care required by that particular condition. This is more relevant for the purpose of this case. Principle 6 postulates that the child for the full and harmonious development of his personality, needs, love and understanding. A child of tender years shall not, save in exceptional circumstance, be separated from his/her mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle No.7 provides that the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He/She shall be given an education which will promote his/her general culture, and enable him/her on a basis of equal opportunity to develop his/her abilities, his/her individual judgment, and his/her sense of moral and social responsibility and to become a useful member of the society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance, that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purpose as education ; society ; and the public authorities shall endeavour to promote the enjoyment of this right. Principle No.8 postulates that the child shall



in all circumstances be among the first to receive protection and relief. Principle 9 is most important in his behalf which provides that the child important in this behalf which provides that the child shall be protected against all forms of neglect, rudely and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age ; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or health or education, or interfere with his physical, mental development. Principle No.10 postulates that the child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance. friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and fallates should be devoted to the service of his fellow men.

(Emphasis supplied)

The Government of India has adopted the National Policy for Children by Resolution No. 1-14/74- CDD dated August

22. 1974. The main purpose of the policy is that the nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children/s programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endorsed with the skills and motivations needed by he society. They participate in equal measure in democratic governance of the State as useful citizens. Equal opportunities for development to all children during the period of growth should be our aim ; for this we would serve our larger purpose of reducing inequality and ensuring Social justice. To care for, plan out needs of the children and successful implementation is, therefore, our duty, as citizen, be an administrator, a Magistrate or a Judge.

Among the diverse programmes, Programme No.4 of India for children postulates that the children of the weaker sections of the society needs special protection. The programme of informal education for pre-school children from such sections will also be taken up. Programme No. 5 postulates that children who are not able to take full advantages of formal school education shall be provided other forms of education suited to their requirements. Programme No. 7 directs to ensure equality of opportunity ; special assistance shall be provided to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas. Programme No.8 envisages that children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizens. Programme No. 10 provides that no child under 14 years of age shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work. Programme No.11 postulates that facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded. Programme No.13 provides that special programmes shall be formulated to spot out and encourage and assist gifted children, particularly those belonging to the weaker sections of society.



Programme No.14 envisages that existing laws should be amended so that in all legal disputes, whether between parents or institutions, the interest of children are given paramount consideration. Programme No.15 provides that in organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighborhood and community environment. Priority sectors have been provided in this behalf and paragraph 4(c) provides maintenance, education and training of orphan and destitute children. They require special care, education, training and rehabilitation of handicapped children ; in clause (e) thereof, role of voluntary organisations is emphasised. Paragraph 6 thereof postulates the Government shall endeavour that adequate resources are provided for child welfare programmes and appropriate schemes are undertaken.

India has a tradition of voluntary action which shall be the endeavour of the State to encourage and strengthen voluntary actions so that State and NGOs complement each other. Paragraph 7 postulates legislative and administrative action in that behalf and paragraph 8 emphasizes people's participation in implementation of this programme. It would, thus, be seen that the constitutional imperatives of the national policy of the children and the international principles for the development of children are of the paramount need an consideration is for the child development. The handicapped children and those from weaker sections are given special attention by the State and voluntary agencies.

The question, therefore, is : what action is to be taken to rescue, rehabilitate and bring the children of fallen women into the mainstream of the society ? As stated earlier, three Cs (CCC) are necessary for successful implementation, rescue and rehabilitate the children of the fallen woman living in the red light area. Counselling, Cajoling by persuasion and Coercion, as the last resort, are the three Cs for successful implementation of them. 65.5% of the fallen women have children and usually they are in the age group of one to ten years. Generally, they prefer to keep their children away from them while they are in the act of intercourse except those children who are very young. Out of 71% children of illiterate fallen woman 39% are literate while 58% of the total have had primary or secondary or higher education. They show keen interest to educate their children. The children tend to spend their time at study or leisure ; though girl children tend to be engaged in house hold jobs as is usual among poorer classes. The children face the problems mainly due to (i) lack of father figure to provide security, care and guidance; (ii) increased responsibilities of mother; (iii) economic hardships; (iv) lack of facilities to meet basic needs; (v) unhealthy social environment; (vi) mal-nutrition; (vii) coercive attempts by managers of brothels; (viii) tauntings, due to dislike, by surroundings; and (ix) lack of proper counselling and guidance; motivation and opportunity gaps.

Many a prostitute themselves are child prostitutes (for short, the 'CP' ; they and the children of the prostitutes (for short, the COP') need to be removed from the red light area. Generally, the police resort to IPC and ITP Act in this behalf but the forceful rescue of CP or COP in reality is not successful in their rehabilitation. In this behalf, it is necessary to take aid of the definition of "neglected child" defined in JJ Act. It is already seen and is reiterated for continuity that 'neglected juvenile' means one found in begging ; or found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute ; or has a parent who is unfit or incapacitated to



exercise control over the juvenile ; or lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life ; or who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. The JJ Act makes distinction between 'delinquent juvenile' and 'neglected juvenile' attributing to a delinquent juvenile an act or omission punishable by law to identify him as a delinquent juvenile. A neglected juvenile is one who is of the age of 16 years in the case of a boy and 18 years in the case of a girl, or whose parents are unfit because of being living in prostitution, or the child born to a prostitute becomes a neglected juvenile. A child brought to associate with a prostitute or is engaged in the prostitution or the profession of prostitution or another juvenile who leads an immoral or depraved life or one who is likely to be abused or exploited for immoral or illegal purposes for unconscionable gain is also a juvenile. The crime is not attached for identifying him/her as neglected juvenile ; it is so in the case of a delinquent juvenile under the Act. They are to be kept in the juvenile home as a place of safety.

An institution established or certified by a State Government under Section 9 of the JJ Act is a juvenile home. The object of the Act is not to punish the juvenile but to rehabilitate him/her, be it a delinquent juvenile or neglected juvenile. In the latter case, it is one of obligations of the State to provide care and concern of the State to establish a juvenile home under Section 9 of the JJ Act. Section 4 of the JJ Act enjoins the State to constitute, by a notification, for any area specified in the notification, one or more Juvenile Welfare Boards for exercise of the powers and discharging the duties conferred or imposed, under the JJ Act, on such Board in relation to neglected juveniles.

The Board shall consist of a Chairman and such other members as the State Government thinks fit to appoint, of whom not less than one shall be a woman ; and every member shall be vested with the powers of a Magistrate under the Cr.P.C. The Board shall function as a Bench of Magistrates and shall have the powers conferred by the Cr.P.C., as the case may be, on a judicial Magistrate of the first class or Metropolitan Magistrate in Metropolitan cities. Even, in certain cases, a delinquent juvenile who commits an offence like begging, being he neglected juvenile, is covered as a neglected juvenile and should not be treated as delinquent juvenile since he began begging due to destitution or was forced to beg by organised gangsters. Therefore, all the types of juveniles defined within the ambit of neglected juvenile, though attached with certain acts or omission, are punishable under law, they still remain to be neglected juvenile and should be dealt with by the Welfare Board and be brought within the protective umbrella of the juvenile home established under Section 9. Establishment of juvenile home, thus, is a mandatory duty of the State to provide teeth to the provisions of the Constitution, the Directive Principles, the Convention on the Right of the Child read with principles of United Nations Declaration and National Policy of the Government of India referred to hereinbefore, and are protected by the JJ Act.

Every child who is found to be neglected juvenile should be dealt with by the Board and should be brought within the protective umbrella of the juvenile home. The attribution as 'neglected children' is not social stigma ; the purpose is to identify the children as juveniles to be dealt with under the JJ Act which is more a reformatory and rehabilitated centre rather than for punishing the child as criminal ; and mend their behavior and conduct. In an appropriate case, where the treatment of bringing the



neglected juvenile into the national mainstream takes long time, the definition coupled with age prescription, should not be strictly interpreted to deny the ameliorative care, consideration and rehabilitation of the neglected juveniles. The benefit of reformation, rehabilitation and bringing them into the mainstream after the passing of the age prescription under the Act, is the goal sought to be achieved. Lest, it has the effect of throwing the neglected juvenile into the vile of prostitution or exploiting him for organised crimes by the organised gangsters taking advantage of this immaturity and despondence ; that would be deleterious to the child's development and would widen the deep gap between hope and reality in the operation of the provisions hereinbefore referred to. The definition of 'neglected juvenile', therefore, should be interpreted broadly which is an important function for the purpose of identifying the groups of children who need care and attention and protection for rehabilitation. Their withdrawal from the protective umbrella of the JJ Act foils the goals set out ; besides all measures to bring the neglected juvenile into the mainstream of the social status end up in failure and frustration.

Even if the economic capacity of the mother of neglected juvenile in the red light area to educate and to bring him up would not relieve the child from social trauma ; it would always be adverse to keep the neglected juvenile in the custody of the mother or the manager of the brothel ; thus, the child prostitute is usage and insecure. So, they should be rescued, cared for and rehabilitated. As stated earlier, the three C's, namely, counselling, cajoling and coercion of the fallen women to part with the child or child prostitute herself from the manager of the brothel is more effective, efficacious and meaningful method to rescue the child prostitute or the neglected juvenile. The income criteria, therefore, is not a factor not to rescue the child prostitute or the neglected juvenile for rehabilitation. It is of necessity to remember that the arms of law are long enough to mould the law to operate on the even keel. The coercive power with the law enforcement agency to rescue the child prostitute or the neglected juvenile, may not necessarily end up as a successful means. It would be last resort when all avenues fail. On the other hand, involvement of the non-governmental organisations in particular women organisations which are more resourceful for counselling and cautioning, would make deep dent into the thinking mould of the fallen victims and would be a source of success for their retrieval from the prostitution or sending the neglected juvenile to the juvenile homes for initial treatment, psychologically and mentally, and will yield place to voluntariness to surrender guardianship of the child prostitute or neglected juvenile to the Welfare Board or to the NGOs to take custody of a child prostitute or the neglected juvenile for, care, protection and rehabilitation. The V.C. Mahajan Committee report states that the resort to Sections 14 and 17 of JJ Act has met with resistance by the mothers and in the case of child prostitute, by the managers of the brothels. The coercive method adopted on one occasion by the Delhi Police pursuant to a complaint under Section 13 of the JJ Act on March 7, 1990, led to frustration of the entire operation, when on an early morning, the prostitutes were taken by surprise by tap on the doors and children were taken by surprise by tap on the doors and children were taken into custody, on the pretext of being examined by the doctors. Total 450 juvenile were taken into custody but no prior arrangement was made with the doctors for their examination. The children were not given custody immediately. The children were taken into custody; 112 children below 16 years were kept in the custody of the



police. Their examination went on upto March 23, 1990 by which time, the agitated mothers and the managers of the brothels resorted to pressure techniques. Ultimately, it all ended in a fiasco. All were released by managers of juvenile home. This would indicate apathy on the part of police in proper implementation and lack of prior planning, understanding and concerted action between the law enforcement agency, the NGOs and public spirited persons and doctors. Instead of doing good, it does harm. It, therefore, gives a stark lesson that until proper arrangements are made and concerted action taken ad hoc attempt to enforce law results in defeat of the purpose of the JJ Act. On the other hand, if the NGOs in particular women members of the NGOs pursue and counsel the mothers of the children or managers of child prostitutes to have them into custody and if proper care and treatment is given, rehabilitation is the sure road to the successful results ; it would be a success rather than frustration of the enforcement of the JJ Act. It is, therefore, clear imperative that proper planning, constant counselling and persuasion are the appropriate means, rather than abrupt to ad hoc coercive steps, unless it becomes the last resort, for successful enforcement of the scheme. The question then is : what is the proper method required to rehabilitate the neglected juvenile or child prostitute taken into custody under the JJ Act for enduring results ? It is rather unfortunate that the juvenile homes established and being run by the Government are not effectively been managed and YIELDING expected results. They become ornament for the statistical purpose defeating the constitutional objectives and international Conventions which are part of the municipal law. This Court on May 2, 1990 had directed the enforcement agencies to bring the prostitute, neglected juveniles for the rehabilitation in the juvenile homes manned by well qualified and trained social workers. The child prostitutes rescued from the red light areas should be shifted into the juvenile homes. They should ensure their protection in the homes. The officers in charge of the juvenile homes, the welfare officers and the probation officers should coordinate the operation and enforce it successfully. They should be made responsible for the protection of the child prostitutes or the neglected juveniles kept in the juvenile homes for psychological treatment in the first instance relieving them from the trauma under which they were subjected to while in the brothels and red light areas. The special police authorities should be established to coordinate with the social welfare officers of the State Government and public spirited persons, NGOs locally available, and see that the juvenile homes are entrusted to efficient and effective management, the child prostitutes or neglected juveniles are properly protected and psychologically treated, education imparted and rehabilitation succeeded. They should also be provided with proper accommodation maintenance facilities for education and other rehabilitation facilities. V.C. Mahajan Committee's report specifies at page 31 that since its inception till November 1989, 102 boys and 34 girls were admitted by a responsible institute, a non- statutory body in Pune run on voluntary basis to impart education to the destitute children in general and neglected juveniles and child prostitutes in particular, with all facilities ; it is run by Bal Sangopan Centre run by Shreemant Dagausheth Halwai Ganpat Trust which gets funds from the Ministry of Welfare, Government of India under the scheme for children in need of care and protection. Similar homes are also being run for 75 children at Kolhapur and Bombay. As policy, the Trust does not keep girls above 12 years in the institute. On the other hand, it has tied up with Hinge Stree Sikshan Sangthan at Pune for placement of the girls above 12 years into their custody but the Trust continues to be the parent institution, paying their fees



and holding the overall responsibility to bring up the holding the overall responsibility to bring up the girls above 12 years. The report also states that the mothers are allowed to visit the children once in a month and they are allowed to take them home for brief spells during festivals and other special occasions. There is another institution, viz., 'Nihar' run by 'Vanchit Vikas' institute at Pune. It is founded on the basis of the felt needs of the neglected juvenile. Social workers of Pune Corporation cooperate with them. There are special health reforms available to prostitutes, the workers come into frequent contact with the prostitute mothers and their children. Gradually, they are getting acquainted with the situation and awareness is generated of the disadvantages to keep the children with them while remaining in red light area. The motivation yielded positive results in helping the children rescued from the mothers and their placement in the home. The institute is run through donation. It is being run for the past 15 years. Much progress has been made in the struggle to rehabilitate the neglected juveniles. There in, they have established a school for 25 children being used in that 'Nihar'. Most of the children are in the age group of 5 to 10 years. They take only female children with the female staff to attend to the needs of the children. Their basic requirements of food, clothing and shelter are taken care of by 'Nihar'. Health, education and overall development is also taken care of. The children are enrolled in Zila Parishad Schools. Residential staff help them to take them to the schools and bring them home. On Saturdays, teachers spend their time in 'Nihar' teaching music and playing games with the children. On Sundays, teachers come from Pune and spend time with the children and keep them in their studies. The mothers of the children visit once in studies. The mothers of the children visit once in a month. The management does not allow the mothers to take the children except for short duration. The prostitute mothers themselves have realised the advantage to keep their children away from vile environment and are happy with educational progress of their children. Similarly, "Devadasi Niradhar Mukti Kendra, Ganghiganj" is running a centre by name "Devadasi Chhatra Vasti Graha" at Pune from October 1986. It is a residential institution for the children of the Devadasis. 80% of them are the Devadasi children while 20% are children from socio- economic backward classes. Funds for this institution are granted by the Department of Social Welfare, Government of Maharashtra. It has on its roll, 75 boys and girls. As on the date of the visit by the Committee on July 7, 1990, 57 boys and 8 girls (total 65) were found in the institute. Similar institutions are being run elsewhere ; the details of which are not material. They have been elaborated in the Report of V.C. Mahajan Committee.

The above facts do indicate that the NGOs are actively involved in the field of rehabilitating and educating the children of the fallen women as neglected juveniles not brought within the net of JJ Act. The mothers have their legitimate aspirations to bring their children into the mainstream of the nation. What needs to be done is proper, efficient and effective coordination and management in particular entrustment to the NGOs which would yield better results than the management solely by the Governmental agencies. The motivation by the NGOs makes a deeper dent into the mind of the prostitute mothers or child prostitutes to retrieve them from the flesh trade and rehabilitate the children as useful citizens in the mainstream of the society. V.C. Mahajan Committee has given details of the Child Development and Care Centres



(for short, the 'CDCC') in Annexure IV to the Report. It states how the management needs to be done, as under :

CHILD DEVELOPMENT AND CARE CENTRES (for brevity CDCC) (A scheme for Children of Prostitutes & Children Associating with Prostitutes and Prostitution)

Various factors have led to the perpetuation of prostitution which in turn has given rise to a large nature of work, status, income, etc. often leave the children wanting in attention and care for their overall development. However, it is not enough to perceive them as more victims of neglect. Their cause has to be taken up to prevent them from taking to prostitution or its promotion and curbing their proneness to delinquency. It is believed that children's energies Development and Care Centres are envisaged to provide Localised services through which the larger interests of these children can be attended to. Such Centres are to be situated in

- i) the vicinity of redlight areas
- ii) the vicinity of other areas identified as having a concentration of prostitutes
- iii) those areas where there is a concentration of communities among whom prostitution is the traditional occupation of the women and girls.

These Centres will be run by voluntary organisation with government fund and have Advisory and Monitoring Committees at Central, State and Local levels.

(Emphasis supplied)

#### OBJECTIVES

The scheme would

- i) provide welfare and developmental services for children of prostitutes and other children associating with prostitutes and prostitution by making them socially productive beings ;
- ii) try to wean them away from their surroundings by referring them to suitable residential institutions as and when necessary ;
- iii) try to reach out to the mothers (through their children) and counsel them on different issues related to their personal lives, their occupational lives and their children ; and
- iv) operate as an information dissemination and conscientious point, particularly for the higher age group (12 - 18 years).

#### Services/Facilities

Keeping in view the total care and development of the child, the following services/facilities would be provided.

- i) crech (day and night)
- ii) pre-school education The objective of pre- (Balwad) school education, besides the physical emotional and social development of the children, is to prepare them mentally to attend formal schools in future. This, it is hoped will increase the enrolment in schools.
- iii) non-formal education/ functional literacy



- iv) counselling (personal and career)
- v) nutritional inputs
- vi) health care
- vii) library
- viii) toy-bank
- ix) recreation
- x) skill development
- xii) `save for the child' Mothers are anticipated scheme to be spending Rs.100/- (at least) per child per month when the child stays with her. When the child is placed in the custody of a residential institution, she no longer has to spend on the child. she should, therefore, start an account in the name of the child in any nationalised bank and deposit Rs.100/- every month. If at the end of one year it is found that she has been regular in depositing the amount, the CDCC will start contributing an equal share. By the time the child is out of the institution he/she will have some immediate financial support.

Note : Suggestion by the Court : The Government of India should extend the Thrift Scheme of Women for these fallen women as well.

- xiii) after school educational help the children help complete their homework and prepare lessons for schools. Teachers would also help them with any difficulties faced in school. By this measure, the rate of school dropout can be checked.

Suggestion and Directions of the Court : Special coaching should be arranged for these children.

- xiv) de-institutionalised Some of the mothers may help be agreeable to part with their children or have different priorities for the children. Money may not be their problem. In such cases the CDCC may enlist their children as recipients of deinstitutionalised care services. It would ensure that the minimum needs of the child are met by the mother and his/her development is in no way impeded. It would be binding on the mother to provide the child with the basic minimum facilities for the child's overall growth and development. This would be means of getting the mother to provide for the child instead of institutionalising him/her . Here, in the process, the CDCC would operate as a catalytic and monitoring agency.

The CDCC will also follow up the cases of those children whose mothers are placed in Protective Homes. In case they are endangered in any way by separation form mother, the CDCC will adopt necessary steps to help them.

The CDCC would be paid a nominal sum for its services and also for spending on some of the items required by the child for its growth, in case the mother is unable to meet such expenditure.

The mother will be liable to make regular reports to the CDCC to facilitate its monitoring function.



Suggestion and Directions of the Court : All necessary funds should be provided by the appropriate Government, i.e., either the Central Government or the State Government, as the case may be.

(Note : This arrangement will work for the traditional communities, with either a CDCC or any other voluntary organisation functioning as a catalytic and monitoring agent.

The CDCC would function as a nodal agency in the field and would co-ordinate with government departments to bring as many programmes to its group of beneficiaries as possible. Further, they would arrange referral services in the following areas as and when the need is felt for the benefit of a child:

- i) Institutionalised care - arrange sponsorship foster care
- ii) skill development
- ii) health
- iv) on the job training
- v) training for entrepreneurship

#### Eligibility of Beneficiaries

Children of any age between 0-18 years who are either -

- i) children of prostitutes, or
- ii) children associated with prostitution or prostitute, may be benefitted from this scheme.

In all deserving cases the scheme should extend services to those children above 18 years, only if it is clearly seen that they are not yet able to feed for themselves and would be benefitted by further support. Those older than 18 years would be assisted as special cases.

#### Coverage

There would be no limit to the number of children being covered by the Centre. Being a service oriented centre it is likely that only groups of children will come to the Centre during the day asking for any of the services. Only in the case of creches and balwadis there would be regular attendance where not more than 25-30 children should be enrolled at any given time and when the member increases separate groups be formed and benefit of service extended. Organisation The following are some of the general conditions for eligibility for applying for the scheme :

- (i) The applicant should be a voluntary, non-governmental organisation, registered under an appropriate Act or a regularly constituted branch of a registered welfare organisation.
- (ii) The organisation seeking assistance should be a non- profit and secular organisation in a way that its services would be open to all without any discrimination of religion, caste, creed, language or sex.
- (iii) The organisation should have a regularly constituted managing committee with its functions and their responsibilities clearly laid down in its Bye-laws.



- (iv) the organisation should preferably have had some experience in managing child development programmes or experience of working on the issues related to prostitution.

#### Programme

Though it is viewed as a localised service centre, its community outreach aspect must be active. By reaching the prospective target group and acquainting them with the services available, the utilisation of the CDCC can be availed.

The staff at the Centre would organise health camps and awareness generation camps from time to time. While providing the services of the children, efforts of the staff at the Centre would be to counsel the mothers and children and encourage the latter to join educational institutions. It should assist them in getting admitted into the educational institutions. Teachers attached to the CDCC would help the school going children in completing their homework and coping with other difficulties. During school hours the teacher would hold functional literacy classes for the elder children who are uneducated.

By way of extending further support to this group of uneducated and unskilled children, the Centre's staff will have to counsel them regularly.

As it is advisable to remove the children from the vicinity of the redlight areas by about 6 years of age, the staff will have to convince the mothers and arrange for their placement in residential institutions. Regular meetings are to be held with the mothers to discuss about the health and nutritional needs of their children and to make them conscious about the environment. Efforts should be directed towards making them interested in the activities of the CDCC. They must be kept informed about the progress of their children and of their current activities, problem and future plans. They must be allowed to participate in planning and execution of programmes.

The Centre must follow up cases of women who are placed in Protective Homes. Their children must be immediately enlisted in the list of beneficiaries at the Centre. Depending upon their situation care and protection must be extended to them such that the separation from mother does not

- (i) hamper their education
- (ii) make them emotionally and physically insecure
- (iii) render them neglected and uncared for
- (iv) expose them to greater risks of delinquency. In case a child is affected in any of these ways, the Centre must step in and to give him/her in a residential institution. The mother must be involved in the process and the Centre must be in touch with her at the Protective Home.

The CDCC will involve the local level youth club or any other organisations and with support from the

- (i) mobilise the local community,
  - (ii) organise activities for the beneficiary group. Working Hours of the CDCC
1. Creche ..... as per decision of the Local (day and night) committee



2. Balwadi ..... 9.00 a.m. to 1.00 p.m.
3. Non-formal ..... 1.00 p.m. to 4.00 p.m. Education
4. After School 4.00 p.m. to 6.00 p.m.

#### Education

Timings of the other facilities to be fixed according to local situation.

#### Staff

1. Programme Co-ordinator 1
2. Special Worker-cum-Counsellor 2
3. Teacher 1
4. Balwadi Teacher 1
5. Helper-cum-Office Assistant 1
6. Ayah-cum-Cook 2
7. Chowkidar 1

#### Advisory and Monitoring Committees

To ensure effective implementation of the scheme Advisory and Monitoring Committees will be set up at various levels. There would be a Central Committee with State and Local Committees under it. While there will be a State Committee in every state, there may be as many Local Committees as the number of CDCCs operative in the respective state. A single Committee may be adequate in case there are more than one CDCC in the same city/town.

#### Members of the Committees

##### Central Committee (Seven Members)

- i) Chairperson, Central Social Welfare Board
- ii) Representative of the Department of Women and Child Development.
- iii) Representative of the Department of Social Welfare
- iv) Retired Police Officer.
- v) Three Social Workers.

##### Local Committee (Seven Members)

- i) Programme Co-ordinator CDCC.
- ii) Representative of mothers
- iii) Representative of community
- iv) Representative of local club, if any
- v) secretary or representative of the voluntary organisation implementing the scheme
- vi) Two Social Worker.



These Committees will run the scheme with the assistance from the government. No separate office need the maintained. The necessary office work can be done at the offices of the Chairperson, CSWB (in the case of the Central Committee) and Chairperson SSWAB ( in the case of State Committee). The CDCC would help in the office work of the Local Committee. For this, the respective organisations will receive a token Administrative Assistance grant.

Meeting of the committee can be organised by the respective organisations. There must be quarterly meeting of the Central and State Committees. The Local Committees must, however, met once in every month. The Local committee is to send its minutes of meeting held and reports of activities to the State and Central committees.

The Central Committee will function as the central Co-ordinating body, with regular feedback from the State and Local Committees. Besides regular meetings, the Committee may call emergent meetings to discuss any urgent matter. These Committees will co-ordinate the functioning of any ICDS Centres being run in lieu of CDCC (in case a voluntary organisation is not available to run and manage a CDCC) and execute the same functions as it does in the case of CDCC." We are of the view that the suggestions require earnest examination to give force and content to them. The rescue and rehabilitation of the child prostitutes and children should be kept under the nodal Department, namely, Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India. It would devise suitable schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation of fallen women even if they have crossed the age prescribed under the JJ Act. They should not be left to themselves, but should be rehabilitated through self-employment schemes or such measures as are indicated hereinbefore. The juvenile homes should be used only for a short stay to relieve the child prostitutes and neglected juveniles from the trauma they would have suffered ; they need to be rehabilitated in the appropriate manner. The details are required to be worked out by meaningful procedure and programmes. In the light of the directions already given by this Court from time to time to the Central Government, State Governments and Union Territory Administrators, adequate steps should be taken to rescue the prostitutes, child prostitutes and the neglected juveniles as indicated hereinabove ; they should take measures to provide them adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or State Government concerned. A nodal Committee with the public spirited NGOs, in particular women organisations/woman members should be involved in the management. Adequate encouragement may be given to them ; the needed funds should be provided and timely payments disbursed so that the scheme would be implemented effectively and fruitfully.

The Minister of Welfare, Government of India will constitute a Committee consisting of the Secretary in charge of Department of Women the Child Development as the chairperson and three or four Secretaries from the concerned State Governments, to be nominated by the Minister of Welfare. They would make an in-depth study into these problems and evolve such suitable schemes as are appropriate and consistent with the directions given above. The Committee should be constituted within one month from the date of the receipt of this judgment. The Committee should finalise



the report within three months thereafter. As soon as the report is submitted. the same may be communicated to all the State Governments and the concerned Ministries for their examination. Within two month from date of the communication, the Minister of Welfare, Government of India, in coordination with the Prime Minister Office should convene a meeting presided over by the Prime Minister, with Minister of Welfare, Home Minister, Human Resource Minister, the concerned Minister, Human Resource Minister, the concerned Ministers of the State Governments and their Secretaries as well to discuss the problem and take decision. The Committee should finalise the report with further suggestions or amendments, if suggested in the conference. Thereafter, the report should be finalised and then direction would be given to the State Governments for effective implementation of the schemes. The nodal Department would enforce and regularly be supervised by the Ministry of Welfare, Government of India. A permanent Committee of Secretaries should be constituted to review the progress of the implementation on annual basis, and to take such other steps as may be expedient in the effective implementation of the schemes. Periodical progress as to funding and enforcement of the scheme should be submitted to the Registry of this Court. If further directions would be needed, liberty is given to the parties to approach this Court. In that view of the matter, it is believed and hoped that the above law and directions would relieve the human problem by rehabilitation of the unfortunate fallen women caught in the trap of prostitution ; their children would be brought into the mainstream of the social order ; these directions would enable them to avail the equality of opportunity and of status, with dignity of person which are the arch of the Constitution.

My learned brother D.P. Wadhwa, J. has disagreed to the directions given to the Union of India etc. in the first part of the Order on the ground, as seems to me, that in view of the relief sought for in the writ petitions and the directions given by this Court on the earlier occasions there is no scope for the relief being granted now and directions given in the concluding part of the Order. Brother Wadhwa, J. thus agrees with the directions given at pages 78 to 81 relating to the prostitute children and the children of the fallen women. Directions at pages 38-39 and 43 to 45 of this Order pertain to the prevention of induction of women, in various forms, into prostitution; their rescue formal flesh trade ; and rehabilitation through various welfare measures so as to rehabilitation through various welfare measures so as to provide them with dignity of person, means of livelihood and socio-economic empowerment. In that behalf, my learned brother has not concurred for the reasons given in the separate Order proposed to be delivered by him. That has necessitated me to have a re-look into the precedents on Public Interest Litigation vis-a-vis the scope, ambit and power of the Court to grant relief in matters arising from real and true and Court to grant reliefs in matters arising from real and true public interest litigation in which the condition of locus stand has been relaxed and public-spirited persons, not motivated by pressure tactics for ultimate ends, are encouraged to work for the poor, under-privileged or weaker segments of the society who are otherwise unable to avail of judicial process for grant of general reliefs to such a group of persons.

In *Labourers working on Salal Hydro Project vs. State of Jammu & Kashmir & Ors.* [(1983) 2 SCC 181] - offspring of a letter addressed to this Court enclosing a clipping of the newspaper "Indian Express" dated August 26, 1982 - it was brought to the notice of this Court that a large number of migrant workmen were subjected



to exploitation and violation of various welfare laws made for them. Intervention was sought to prohibit exploitation and to grant different reliefs to them. The letter was treated by this Court as a writ petition under Article 32. Directions were issued to the Labour Commissioner (Centre) to enquire into and submit a report ; the Central Government was also directed to file their affidavit. After receipt of the report and filing of the counter-affidavits, this Court found, as a fact, from the evidence that the workmen were denied of the minimum wages and other welfare were denied of the minimum wages and other welfare benefits. Accordingly, directions were given. This decision, therefore, is an authority for the proposition that a Public Interest litigation is not of adversory character but one of performance of the constitutional duty ; therein new procedure was adopted for collecting evidence from acceptable source. In *Dr. Upendra Baxi & Ors. (II) vs. State of U.P. & Ors.* [(1986) 4 SCC 106], Dr. Upendra Baxi, a noted humanist and champion of Human Rights, had addressed a letter to this Court that a writ petition may be entertained in public interest to protect the girls living in the Government protective Homes at Agra who were being denied right to live with basic human dignity by the State of Uttar Pradesh which was running the Home. In that case, it was held that the public interest litigation is not a litigation of an adversory undertaken for the purpose of holding the State Government or its officers responsible for making reparation. Public interest litigation involves a collaborative and cooperative efforts by the State Government and its officer, the lawyers appearing in the case and the Bench for the purpose of making Human Rights meaningful for the weaker sections for the community in ensuring the socio-economic justice to the deprived and vulnerable sections of the humanity in the country. Directions, therefore, were accordingly issued ; details thereof are, however, not material for the purpose of this case. What is material is that the power of this Court is wide to grapple with new situations ; it can get the evidence collected with cooperation of the counsel for the parties and the State and mete out justice to protect the constitutional rights guaranteed to all the citizens in particular, the vulnerable weaker segments of the society. *Vincent Panikurlangara vs. Union of India & Ors.* [(1987) 2 SCC 165], related to manufacture of drugs and involved examination of evidence to determine the character of the action taken by the Government on the basis of advice tendered to it to prohibit the manufacture and trade of drugs in the interest of patients who required the drugs for that treatment. This Court pointed out that the statutory bodies and the Government are bound to respond and join the proceedings pending before the Court. They are not litigants ; yet they do not have the choice of keeping away from the Court like private parties in ordinary litigations ; yet they do not have the choice of keeping away from the Court like private parties in ordinary litigations opting to go *ex parte*. Since the matter involves technical aspects vis-a-vis health of the public and is of national importance, this Court ensured cooperation of all the parties and *suo motu* extended the opportunity of hearing and inviting the named statutory authorities to assist the Court. In that behalf, it was held that the public interest litigation is not a normal litigation with adversaries fitted against one another.

As already seen, in *Bandhua Mukti Morcha* case, this Court had evolved a new procedure supplementing the existing procedure to meet the new situation and to render justice in public interest litigations. It directed the Commissioner Labour (Central) to investigate into and collect the evidence and submit the report to the Court,



as dealt with at pages 189-90. In *Rural Litigation and Entitlement Kendra vs. State of U.P.* [(1989) Supp. 1 SCC 504] this Court dealt with a public interest litigation relating to ecological imbalances created due to mining operations and denudation of forest. In paragraphs 16 & 17, this Court at pages 515-16 had pointed out that the writ petitions before the Court were not inter-partes disputes and had been raised by way of public interest litigation and the controversy before the Court was as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. This Court had directed stoppage of mining activity since it created ecological imbalance and denudation of the forest. In *M.C. Mehta & Anr. vs. Union of India & Ors.* [(1987) 1 SCC 395], a Constitution Bench of this Court was to consider the scope of the public interest litigation to grant compensation to the victims of hazardous or dangerous activities when deaths or injuries were caused to them on account of the accident during the operation of such activities. This Court had held that the law should keep pace with changing socio-economic norms; where a law of the past does not fit in the present context, the Court should evolve new law in a public interest litigation. The power of this Court is very wide to devise appropriate procedure and to issue directions, orders or rules. This Court is competent to grant a remedial assistance by way of compensation in exceptional cases. The Court has incidental and ancillary power in exercise of which it can devise new methods and strategy in securing enforcement of fundamental rights particularly in public interest litigation or social action cases. Directions were accordingly granted in that case. In *Bandhua Mukti Morcha vs. Union of India & Ors.* [(1984) 3 SCC 161] the writ petition under Article 32 was filed to release bonded labourers in the country by way of letter addressed to this Court. In that behalf, this Court had taken assistance of the parties, got the evidence collected and then issued appropriate directions for release of the bonded labour. In this behalf, it was held at page 189 that when the poor come before the Court, particularly for enforcement of their fundamental rights, it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor and the weak to bring the necessary material before the Court for the purpose of securing enforcement of their fundamental rights. It must be remembered that the problems of the poor which are now coming before the Court are qualitatively different from those which have hitherto occupied the attention of the Court and they need a different kind of layering skill and a different kind of judicial approach. If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights and the result would be nothing but a mockery of the Constitution. We have, therefore, to abandon the *laissez faire* approach in the judicial process particularly where it involves a question of enforcement of fundamental rights; we should forge new tools, devise new methods and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of the people. And this is clearly permissible by the language of clause (2) of Article 32 because the Constitution-makers while enacting that clause, have deliberately and advisedly not used any words restricting the power of the Court to adopt any procedure which it considers appropriate in the circumstances of a given case for enforcing the fundamental right. In *Santhal Pargana Antyodaya Ashram vs. State of Bihar & Ors.* [(1987) Supp. SCC 141] in a public interest litigation, this Court obtained a report of the Committee appointed by the Court, accepted the report and gave directions to release and rehabilitate the bonded labours identified by the Committee and to implement the



Committee's recommendations, as far as possible, were issued to the State Government. The State Government were directed to carry out the statutory obligations under the Bonded Labour System Act, 1976.

It would, thus, be the established procedure of this Court under Article 32 that the public interest litigation is not adversarial. It is one of collaboration and cooperation between the State and the Court. This Court as the sentinel on the qui vive, is constitutionally obligated to enforce the fundamental rights of all the citizens of the country and to protect them from exploitation and to provide guidance and direction for facilities and opportunities to them for securing socio-economic justice, empowerment and to free the handicapped persons from the disabilities with which they suffer from and to make them realise and enjoy the fundamental rights ensured to them under the Constitution. In that behalf, this Court is entitled and empowered under Article 32 to adopt such procedure as is expedient in a given fact situation and deal with the matter appropriately. Therefore, the rigour of the pleadings or the reliefs sought for in adversarial litigation, has been softened; new methods, tools and procedures were evolved to mete out justice and to enforce the fundamental rights. Obviously, therefore, when a limited relief to establish separate schools for the children of the fallen women was sought for by the petitioner-Gaurav Jain, this Court did not confine to the same. It, instead, enlarged the scope and directed the authorities as an interim measure to have those children admitted in the general schools to make the children overcome the disabilities had from foul atmosphere and to generate the feeling of oneness and desegregation. In addition, this Court appointed V.C. Mahajan Committee to enquire into and submit a report. The report was accordingly submitted after extensive travelling to far and wide parts of the country; it studied not only the problem of the children of the fallen women but also the root cause of the menace of child prostitution and the prostitution as such and the need for its eradication. The prevailing conditions have been pointed out in the Report and beneficial actions already taken by some of the Social Action Groups have been pointed and also noted as illustrated hereinabove. They have also dealt with the problems of the children. The State Governments and the Central Government were supplied with the copies of the Report and they have not even objected to the recommendations; in fact, they cannot be objected to since it is a fact prevailing, unfortunately, in the country. Therefore, the relief cannot be restricted to the pleadings or to the scope of the directions earlier issued; the Court can take cognisance from indisputable or the undisputed facts from the Report of V.C. Mahajan Committee and other reports and articles published in recognised Journals and act upon it. Placing reliance thereon, the directions given in the Order, aim not only at giving benefits to the children but also to root out the very source of the problem as has been pointed out in the first part of the Order, it is for the Government to evolve suitable programme of action. My learned brother has very graciously agreed to the second part of the order relating to the setting up of juvenile homes for the prostitute children and children of fallen women.

By operation of Article 145(6), to the extent both of us have agreed, the Order constitutes as binding precedent. It is to remember that this Court being composed of large number of Judges has evolved its own procedure to transact court management of its judicial work and to decide cases/causes sitting in appropriate Division Benches constituted by the Chief Justice of India as per the Supreme Court Rules. Any observation



made by one of the Judges has persuasive obiter. When there is a dissent, the majority of opinion forms a binding precedent. Any difference of opinion between a Bench composed of two Judges, in an adversarial litigation requires resolution by a larger Bench of three Judges and/or if further reference is made to a Constitution Bench, it is to deal with the controversy and majority opinion forms precedent. As stated earlier, public interest litigation is not adversarial in nature but is one of cooperation and coordination between the three wings of the State and the coordination and it is the constitutional duty of this Court to ensure enjoyment of the fundamental rights by all citizens and in particular the poor and deprived social segments and in case of violation thereof, to prevent the same by giving appropriate directions in that behalf. In aid thereof, this court has been armed by Article 142 to pass such orders as may be necessary for doing complete justice in a cause or pending matter before it. An order so made shall be enforceable throughout the Territory of India. Normally, if it were an adversarial dispute, we would have referred the matter to three Judge Bench in respect of the first part of the directions, namely, to prevent prostitution; to rehabilitate fallen women and to provide them facilities and opportunities by evolving suitable measures by all the Governments for enforcement of their economic empowerment and social integration with dignity of person which are fundamental rights to the unfortunate fallen women, i.e., the victims of circumstances. It is seen that this matter is pending for nearly a decade. If a reference is made to a three Judge Bench, it may further be delayed. Since “delay defeats justice” it may amount to everyday denial of the fundamental rights to large number of fallen women.

I put a caveat upon myself and I am aware that Article 142 would be used to enforce final judgment or order which, in given special or exceptional circumstances, would include directions of this type to mitigate injustice and to elongate enforcement of fundamental and human rights. Article 142 speaks of doing complete justice in a cause. The arm of the Court is long enough to reach injustice wherever it is found and to mete out justice. Denial of the constitutional rights to the unfortunate fallen women outrages the quest for justice and pragmatism of constitutional ethos which constrain me to avail Article 142 of the Constitution of India to direct the Union of the India as well as all State Governments to evolve, after in depth discussion at Ministerial level conference, such procedures and principles or programmes, as indicated in this Order, as guidance would help rescue and rehabilitate the fallen women. Otherwise, the fundamental and human rights remain pious platitudes to these miserable souls crushed in the cruel flesh trade with grinding poverty in the evening of their lives. Generally, Article 142 may not be invoked before the difference of opinion is resolved in an adversarial litigation and in a keenly contested matters of even public interest litigation, in particular, of recent type cases. However, in the cases of the type in hand, where there would be no controversy on human problems of most unfortunate women which require their careful planning, rescue and rehabilitation, the exercise of the power under Article 142, even by a single member of the Bench, may be appropriate and efficacious to enforce fundamental and human rights of large number of neglected and exploited segments of the society. Society is responsible for a woman’s becoming victim of circumstances. The society should make reparation to prevent trafficking in the women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic empowerment and justice, is the



constitutional duty of the State. Their economic empowerment and social justice with dignity of person, are the fundamental rights and the Court and the Government should positively endeavour to ensure them. The State in a democratic policy includes its three constitutional organs - the Legislature, the Executive and the Judiciary. Legislature has already done its duty. The Executive and the Judiciary are required to act in union to ensure enforcement of fundamental and human rights of the fallen women. I am also conscience that the Union of India as well as the State Governments are sensitive to the conscience of their constitutional duty under article 23 and are desirous to have the prostitution eradicated from the root with the aid of ITP Act, IPC and other appropriate legislative or executive actions. Sequential rehabilitation of the fallen women rescued from the red light areas and other areas required enforcement. The observations made in this Order, the constitutional provisions, the human rights and other International Conventions referred to in the Order and the national Policy would aid the Union of India and the State Governments as foundation and guide them to discuss the problems in Ministerial and Secretarial level Conferences and as suggested in this Order to evolve procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights mentioned in the Order. Before parting with the case, we place on record the valuable assistance and yeoman's service rendered by V.C. Mahajan Committee.

The directions are accordingly given. The writ petitions are directed to be posted after the compliance report as regards the action taken in that behalf, is furnished by the Union of India for appropriate orders.

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*"Slavery is founded on the selfishness of man's nature' opposition to it on his love of justice."*

*- Abraham Lincoln*



Supreme Court of India

**1984 AIR 469, 1984 SCR (2) 795**

***Lakshmi Kant Pandey***

**vs**

***Union Of India***

**on 6 February, 1984**

**Bhagwati, P.N.**

PETITIONER: LAKSHMI KANT PANDEY

Vs.

RESPONDENT: UNION OF INDIA

DATE OF JUDGMENT 06/02/1984

The Judgment of the Court was delivered by

**BHAGWATI, J.** This writ petition has been initiated on the basis of a letter addressed by one Laxmi Kant Pandey, an advocate practising in this Court, complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The letter referred to a press report based on "empirical investigation carried out by the staff of a reputed foreign magazine" called "The Mail" and alleged that not only Indian children of tender age are under the guise of adoption "exposed to the long horrendous journey to distant foreign countries at great risk to their lives but in cases where they survive and where these children are not placed in the Shelter and Relief Homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foreign foster parents." The petitioner accordingly sought relief restraining Indian based private agencies "from carrying out further activity of routing children for adoption abroad" and directing the Government of India, the Indian Council of Child Welfare and the Indian Council of Social Welfare to carry out their obligations in the matter of adoption of Indian children by foreign parents. This letter was treated as a writ petition and by an Order dated 1st September, 1982 the Court issued notice to the Union of India the Indian Council of Child Welfare and the Indian Council of Social Welfare to appear in answer to the writ petition and assist the Court in laying down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents and if so, the procedure to be followed for that purpose, with the object of ensuring the welfare of the child.

The Indian Council of Social Welfare was the first to file its written submissions in response to the notice issued by the Court and its written submission filed on 30th September, 1982 not only carried considerable useful material bearing on the question of adoption of Indian children by foreign parents but also contained various suggestions and recommendations for consideration by the Court in formulating principles and norms for permitting such adoptions and laying down the procedure for that purpose. We shall have occasion to refer to this large material placed before us as also to discuss the various suggestions and recommendations made in the written submission by the Indian Council of Social Welfare when we take up for consideration the various issues arising in the writ petition. Suffice it to state for the present that



the written submission of the Indian Council of Social Welfare is a well thought out document dealing comprehensively with various aspects of the problem in its manifold dimensions. When the writ petition reached hearing before the Court on 12th October, 1982 the only written submission filed was that the Indian Council of Social Welfare and neither the Union of India nor the Indian Council of Child Welfare had made any response to the notice issued by the Court. But there was a telegram received from a Swedish Organisation called 'Barnen Framfoer Allt Adoptoner" intimating to the Court that this Organisation desired to participate in the hearing of the writ petition and to present proper material before the Court. S.O.S, Children's Villages of India also appeared through their counsel Mrs. Urmila Kapoor and applied for being allowed to intervene at the hearing of the writ petition so that they could make their submissions on the question of adoption of Indian Children by foreign parents. Since S.O.S, Children's Villages of India is admittedly an organisation concerned with welfare of children, the Court, by an Order dated 12th October, 1982, allowed them to intervene and to make their submissions before the Court. The Court also by the same Order directed that the Registry may address a communication to Barnen Framfoer Allt Adoptoner informing them about the adjourned date of hearing of the writ petition and stating that if they wished to present any material and make their submissions, they could do so by filing an affidavit before the adjourned date of hearing. The Court also directed the Union of India to furnish before the next hearing of the writ petition the names of "any Indian Institutions or Organisations other than the Indian Council of Social Welfare and the Indian Council of Child Welfare, which are engaged or involved in offering Indian children for adoption by foreign parents" and observed that if the Union of India does not have this information, they should gather the requisite information so far as it is possible for them to do so and to make it available to the Court. The Court also issued a similar direction to the Indian Council of Child Welfare, Indian Council of Social Welfare and S.O.S. Children's Villages of India. There was also a further direction given in the same Order to the Union of India, the Indian Council of Child Welfare, the Indian Council of Social Welfare and the S.O.S. Children's Villages of India "to supply to the Court information in regard to the names and particulars of any foreign agencies which are engaged in the work of finding Indian children for adoption for foreign parents". The writ petition was adjourned to 9th November, 1982 for enabling the parties to carry out these directions.

It appears that the Indian Council of Social Welfare thereafter in compliance with the directions given by the Court, filed copies of the Adoption of Children Bill, 1972 and the adoption of Children Bill, 1980. The adoption of Children Bill, 1972 was introduced in the Rajya Sabha sometime in 1972 but it was subsequently dropped, presumably because of the opposition of the Muslims stemming from the fact that it was intended to provide for a uniform law of adoption applicable to all communities including the Muslims. It is a little difficult to appreciate why the Muslims should have opposed this Bill which merely empowered a Muslim to adopt if he so wished; it had no compulsive force requiring a Muslim to act contrary to his religious tenets: it was merely an enabling legislation and if a Muslim felt that it was contrary to his religion to adopt, he was free not to adopt. But in view of the rather strong sentiments expressed by the members of the Muslim Community and with a view not to offend their religious susceptibilities, the Adoption of Children Bill, 1980 which was introduced in the Lok Sabha eight years later on 16th December, 1980, contained an express provision that it



shall not be applicable to Muslims. Apart from this change in its coverage the Adoption of Children Bill, 1980 was substantially in the same terms as the Adoption of Children Bill, 1972. The Adoption of Children Bill 1980 has unfortunately not yet been enacted into law but it would be useful to notice some of the relevant provisions of this Bill in so far as they indicate what principles and norms the Central Government regarded as necessary to be observed for securing the welfare of children sought to be given in adoption to foreign parents and what procedural safeguards the Central Government thought, were essential for securing this end. Clauses 23 and 24 of the Adoption of Children Bill, 1980 dealt with the problem of adoption of Indian children by parents domiciled abroad and, in so far as material, they provided as follows: “23 (1) Except under the authority of an order under section 24, it shall not be lawful for any person to take or send out of India a child who is a citizen of India to any place outside India with a view to the adoption of the child by any person.

(2) Any person who takes or sends a child out of India to any place outside India in contravention of sub-section (1) or makes or takes part in any arrangements for transferring the care and custody of a child to any person for that purpose shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both. (24) (1) If upon an application made by a person who is not domiciled in India, the district court is satisfied that the applicant intends to adopt a child under the law of or within the country in which he is domiciled, and for that purpose desires to remove the child from India either immediately or after an interval, the court may make an order (in this section referred to as a provisional adoption order) authorising the applicant to remove the child for the purpose aforesaid and giving to the applicant the care and custody of the child pending his adoption as aforesaid:

Provided that no application shall be entertained unless it is accompanied by a certificate by the Central Government to the effect that-

- (i) the applicant is in its opinion a fit person to adopt the child;
- (ii) the welfare and interests of the child shall be safeguarded under the law of the country of domicile of the applicant;
- (iii) the applicant has made proper provision by way of deposit or bond or otherwise in accordance with the rules made under this Act to enable the child to be repatriated to India, should it become necessary for any reason.

(2) The provisions of this Act relating to an adoption order shall, as far as may be apply in relation to a provisional adoption order made under this section.

The other clauses of the Adoption of Children Bill, 1980 were sought to be made applicable in relation to a provisional adoption order by reason of sub-clause (3) of clause 24. The net effect of this provision, if the Bill were enacted into law, would be that in view of clause 17 no institution or organisation can make any arrangement for the adoption of an Indian child by foreign parents unless such institution or organisation is licensed as a social welfare institution and under Clause 21, it would be unlawful to make or to give to any person any payment or reward for or in consideration of the grant by that person of any consent required in connection with the adoption of a child or the transfer by that person of the care and custody of such child with a view to its adoption or the making by that person of any arrangements for such adoption. Moreover, in view



of Clause 8, no provisional adoption order can be made in respect of an Indian child except with the consent of the parent or guardian of such child and if such child is in the care of an institution, except with the consent of the institution given on its behalf by all the persons entrusted with or in charge of its management, but the District Court can dispense with such consent if it is satisfied that the person whose consent is to be dispensed with has abandoned, neglected or persistently ill-treated the child or has persistently failed without reasonable cause to discharge his obligation as parent or guardian or can not be found or is incapable of giving consent or is withholding consent unreasonably. When a provisional adoption order is made by the District Court on the application of a person domiciled abroad, such person would be entitled to obtain the care and custody of the child in respect of which the order is made and to remove such child for the purpose of adopting it under the law or within the country in which he is domiciled. These provisions in the Adoption of Children Bill, 1980 will have to be borne in mind when we formulate the guidelines which must be observed in permitting an Indian child to be given in adoption to foreign parents. Besides filing copies of the Adoption of Children Bill, 1972 and the Adoption of Children Bill, 1980 the Indian Council of Social Welfare also filed two lists, one list giving names and particulars of recognised agencies in foreign countries engaged in facilitating procurement of children from other countries for adoption in their own respective countries and the other list containing names and particulars of institutions and organisations in India engaged in the work of offering and placing Indian children for adoption by foreign parents. The Writ Petition thereafter came up for hearing on 9th November, 1982 when several applications were made by various institutions and organisations for intervention at the hearing of the writ petition. Since the questions arising in the writ petition were of national importance, the Court thought that it would be desirable to have assistance from whatever legitimate source it might come and accordingly, by an order dated 9th November, 1982, the Court granted permission to eight specified institutions or organisations to file affidavits or statements placing relevant material before the Court in regard to the question of adoption of Indian children by foreign parents and directed that such affidavits or statements should be filed on or before 27th November, 1982. The Court also issued notice of the writ petition to the State of West Bengal directing it to file its affidavit or statement on or before the same date. The Court also directed the Superintendent of Tees Hazari courts to produce at the next hearing of the writ petition quarterly reports in regard to the orders made under the Guardian and Wards Act, 1890 entrusting care and custody of Indian children to foreign parents during the period of five years immediately prior to 1st October, 1982. Since the Union of India had not yet filed its affidavit or statement setting out what was the attitude adopted by it in regard to this question, the Court directed the Union of India to file its affidavit or statement within the same time as the others. The Court then adjourned the hearing of the writ petition to 1st December 1982 in order that the record may be completed by that time.

Pursuant to these directions given by the Court, various affidavits and statements were filed on behalf of the Indian Council of Social Welfare, Enfants Du Monde, Missionaries of Charity, Enfants De L's Espoir, Indian Association for promotion of Adoption Kuan-yin Charitable Trust, Terre Des Homes (India) Society, Maharashtra State Women's Council, Legal Aid Services West Bengal, SOS Children's Villages of India, Bhavishya International Union for Child Welfare and the Union of India. These affidavits



and statements placed before the Court a wealth of material bearing upon the question of adoption of Indian children by foreign parents and made valuable suggestions and recommendations for the consideration of the Court. These affidavits and statements were supplemented by elaborate oral arguments which explored every facet of the question, involving not only legal but also sociological considerations. We are indeed grateful to the various participants in this inquiry and to their counsel for the very able assistance rendered by them in helping us to formulate principles and norms which should be observed in giving Indian children in adoption to foreign parents and the procedure that should be followed for the purpose of ensuring that such inter-country adoptions do not lead to abuse maltreatment or exploitation of children and secure to them a healthy, decent family life.

It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a “supremely important national asset” and the future well being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said: “Child shows the man as morning shows the day” and the Study Team on Social Welfare said much to the same effect when it observed that “the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages”. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fulness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. Now obviously children need special protection because of their tender age and physique mental immaturity and incapacity to look-after themselves. That is why there is a growing realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realisation of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process. In India this consciousness is reflected in the provisions enacted in the Constitution. Clause (3) of Article 15 enables the State to make special provisions inter alia for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented perambulatory introduction: “The nation’s children are a supremely important asset. Their nurture and solicitude are



our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice."

The National Policy sets out the measures which the Government of India proposes to adopt towards attainment of the objectives set out in the perambulatory introduction and they include measures designed to protect children against neglect, cruelty and exploitation and to strengthen family ties "so that full potentialities of growth of children are realised within the normal family neighbourhood and community environment." The National Policy also lays down priority in programme formation and it gives fairly high priority to maintenance, education and training of orphan and destitute children. There is also provision made in the National Policy for constitution of a National Children's Board and pursuant to this provision, the Government of India has Constituted the National Children's Board with the Prime Minister as the chair person. It is the function of the National Children's Board to provide a focus for planning and review and proper coordination of the multiplicity of services striving to meet the needs of children and to ensure at different levels continuous planning, review and coordination of all the essential services. The National Policy also stresses the vital role which the voluntary organisations have to play in the field of education, health recreation and social welfare services for children and declares that it shall be the endeavour of State to encourage and strengthen such voluntary organisations.

There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20th November, 1959. The Declaration in its Preamble points out that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", and that "mankind owes to the child the best it has to give" and proceeds to formulate several Principles of which the following are material for our present purpose: "PRINCIPLE 2: The child shall enjoy special protection and shall be given opportunities and facilities by law and by other means, to enable him to develop physically mentally morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration."

PRINCIPLE 3: The child shall be entitled from his birth to a name and a nationality.

PRINCIPLE 6: The Child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

PRINCIPLE 9: The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. PRINCIPLE 10: The



child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men.”

Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents. But if for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents. The adoptive parents would be the next best substitute for the biological parents. The practice of adoption has been prevalent in Hindu Society for centuries and it is recognised by Hindu Law, but in a large number of other countries it is of comparatively recent origin while in the muslim countries it is totally unknown. Amongst Hindus, it is not merely ancient Hindu Law which recognises the practice of adoption but it has also been legislatively recognised in the Hindu Adoption and Maintenance Act, 1956. The Adoption of Children Bill 1972 sought to provide for a uniform law of adoption applicable to all communities including the muslims but, as pointed out above, it was dropped owing to the strong opposition of the muslim community. The Adoption of Children Bill, 1980 is now pending in Parliament and if enacted, it will provide a uniform law of adoption applicable to all communities in India excluding the muslim community. Now when the parents of a child want to give it away in adoption or the child is abandoned and it is considered necessary in the interest of the child to give it in adoption, every effort must be made first to find adoptive parents for it within the country, because such adoption would steer clear of any problems of assimilation of the child in the family of the adoptive parents which might arise on account of cultural, racial or linguistic differences in case of adoption of the child by foreign parents. If it is not possible to find suitable adoptive parents for the child within the country, it may become necessary to give the child in adoption to foreign parents rather than allow the child to grow up in an orphanage or an institution where it will have no family life and no love and affection of parents and quite often, in the socioeconomic conditions prevailing in the country, it might have to lead the life of a destitute, half clad, half-hungry and suffering from malnutrition and illness. Paul Harrison a free-lance journalist working for several U.N. Agencies including the International Year of the Child Secretariat points out that most third world children suffer “because of their country’s lack of resources for development as well as pronounced inequalities in the way available resources are distributed” and they face a situation of absolute material deprivation. He proceeds to say that for quite a large number of children in the rural areas, “poverty and lack of education of their parents, combined with little or no access to essential services of health, sanitation and education, prevent the realisation of their full human potential making them more likely to grow up uneducated, unskilled and unproductive” and their life is blighted by malnutrition, lack of health care and disease and illness caused by starvation, impure water and poor sanitation. What Paul Harrison has said about children of the third world applies to children in India and if it is not possible to provide to them in India decent family life where they can grow up under the loving care and



attention of parents and enjoy the basic necessities of life such as nutritive food, health care and education and lead a life of basic human dignity with stability and security, moral as well as material, there is no reason why such children should not be allowed to be given in adoption to foreign parents. Such adoption would be quite consistent with our National Policy on Children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned, to lead a healthy decent life, without privation and suffering arising from poverty, ignorance, malnutrition and lack of sanitation and free from neglect and exploitation, where they would be able to realise "full potential of growth". But of course as we said above, every effort must be made first to see if the child can be rehabilitated by adoption within the country and if that is not possible, then only adoption by foreign parents, or as it is some time called 'inter country adoption' should be acceptable. This principle stems from the fact that inter country adoption may involve trans-racial, trans-cultural and trans-national aspects which would not arise in case of adoption' within the country and the first alternative should therefore always be to find adoptive parents for the child within the country. In fact, the Draft Guidelines of Procedures Concerning Inter-Country Adoption formulated at the International Council of Social Welfare Regional Conference of Asia and Western Pacific held in Bombay in 1981 and approved at the Workshop on Inter Country Adoption held in Brighton, U.K. on 4th September, 1982, recognise the validity of this principle in clause 3.1 which provides: "Before any plans are considered for a child to be adopted by a foreigner, the appropriate authority or agency shall consider all alternatives for permanent family care within the child's own country". Where, however, it is not possible to find placement for the child in an adoptive family within the country, we do not see anything wrong if: a home is provided to the child with an adoptive family in a foreign country. The Government of India also in the affidavit filed on its behalf by Miss B. Sennapati Programme Officer in the Ministry of Social Welfare seems to approve of inter-country adoption for Indian children and the proceedings of the Workshop on Inter Country Adoption held in Brighton, U.K. on 4th September, 1982 clearly show that the Joint Secretary, Ministry of Social Welfare who represented the Government of India at the Workshop "affirmed support of the Indian Government to the efforts of the international organisations in promoting measures to protect welfare and interests of children who are adopted abroad."

But while supporting inter-country adoption, it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in a worse situation than that in his own country. The Economic and Social Council as also the Commission for Social Development have therefore tried to evolve social and legal principles for the protection and welfare of children given in inter-country adoption. The Economic and Social Council by its Resolution 1925 LVIII requested the Secretary General of the United Nations to convene a group of Experts with relevant experts with relevant experience of family and child welfare with the following mandate:

- "(a) To prepare a draft declaration of social and legal principles relating to adoption and foster placement of children nationally and internationally, and to review



and appraise the recommendations and guidelines incorporated in the report of the Secretary General and the relevant material submitted by Governments already available to the Secretary General and the regional commissions.

- (b) To draft guidelines for the use of Governments in the implementation of the above principles, as well as suggestions for improving procedures within the context of their social development-including family and child welfare-programmes."

Pursuant to this mandate an expert Group meeting was convened in Geneva in December, 1978 and this Expert Group adopted a "Draft declaration on social and legal principles relating to the protection and welfare of children with special reference of foster placement and adoption, nationally and internationally". The Commission for Social Development considered the draft Declaration at its 26th Session and expressed agreement with its contents and the Economic and Social Council approved the draft Declaration and requested the General Assembly to consider it in a suitable manner. None of the parties appearing could give us information whether any action has been taken by the General Assembly. But the draft Declaration is a very important document in as much it lays down certain social and legal principles which must be observed in case of inter-country adoption. Some of the relevant principles set out in the draft Declaration may be referred to with advantage: "Art. 2. It is recognised that the best child welfare is good family welfare.

4. When biological family care is unavailable or in appropriate, substitute family care should be considered.

7. Every child has a right to a family. Children who cannot remain in their biological family should be placed in foster family or adoption in preference to institutions, unless the child's particular needs can best be met in a specialized facility.

8. Children for whom institutional care was formerly regarded as the only option should be placed with families, both foster and adoptive.

12. The primary purpose of adoption is to provide a permanent family for a child who cannot be cared for by his/her biological family.

14. In considering possible adoption placements, those responsible for the child should select the most appropriate environment for the particular child concerned.

15. Sufficient time and adequate counselling should be given to the biological parents to enable them to reach a decision on their child's future, recognizing that it is in the child's best interest to reach this decision as early as possible.

16. Legislation and services should ensure that the child becomes an integral part of the adoptive family.

17. The need of adult adoptees to know about their background should be recognized.

19. Governments should determine the adequacy of their national services for children, and recognize those children whose needs are not being met by existing services. For some of these children, inter- country adoption may be considered as a suitable means of providing them with a family.



21. In each country, placements should be made through authorized agencies competent to deal with inter country adoption services and providing the same safeguards and standards as are applied in national adoptions.

22. Proxy adoptions are not acceptable, in consideration of the child's legal and social safety.

23. No adoption plan should be considered before it has been established that the child is legally free for adoption and the pertinent documents necessary to complete the adoption are available. All necessary consents must be in a form which is legally valid in both countries. It must be definitely established that the child will be able to immigrate into the country of the prospective adopters and can subsequently obtain their nationality.

24. In inter-country adoptions, legal validation of the adoption should be assured in the countries involved.

25. The child should at all times have a name, nationality and legal guardian."

Thereafter at the Regional Conference of Asia and Western Pacific held by the International Council on Social Welfare in Bombay in 1981, draft guidelines of procedure concerning inter-country adoption were formulated and, as pointed out above, they were approved at the Workshop held in Brighton, U.K. on 4th September, 1982. These guidelines were based on the Draft Declaration and they are extremely relevant as they reflect the almost unanimous thinking of participants from various countries who took part in the Regional Conference in Bombay and in the Workshop in Brighton, U.K. There are quite a few of these guidelines which are important and which deserve serious consideration by us: "1.4. In all inter-country adoption arrangements, the welfare of the child shall be prime consideration. Biological Parents:

- 2.2. When the biological parents are known they shall be offered social work services by professionally qualified workers (or experienced personnel who are supervised by such qualified workers) before and after the birth of the child.
- 2.3. These services shall assist the parents to consider all the alternatives for the child's future. Parents shall not be subject to any duress in making a decision about adoption. No commitment to an adoption plan shall be permitted before the birth of the child. After allowing parents a reasonable time to reconsider any decision to relinquish a child for adoption, the decision should become irrevocable.
- 2.5. If the parents decide to relinquish the child for adoption, they shall be helped to understand all the implications, including the possibility of adoption by foreigners and of no further contact with the child.
- 2.6. Parents should be encouraged, where possible, to provide information about the child's background and development, and their own health.
- 2.8. It is the responsibility of the appropriate authority or agency to ensure that when the parents relinquish a child for adoption all of the legal requirements are met.



- 2.9. If the parents state a preference for the religious up-bringing of the child, these wishes shall be respected as far as possible, but the best interest of the child will be the paramount consideration.
- 2.10. If the parents are not known, the appropriate authority or agency, in whose care the child has been placed, shall endeavour to trace the parents and ensure that the above services are provided, before taking any action in relation to adoption of the child.

#### The Child:

- 3.1. Before any plans are considered for a child to be adopted by foreigners, the appropriate authority or agency shall consider all alternatives for permanent family care within the child's own country.
- 3.2. A child-study report shall be prepared by professional workers (or experienced personnel who are supervised by such qualified workers) of an appropriate authority or agency, to provide information which will form a basis for the selection of prospective adopters for the child, assist with the child's need to know about his original family at the appropriate time, and help the adoptive parents understand the child and have relevant information about him/her.
- 3.3. As far as possible, the child-study report shall include the following:
  - 3.3.1. Identifying information, supported where possible by documents.
  - 3.3.2. Information about original parents, including their health and details of the mother's pregnancy and the birth.
  - 3.3.3. Physical, intellectual and emotional development.
  - 3.3.4. Health report.
  - 3.3.5. Recent photograph.
  - 3.3.6. Present environment-category of care (Own home, foster home, institution, etc.) relationships, routines and habits.
  - 3.3.7. Social Worker's assessment and reasons for suggesting inter-country adoption.
- 3.4. Brothers and sisters and other children who have been cared for as siblings should not be separated by adoption placement except for special reasons. 3.5. When a decision about an adoption placement is finalised, adequate time and effort shall be given to preparation of the child in a manner appropriate to his/her age and level of development. Information about the child's new country and new home, and counselling shall be provided by a skilled worker.
- 3.5. (a) Before any adoption placement is finalized the child concerned shall be consulted in a manner appropriate to his/her age and level of development.
- 3.6. When older children are placed for adoption, the adoptive parents should be encouraged to come to the child's country of origin, to meet him/her there, learn personally about his/her first environment and escort the child to its new home.

#### Adoptive Parents:



- 4.3. In addition to the usual capacity for adoptive, parenthood applicants need to have the capacity to handle the trans-racial, trans-cultural and trans-national aspects of inter-country adoptions.
- 4.4. A family study report shall be prepared by professional worker (or experienced personnel who are supervised by such qualified workers) to indicate the basis on which the applicants were accepted as prospective adopters. It should include an assessment of the parents' capacity to parent a particular type of child and provide relevant information for other authorities such as Courts.
- 4.5. The report on the family study which must be made in the community where the applicants are residing, shall include details of the following:
  - 4.5.1. Identifying information about parents and other members of the family, including any necessary documentation.
  - 4.5.2. Emotional and intellectual capacities of prospective adopters, and their motivation to adoption.
  - 4.5.3. Relationship (material, family, relatives, friends, community)
  - 4.5.4. Health.
  - 4.5.5. Accommodation and financial position.
  - 4.5.6. Employment and other interests.
  - 4.5.7. Religious affiliations and/or attitude.
  - 4.5.8. Capacity for adoptive parenthood, and details of child preferred (age, sex, degree of disability).
  - 4.5.9. Support available from relatives, friends, community.
  - 4.5.10. Social worker's assessment and details of adoption authority's approval.
  - 4.5.11. Recent photograph of family.

#### Adoption Authorities and Agencies:

- 5.1. Inter-country adoption arrangements should be made only through Government adoption authorities (or agencies recognised by them) in both sending and receiving countries. They shall use experienced staff with professional social work education or experienced personnel supervised by such qualified workers.
- 5.2. The appropriate authority or agency in the child's country should be informed of all proposed inter-country adoptions and have the opportunity to satisfy itself that all alternatives in the country have been considered, and that inter-country adoption is the optimal choice of care for the child.
- 5.3. Before any inter-country adoption plan is considered, the appropriate authority or agency in the child's country should be responsible for establishing that the child is legally free for adoption, and that the necessary documentation is legally valid in both countries.
- 5.4. Approval of inter-country adoption applicants is a responsibility of the appropriate authorities or agencies in both sending and receiving countries. An application to adopt a child shall not be considered by a sending country unless



it is forwarded through the appropriate authority or agency in the receiving country.

- 5.5. The appropriate authority or agency in both countries shall monitor the reimbursement of costs involved in inter-country adoption to prevent profiteering and traffic king in children.
- 5.6. XX XX XX XX
- 5.7. When a child goes to another country to be adopted, the appropriate authority or agency of the receiving country shall accept responsibility for supervision of the placement, and for the provision of progress reports for the adoption authority or agency in the sending country for the period agreed upon.
- 5.8. In cases where the adoption is not to be finalised in the sending country, the adoption authority in the receiving country shall ensure that an adoption order is sought as soon as possible but not later than 2 years after placement. It is the responsibility of the appropriate authority or agency in the receiving country to inform the appropriate authority or agency in the sending country of the details of the adoption order when it is granted.
  - 5.8.1. In cases where the adoption is to be finalised in the sending country after placement, it is the responsibility of the appropriate authority or agency in both the sending and receiving country to ensure that the adoption is finalised as soon as possible.
- 5.9. If the placement is disrupted before the adoption is finalised, the adoption authority in the receiving country shall be responsible for ensuring, with the agreement of the adoption authority in the sending country that a satisfactory alternative placement is made with prospective adoptive parents who are approved by the adoption authorities of both countries.

#### Adoption Services and Communities:

- 6.1. Appropriate authorities or agencies in receiving countries shall ensure that there is adequate feedback to the appropriate authorities or agencies in sending countries, both in relation to inter-country adoption generally and to individual children where required.
- 6.2. XX XX XX XX
- 6.3. The appropriate authorities and agencies in both sending and receiving countries have a responsibility for public education in relation to inter-country adoption, to ensure that when such adoption is appropriate for children, public attitudes support this. Where public attitude is known to be discriminatory or likely to be hostile on grounds of race or colour, the appropriate authority or agency in the sending country should not consider placement of the child.

#### Status of the Child:

##### 7.1. Family:

It is essential that in inter-country adoption child is given the same legal status and rights of inheritance, as if she/he had been born to the adoptive parents in marriage.



7.2. Name:

When the legal adoption process is concluded the child shall have the equivalent of a birth registration certificate.

7.3. Nationality:

When the legal adoption is concluded, the child shall be granted appropriate citizenship.

7.4. XX XX XX XX

7.5. Immigration:

Before an inter-country adoption placement with particular prospective adopters is proposed, the appropriate authority or agency in the child's country shall ensure that there is no hindrance, to the child entering the prospective adopters' country, and that travel documents can be obtained at the appropriate time.

We shall examine these provisions of the Draft Declaration and the draft guidelines of procedure when we proceed to consider and lay down the principles and norms which should be followed in intercountry adoption.

Now it would be convenient at this stage to set out the procedure which is at present being followed for giving a child in adoption to foreign parents. Since there is no statutory enactment in our country providing for adoption of a child by foreign parents or laying down the procedure which must be followed in such a case, resort is had to the provisions of the Guardians & Wards Act 1890 for the purpose of facilitating such adoption. This Act is an old statute enacted for the purpose of providing for appointment of guardian of the person or property of a minor. Section 4 sub-section (5) clause (a) defines the "court" to mean the district court having jurisdiction to entertain an application under the Act for an order appointing or declaring a person to be a guardian and the expression "district court" is defined in sub-section (4) of section 4 to have the same meaning as assigned to it in the Code of Civil Procedure and includes a High Court in the exercise of its ordinary original civil jurisdiction. Section 7 sub-section (1) provides that where the court is satisfied that it is for the welfare of a minor that an order should be made appointing a guardian of his person or property or both or declaring a person to be such a guardian, the court may make an order accordingly and, according to section 8, such an order shall not be made except on the application of one of four categories of persons specified in clauses (a) to (d), one of them being "the person desirous of being the guardian of the minor" and the other being "any relative or friend of the minor". Sub section (1) of section 9 declares that if the 'application' is with respect to the guardianship of the person of the minor-and that is the kind of application which is availed of for the purpose of intercountry adoption-it shall be made to the district court having jurisdiction in the place where the minor ordinarily resides. Then follows section 11, sub- section (1) which prescribes that if the court is satisfied that there is ground for proceeding on the application, it shall fix a date for the hearing thereof and cause notice of the application and of the date fixed for the hearing to be served on the parents of the minor if they are residing in any State to which



the Act extends, the person if any named in the petition as having the custody or possession of the person of the minor, the person proposed in the application to be appointed guardian and any other person to whom, in the opinion of the court, special notice of the application should be given. Section 17 provides that in appointing guardian of a minor, the court shall be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor and in considering what will be for the welfare of the minor, the court shall have regard to the age sex, and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent and any existing or previous relations of the proposed guardian with the minor or his property. The last material section is section 26 which provides that a guardian of the person of a minor appointed by the court shall not, without the leave of the court by which he was appointed, remove the ward from the limits of its jurisdiction, except for such purposes as may be prescribed and the leave to be granted by the court may be special or general. These are the relevant provisions of the Guardians and Wards Act 1890 which have a bearing on the procedure which is at present being followed for the purpose of carrying through inter-country adoption. The foreign parent makes an application to the court for being appointed guardian of the person of the child whom he wishes to take in adoption and for leave of the court to take the child with him to his country on being appointed such guardian. The procedure to be followed by the court in disposing of such application is laid down by three High Courts in the country with a view to protecting the interest and safeguarding the welfare of the child, but so far as the rest of the High Courts are concerned, they do not seem to have taken any steps so far in that direction. Since most of the applications by foreign parents wishing to take a child in adoption in the State of Maharashtra are made on the original side of the High Court of Bombay that High Court has issued a notification dated 10th May 1972 incorporating Rule 361-B in Chapter XX of the Rules of the High Court of Bombay (Original Side) 1957 and this newly added Rule provides inter alia as follows:

When a foreigner makes an application for being appointed as the guardian of the person or property of a minor, the Prothonotary and Senior Master shall address a letter to the Secretary of the Indian Council of Social Welfare, informing him of the presentation of the application and the date fixed for the hearing thereof-he shall also inform him that any representation which the Indian Council of Social Welfare may make in the matter would be considered by the Court before passing the order on the application. A copy of the application shall be forwarded to the Secretary of the Indian Council of Social Welfare along with the letter of Prothonotary and Senior Master." The High Court of Delhi has also issued instructions on the same lines to the Courts subordinate to it and these instructions read as follows:

- (i) A foreigner desirous of being appointed guardian of the person of a minor and praying for leave to remove the minor to a foreign country, shall make an application for the purpose in the prescribed form under the Guardians and Wards Act, attaching with it three copies of passport size



photographs of the minor, duly attested by the person having custody of the minor at the time;

- (ii) If the court is satisfied that there is no ground for proceedings on the application, it shall fix a day for the hearing there of and cause notice of the application and of the date fixed for the hearing on the person and in the manner mentioned in Section 11, Guardians and Wards Act, 1890 as also to the general public and the Secretary of the Indian Council of child Welfare and consider their representation;
- (iii) Every person appointed guardian of the person of a minor shall execute a bond with or without a surety or sureties as the court may think fit to direct and in such sum as the court may fix, having regard to the welfare of the minor and to ensure his production in the court if and when so required by the court;
- (iv) On the court making an order for the appointment of a foreigner guardian of the person of an Indian minor, a copy of the minor's photograph shall be counter-signed by the Court and issued to the guardian or joint guardian, as the case may be, appointed by the court alongwith the certificate or guardianship."

The High Court of Gujarat has not framed any specific rule for this purpose like the High Courts of Bombay and Delhi but in a judgment delivered in 1982 in the case of Rasiklal Chaganlal Mehta,<sup>(1)</sup> the High Court of Gujarat has made the following observations:

"In order that the Courts can satisfactorily decide an intercountry adoption case against the aforesaid background and in the light of the above referred guidelines, we consider it necessary to give certain directions. In all such cases, the Court should issue notice to the Indian Council of Social Welfare (175, Dadabhai Naroji Road, Bombay-400001) and seek its assistance. If the Indian Council of Social Welfare so desires it should be made a party to the proceedings. If the Indian Council of Social Welfare does not appear, or if it is unable, for some reason, to render assistance, the Court should issue notice to an independent, reputed and publicly/officially recognised social welfare agency working in the field and in that area and request it to render assistance in the matter."

The object of giving notice to the Indian Council of Social Welfare or the Indian Council for Child Welfare or any other independent, reputed and publicly or officially recognised social welfare agency is obviously to ensure that the application of foreign parents for guardianship of the child with a view to its eventual adoption is properly and carefully scrutinised and evaluated by an expert body having experience in the area of child welfare with a view to assisting the Court in coming to the conclusion whether it will be in the interest of the child, promotive of its welfare, to be adopted by the foreign parents making the application or in other words, whether such adoption will provide moral and material security to the child with an opportunity to grow into the full stature of its personality in an atmosphere of love and affection and warmth of a family hearth and home. This procedure which has been evolved by the High Courts of Bombay, Delhi and Gujarat is, in our opinion, eminently desirable and it can help considerably to reduce, if not eliminate, the possibility of the child being



adopted by unsuitable or undesirable parents or being placed in a family where it may be neglected, maltreated or exploited by the adoptive parents. We would strongly commend this procedure for acceptance by every court in the country which has to deal with an application by a foreign parent for appointment of himself as guardian of a child with a view to its eventual adoption. We shall discuss this matter a little more in detail when we proceed to consider what principles and norms should be laid down for inter-country adoption, but, in the meanwhile, proceeding further with the narration of the procedure followed by the courts in Bombay, Delhi and Gujarat, we may point out that when notice is issued by the court, the Indian Council of Social Welfare or the Indian Council for Child Welfare or any other recognised social welfare agency to which notice is issued, prepares what may conveniently be described as a child study report and submits it to the Court for its consideration. What are the different aspects relating to the child in respect of which the child study report should give information is a matter which we shall presently discuss, but suffice it to state for the time being that the child study report should contain legal and social data in regard to the child as also an assessment of its behavioural pattern and its intellectual, emotional and physical development. The Indian Council of Social Welfare has evolved a standardised form of the child study report and it has been annexed as Ex. 'C' to the reply filed in answer to the notice issued by the Court. Ordinarily an adoption proposal from a foreign parent is sponsored by a social or child welfare agency recognised or licensed by the Government of the country in which the foreign parents resides and the application of the foreign parent for appointment as guardian of the child is accompanied by a home study report prepared by such social or child welfare agency. The home study report contains an assessment of the fitness and suitability of the foreign parent for taking the child in adoption based on his antecedents, family background, financial condition, psychological and emotional adaptability and the capacity to look after the child after adoption despite racial, national and cultural differences. The Indian Council of Social Welfare has set out in annexure 'B' to the reply filed by it, guidelines for the preparation of the home study report in regard to the foreign parent wishing to take a child in adoption, and it is obvious from these guidelines which we shall discuss a little later, that the home study report is intended to provide social and legal facts in regard to the foreign parent with a view to assisting the court in arriving at a proper determination of the question whether it will be in the interest of the child to be given in adoption to such foreign parent. The court thus has in most cases where an application is made by a foreign parent for being appointed guardian of a child in the courts in Bombay, Delhi and Gujarat, the child study report as well as the home study report together with other relevant material in order to enable it to decide whether it will be for the welfare of the child to be allowed to be adopted by the foreign parents and if on a consideration of these reports and material, the court comes to the conclusion that it will be for the welfare of the child, the court makes an order appointing the foreign parent as guardian of the child with liberty to him to take the child to his own country with a view to its eventual adoption. Since adoption in a foreign country is bound to take some time and till then the child would continue to be under the guardianship of the foreign parent by virtue of the order made by the court, the foreign parent as guardian would continue to be accountable to the court for the welfare of the child and the court therefore takes a bond from him with or without surety or sureties in such sum as may be thought for ensuring its production if and when required by the court.



The foreign parent then takes the child to his own country either personally or through an escort and the child is then adopted by the foreign parent according to the law of his country and on such adoption, the child acquires the same status as a natural born child with the same rights of inheritance and succession as also the same nationality as the foreign parent adopting it. This is broadly the procedure which is followed in the courts in Bombay, Delhi and Gujarat and there can be no doubt that, by and large, this procedure tends to ensure the welfare of the child, but even so, there are several aspects of procedure and detail which need to be considered in order to make sure that the child is placed in the right family where it will be able to grow into full maturity of its personality with moral and material security and in an atmosphere of love and warmth and it would not be subjected to neglect, maltreatment or exploitation.

Now one thing is certain that in the absence of a law providing for adoption of an Indian child by a foreign parent, the only way in which such adoption can be effectuated is by making it in accordance with the law of the country in which the foreign parent resides. But in order to enable such adoption to be made in the country of the foreign parent, it would be necessary for the foreign parent to take the child to his own country where the procedure for making the adoption in accordance with the law of that country can be followed. However, the child which is an Indian national cannot be allowed to be removed out of India by the foreign parent unless the foreign parent is appointed guardian of the person of the child by the Court and is permitted by the Court to take the child to his own country under the provisions of the Guardians and Wards Act 1890. Today, therefore, as the law stands, the only way in which a foreign parents can take an Indian child in adoption is by making an application to the Court in which the child ordinarily resides for being appointed guardian of the person of the child with leave to remove the child out of India and take it to his own country for the purpose of adopting it in accordance with the law of his country. We are definitely of the view that such inter-country adoption should be permitted after exhausting the possibility of adoption within the country by Indian parents. It has been the experience of a large number of social welfare agencies working in the area of adoption that, by and large, Indian parents are not enthusiastic about taking a stranger child in adoption and even if they decide to take such child in adoption, they prefer to adopt a boy rather than a girl and they are wholly averse to adopting a handicapped child, with the result that the majority of abandoned, destitute or orphan girls and handicapped children have very little possibility of finding adoptive parents within the country and their future lies only in adoption by foreign parents. But at the same time it is necessary to bear in mind that by reason of the unavailability of children in the developed countries for adoption, there is a great demand for adoption of children from India and consequently there is increasing danger of ill-equipped and sometimes even undesirable organisations or individuals activising themselves in the field of inter- country adoption with a view to trafficking in children and sometimes it may also happen that the immediate prospect of transporting the child from neglect and abandonment to material comfort and security by placing it with a foreigner may lead to other relevant factors such as the intangible needs of the child, its emotional and psychological requirements and possible difficulty of its assimilation and integration in a foreign family with a different racial and cultural background, being under-emphasized, if not ignored. It is therefore necessary to evolve normative and procedural safeguards for ensuring that the child goes into the right family which would provide it warmth and affection of family life and help it to grow



and develop physically, emotionally, intellectually and spiritually. These safeguards we now proceed to examine.

We may make it clear at the outset that we are not concerned here with cases of adoption of children living with their biological parents, for in such class of cases, the biological parents would be the best persons to decide whether to give their child in adoption to foreign parents. It is only in those cases where the children sought to be taken in adoption are destitute or abandoned and are living in social or child welfare centres that it is necessary to consider what normative and procedural safeguards should be forged for protecting their interest and promoting their welfare.

Let us first consider what are the requirements which should be insisted upon so far as a foreigner wishing to take a child in adoption is concerned. In the first place, every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognised or licensed by the government of the country in which the foreigner is resident. No application by a foreigner for taking a child in adoption should be entertained directly by any social or welfare agency in India working in the area of inter-country adoption or by any institution or centre or home to which children are committed by the juvenile court. This is essential primarily for three reasons.

Firstly, it will help to reduce, if not eliminate altogether the possibility of profiteering and trafficking in children, because if a foreigner were allowed to contact directly agencies or individuals in India for the purpose of obtaining a child in adoption, he might in his anxiety to secure a child for adoption, be induced or persuaded to pay any unconscionable or unreasonable amount which might be demanded by the agency or individual procuring the child. Secondly it would be almost impossible for the court to satisfy itself that the foreigner who wishes to take the child in adoption would be suitable as a parent for the child and whether he would be able to provide a stable and secure family life to the child and would be able to handle trans-racial, trans-cultural and trans-national problems likely to arise from such adoption, because, where the application for adopting a child has not been sponsored by a social or child welfare agency in the country of the foreigner, there would be no proper and satisfactory home study report on which the court can rely. Thirdly, in such a case, where the application of a foreigner for taking a child in adoption is made directly without the intervention of a social or child welfare agency, there would be no authority or agency in the country of the foreigner who could be made responsible for supervising the progress of the child and ensuring that the child is adopted at the earliest in accordance with law and grows up in an atmosphere of warmth and affection with moral and material security assured to it. The record shows that in every foreign country where children from India are taken in adoption, there are social and child welfare agencies licensed or recognised by the government and it would not therefore cause any difficulty, hardship or inconvenience if it is insisted that every application from a foreigner for taking a child in adoption must be sponsored by a social or child welfare agency licensed or recognised or recognised by the government of the country in which the foreigner resides. It is not necessary that there should be only one social or child welfare agency in the foreign country through which an application for adoption of a child may be routed; there may be more than one such social or child welfare agencies, but every such social or child welfare agency must be licensed or recognised by the government of the foreign country.



and the court should not make an order for appointment of a foreigner as guardian unless it is satisfied that the application of the foreigner for adopting a child has been sponsored by such social or child welfare agency. The social or child welfare agency which sponsors the application for taking a child in adoption must get a home study report prepared by a professional worker indicating the basis on which the application of the foreigner for adopting a child has been sponsored by it. The home study report should broadly include information in regard to the various matters set out in Annexure 'A' to this judgment though it need not strictly adhere to the requirements of that Annexure and it should also contain an assessment by the social or child welfare agency as to whether the foreigner wishing to take a child in adoption is fit and suitable and has the capacity to parent a child coming from a different racial and cultural milieu and whether the child will be able to fit into the environment of the adoptive family and the community in which it lives. Every application of a foreigner for taking a child in adoption must be accompanied by a home study report and the social or child welfare agency sponsoring such application should also send along with it a recent photograph of the family, a marriage certificate of the foreigner and his or her spouse as also a declaration concerning their health together with a certificate regarding their medical fitness duly certificate by a medical doctor, a declaration regarding their financial status alongwith supporting documents including employer's certificate where applicable, income tax assessment orders, bank references and particulars concerning the properties owned by them, and also a declaration stating that they are willing to be appointed guardian of the child and undertaking that they would adopt the child according to the law of their country within a period of not more than two years from the time of arrival of the child in their country and give intimation of such adoption to the court appointing them as guardian as also to the social or child welfare agency in India processing their case, they would maintain the child and provide it necessary education and up-bringing according to their status and they would also send to the court as also to the social or child welfare agency in India reports relating to the progress of the child alongwith its recent photograph, the frequency of such progress reports being quarterly during the first two years and half yearly for the next three years. The application of the foreigner must also be accompanied by a Power of Attorney in favour of an Officer of the social or child welfare agency in India which is requested to process the case and such Power of Attorney should authorise the Attorney to handle the case on behalf of the foreigner in case the foreigner is not in a position to come to India. The social or child welfare agency sponsoring the application of the foreigner must also certify that the foreigner seeking to adopt a child is permitted to do so according to the law of his country. These certificates, declarations and documents which must accompany the application of the foreigner for taking a child in adoption, should be duly notarised by a Notary Public whose signature should be duly attested either by an Officer of the Ministry of External Affairs or Justice or Social Welfare of the country of the foreigner or by an Officer of the Indian Embassy or High Commission or Consulate in that country. The social or child welfare agency sponsoring the application of the foreigner must also undertake while forwarding the application to the social or child welfare agency in India, that it will ensure adoption of the child by the foreigner according to the law of his country within a period not exceeding two years and as soon as the adoption is effected, it will send two certified copies of the adoption order to the social or child welfare agency in India through which the application for guardianship



is processed, so that one copy can be filed in court and the other can remain with the social or child welfare agency in India. The social or child welfare agency sponsoring the application must also agree to send to the concerned social or child welfare agency in India progress reports in regard to the child, quarterly during the first year and half yearly for the subsequent year or years until the adoption is effected, and it must also undertake that in case of disruption of the family of the foreigner before adoption can be effected, it will take care of the child and find a suitable alternative placement for it with the approval of the concerned social or child welfare agency in India and report such alternative placement to the court handling the guardianship proceedings and such information shall be passed on both by the court as also by the concerned social or child welfare agency in India to the Secretary, Ministry of Social Welfare, Government of India. The Government of India shall prepare a list of social or child welfare agencies licensed or recognised for inter- country adoption by the government of each foreign country where children from India are taken in adoption and this list shall be prepared after getting the necessary information from the government of each such foreign country and the Indian Diplomatic Mission in that foreign country. We may point out that the Swedish Embassy has in Annexure II to the affidavit filed on its behalf by Ulf Waltre, given names of seven Swedish organisations or agencies which are authorised by the National Board for Inter-Country Adoption functioning under the Swedish Ministry of Social Affairs to “mediate” applications for adoption by Swedish nationals and the Indian Council of Social Welfare has also in the reply filed by it in answer to the writ petition given a list of government recognised organisations or agencies dealing in inter-country adoption in foreign countries. It should not therefore be difficult for the Government of India to prepare a list of social or child welfare agencies licensed or recognised for intercountry adoption by the Government in various foreign countries. We direct the Government of India to prepare such list within six months from today and copies of such list shall be supplied by the Government of India to the various High Courts in India as also to the social or child welfare agencies operating in India in the area of inter-country adoption under licence or recognition from the Government of India. We may of course make it clear that application of foreigners for appointment of themselves as guardians of children in India with a view to their eventual adoption shall not be held up until such list is prepared by the Government of India but they shall be processed and disposed of in the light of the principles and norms laid down in this judgment.

We then proceed to consider the position in regard to biological parents of the child proposed to be taken in adoption. What are the safeguards which are required to be provided in so far as biological parents are concerned ? We may make it clear at the outset that when we talk about biological parents, we mean both parents if they are together of the mother or the father if either is alone. Now it should be regarded as an elementary requirement that if the biological parents are known, they should be properly assisted in making a decision about relinquishing the child for adoption, by the Institution or centre or Home for Child Care or social or child welfare agency to which the child is being surrendered. Before a decision is taken by the biological parents to surrender the child for adoption, they should be helped to understand all the implications of adoptions including the possibility of adoption by a foreigner and they should be told specifically that in case the child is adopted, it would not be possible for them to have any further contact with the child. The biological parents should not be



subjected to any duress in making a decision about relinquishment and even after they have taken a decision to relinquish the child for giving in adoption, a further period of about three months should be allowed to them to reconsider their decision. But once the decision is taken and not reconsidered within such further time as may be allowed to them, it must be regarded as irrevocable and the procedure for giving the child in adoption to a foreigner can then be initiated without any further reference to the biological parents by filing an application for appointment of the foreigner as guardian of the child. Thereafter there can be no question of once again consulting the biological parents whether they wish to give the child in adoption or they want to take it back. It would be most unfair if after a child is approved by a foreigner and expenses are incurred by him for the purpose of maintenance of the child and some times on medical assistance and even hospitalisation for the child, the biological parents were once again to be consulted for giving them a locus penitential to reconsider their decision. But in order to eliminate any possibility of mischief and to make sure that the child has in fact been surrendered by its biological parents, it is necessary that the Institution or Centre or Home for Child Care or social or child welfare agency to which the child is surrendered by the biological parents, should take from the biological parents a document of surrender duly signed by the biological parents and attested by at least two responsible persons and such document of surrender should not only contain the names of the biological parents and their address but also information in regard to the birth of the child and its background, health and development. If the biological parents state a preference for the religious upbringing of the child, their wish should as far as possible be respected, but ultimately the interest of the child alone should be the sole guiding factor and the biological parents should be informed that the child may be given in adoption even to a foreigner who professes a religion different from that of the biological parents. This procedure can and must be followed where the biological parents are known and they relinquish the child for adoption to an Institution or Centre or Home for Child Care or hospital or social or child welfare agency. But where the child is an orphan, destitute or abandoned child and its parents are not known, the Institution or Centre or Home for Child Care or hospital or social or child welfare agency in whose care the child has come, must try to trace the biological parents of the child and if the biological parents can be traced and it is found that they do not want to take back the child, then the same procedure as outlined above should as far as possible be followed. But if for any reason the biological parents cannot be traced, then there can be no question of taking their consent or consulting them. It may also be pointed out that the biological parents should not be induced or encouraged or even be permitted to take a decision in regard to giving of a child in adoption before the birth of the child of within a period of three months from the date of birth. This precaution is necessary because the biological parents must have reasonable time after the birth of the child to take a decision whether to rear up the child themselves or to relinquish it for adoption and moreover it may be necessary to allow some time to the child to overcome any health problems experienced after birth.

We may now turn to consider the safeguards which should be observed in so far as the child proposed to be taken in adoption is concerned. It was generally agreed by all parties appearing before the Court, whether as interveners or otherwise, that it should not be open to any and every agency or individual to process an application from a foreigner for taking a child in adoption and such application should be



processed only through a social or child welfare agency licensed or recognised by the Government of India or the Government of the State in which it is operating, or to put it differently in the language used by the Indian Council of Social Welfare in the reply filed by it in answer to the writ petition, “all private adoptions conducted by unauthorised individuals or agencies should be stopped”. The Indian Council of Social Welfare and the Indian Council for Child Welfare are clearly two social or child welfare agencies operating at the national level and recognised by the Government of India, as appears clearly from the letter dated 23rd August, 1980 addressed by the Deputy Secretary to the Government of India to the Secretary, Government of Kerala, Law Department, Annexure ‘F’ to the submissions filed by the Indian Council for Child Welfare in response to the writ petition. But apart from these two recognised social or child welfare agencies functioning at the national level, there are other social or child welfare agencies engaged in child care and welfare and if they have good standing and reputation and are doing commendable work in the area of child care and welfare, there is no reason why they should not be recognised by the Government of India or the Government of a State for the purpose of inter-country adoptions. We would direct the Government of India to consider and decide within a period of three months from today whether any of the institutions or agencies which have appeared as interveners in the present writ petition are engaged in child care and welfare and if so, whether they deserve to be recognised for inter- country adoptions. Of course it would be open to the Government of India or the Government of a State suo motu or on an application made to it to recognise any other social or child welfare agency for the purpose of inter-country adoptions, provided such social or child welfare agency enjoys good reputation and is known for its work in the field of child care and welfare. We would suggest that before taking a decision to recognise any particular social or child welfare agency for the purpose of intercountry adoptions, the Government of India or the Government of a State would do well to examine whether the social or child welfare agency has proper staff with professional social work experience, because otherwise it may not be possible for the social or child welfare agency to carry out satisfactorily the highly responsible task of ensuring proper placement of a child with a foreign adoptive family. It would also be desirable not to recognise an organisation or agency which has been set up only for the purpose of placing children in adoption: it is only an organisation or agency which is engaged in the work of child care and welfare which should be regarded as eligible for recognition, since inter-country adoption must be looked upon not as an independent activity by itself, but as part of child welfare programme so that it may not tend to degenerate into trading. The Government of India or the Government of a State recognising any social or child welfare agency for inter-country adoptions must insist as a condition of recognition that the social or child welfare agency shall maintain proper accounts which shall be audited by a chartered accountant at the end of every year and it shall not charge to the foreigner wishing to adopt a child any amount in excess of that actually incurred by way of legal or other expenses in connection with the application for appointment of guardian including such reasonable remuneration or honorarium for the work done and trouble taken in processing, filing and pursuing the application as may be fixed by the Court.

Situations may frequently arise where a child may be in the care of a child welfare institution or centre or social or child welfare agency which has not been recognised by the Government. Since an application for appointment as guardian can, according



to the principles and norms laid down by us, be processed only by a recognised social or child welfare agency and none else, any unrecognised institution, centre or agency which has a child under its care would have to approach a recognised social or child welfare agency if it desires such child to be given in inter-country adoption, and in that event it must send without any undue delay the name and particulars of such child to the recognised social or child welfare agency through which such child is proposed to be given in inter-country adoption. Every recognised social or child welfare agency must maintain a register in which the names and particulars of all children proposed to be given in inter-country adoption through it must be entered and in regard to each such child, the recognised social or child welfare agency must prepare a child study report through a professional social worker giving all relevant information in regard to the child so as to help the foreigner to come to a decision whether or not to adopt the child and to understand the child, if he decides to adopt it as also to assist the court in coming to a decision whether it will be for the welfare of the child to be given in adoption to the foreigner wishing to adopt it. The child study report should contain as far as possible information in regard to the following matters:

- “(1) Identifying information, supported where possible by documents.
- (2) Information about original parents, including their health and details of the mother’s pregnancy and birth.
- (3) Physical, intellectual and emotional development.
- (4) Health report prepared by a registered medical practitioner preferably by a paediatrician.
- (5) Recent photograph.
- (6) Present environment-category of care (Own home, foster home, institution etc.) relationships, routines and habits.
- (7) Social worker’s assessment and reasons for suggesting inter-country adoption.”

The government of India should, with the assistance of the Government of the States, prepare a list of recognised social or child welfare agencies with their names, addresses and other particulars and send such list to the appropriate department of the Government of each foreign country where Indian children are ordinarily taken in adoption so that the social or child welfare agencies licensed or recognised by the Government of such foreign country for intercountry adoptions, would know which social or child welfare agency in India they should approach for processing an application of its national for taking an Indian child in adoption. Such list shall also be sent by the Government of India to each High Court with a request to forward it to the district courts within its jurisdiction so that the High Courts and the district courts in the country would know which are the recognised social or child welfare agencies entitled to process an application for appointment of a foreigner as guardian. Of course, it would be desirable if a Central Adoption Resource Agency is set up by the Government of India with regional branches at a few centres which are active in inter-country adoptions. Such Central Adoption Resource Agency can act as a clearing house of information in regard to children available for inter-country adoption and all applications by foreigners for taking Indian children in adoption can then be forwarded



by the social or child welfare agency in the foreign country to such Central Adoption Resource Agency and the latter can in its turn forward them to one or the other of the recognised social or child welfare agencies in the country. Every social or child welfare agency taking children under its care can then be required to send to such Central Adoption Resource Agency the names and particulars of children under its care who are available for adoption and the names and particulars of such children can be entered in a register to be maintained by such Central Adoption Resource Agency. But until such Central Adoption Resource Agency is set up, an application of a foreigner for taking an Indian child in adoption must be routed through a recognised social or child welfare agency. Now before any such application from a foreigner is considered, every effort must be made by the recognised social or child welfare agency to find placement for the child by adoption in an Indian family. Whenever any Indian family approaches a recognised social or child welfare agency for taking a child in adoption, all facilities must be provided by such social or child welfare agency to the Indian family to have a look at the children available with it for adoption and if the Indian family wants to see the child study report in respect of any particular child, child study report must also be made available to the Indian family in order to enable the Indian family to decide whether they would take the child in adoption. It is only if no Indian family comes forward to take a child in adoption within a maximum period of two months that the child may be regarded as available for inter-country adoption, subject only to one exception, namely, that if the child is handicapped or is in bad state of health needing urgent medical attention, which is not possible for the social or child welfare agency looking after the child to provide, the recognised social or child welfare agency need not wait for a period of two months and it can and must take immediate steps for the purpose of giving such child in inter-country adoption. The recognised social or child welfare agency should, on receiving an application of a foreigner for adoption through a licensed or recognised social or child welfare agency in a foreign country, consider which child would be suitable for being given in adoption to the foreigner and would fit into the environment of his family and community and send the photograph and child study report of such child to the foreigner for the purpose of obtaining his approval to the adoption of such child. The practice of accepting a general approval of the foreigner to adopt any child should not be allowed, because it is possible that if the foreigner has not seen the photograph of the child and has not studied the child study report and a child is selected for him by the recognised social or child welfare agency in India on the basis of his general approval, he may on the arrival of the child in his country find that he does not like the child or that the child is not suitable in which event the interest of the child would be seriously prejudiced. The recognised social or child welfare agency must therefore insist upon approval of a specific known child and once that approval is obtained, the recognised social or child welfare agency should immediately without any undue delay proceed to make an application for appointment of the foreigner as guardian of the child. Such application would have to be made in the court within whose jurisdiction the child ordinarily resides and it must be accompanied by copies of the home study report, the child study report and other certificates and documents forwarded by the social or child welfare agency sponsoring the application of the foreigner for taking the child in adoption.

Before we proceed to consider what procedure should be followed by the court in dealing with an application for appointment of a foreigner as guardian of a



child, we may deal with a point of doubt which was raised before us, namely, whether the social or child welfare agency which is looking after the child should be entitled to receive from the foreigner wishing to take the child in adoption any amount in respect of maintenance of the child or its medical expenses. We were told that there are instances where large amounts are demanded by so called social or child welfare agencies or individuals in consideration of giving a child in adoption and often this is done under the label of maintenance charges and medical expenses supposed to have been incurred for the child. This is a pernicious practice which is really nothing short of trafficking in children and it is absolutely necessary to put an end to it by introducing adequate safeguards. There can be no doubt that if an application of a foreigner for taking a child in adoption is required to be routed through a recognised social or child welfare agency and the necessary steps for the purpose of securing appointment of the foreigner as guardian of the child have also to be taken only through a recognised social or child welfare agency, the possibility of any so called social or child welfare agency or individual trafficking in children by demanding exorbitant amounts from prospective adoptive parents under the guise of maintenance charges and medical expenses or otherwise, would be almost eliminated. But, at the same time, it would not be fair to suggest that the social or child welfare agency which is looking after the child should not be entitled to receive any amount from the prospective adoptive parent, when maintenance and medical expenses in connection with the child are actually incurred by such social or child welfare agency. Many of the social or child welfare agencies running homes for children have little financial resources of their own and have to depend largely on voluntary donations and therefore if any maintenance or medical expenses are incurred by them on a child, there is no reason why they should not be entitled to receive reimbursement of such maintenance and medical expenses from the foreigner taking the child in adoption. We would therefore direct that the social or child welfare agency which is looking after the child selected by a prospective adoptive parent, may legitimately receive from such prospective adoptive parent maintenance expenses at a rate not exceeding Rs. 60 per day (this outer limit being subject to revision by the Ministry of Social Welfare, Government of India from time to time) from the date of selection of the child by him until the date the child leaves for going to its new home as also medical expenses including hospitalisation charges, if any, actually incurred by such social or child welfare agency for the child. But the claim for payment of such maintenance charges and medical expenses shall be submitted to the prospective adoptive parent through the recognised social or child welfare agency which has processed the application for guardianship and payment in respect of such claim shall not be received directly by the social or child welfare agency making the claim but shall be paid only through the recognised social or child welfare agency. This procedure will to a large extent eliminate trafficking in children for money or benefits in kind and we would therefore direct that this procedure shall be followed in the future. But while giving this direction, we may make it clear that what we have said should not be interpreted as in any way preventing a foreigner from making voluntary donation to any social or child welfare agency but no such donation from a prospective adoptive parent shall be received until after the child has reached the country of its prospective adoptive parent.

It is also necessary to point out that the recognised social or child welfare agency through which an application of a foreigner for taking a child in adoption is



routed must, before offering a child in adoption, make sure that the child is free to be adopted. Where the parents have relinquished the child for adoption and there is a document of surrender, the child must obviously be taken to be free for adoption. So also where a child is an orphan or destitute or abandoned child and it has not been possible by the concerned social or child welfare agency to trace its parents or where the child is committed by a juvenile court to an institution, centre or home for committed children and is declared to be a destitute by the juvenile court, it must be regarded as free for adoption. The recognised social or child welfare agency must place sufficient material before the court to satisfy it that the child is legally available for the adoption. It is also necessary that the recognised welfare agency must satisfy itself, firstly, that there is no impediment in the way of the child entering the country of the prospective adoptive parent; secondly, that the travel documents for the child can be obtained at the appropriate time and lastly, that the law of the country of the prospective adoptive parent permits legal adoption of the child and that no such legal adoption being concluded, the child would acquire the same legal status and rights of inheritance as a natural born child and would be granted citizenship in the country of adoption and it should file along with the application for guardianship, a certificate reciting such satisfaction.

We may also at this stage refer to one other question that was raised before us, namely, whether a child under the care of a social or child welfare agency or hospital or orphanage in one State can be brought to another State by a social or child welfare agency for the purpose of being given in adoption and an application for appointment of a guardian of such child can be made in the court of the latter State. This question was debated before us in view of the judgment given by Justice Lentin of the Bombay High Court of 22nd July, 1982 in Miscellaneous Petition No. 178 of 1982 and other allied petitions. We agree with Justice Lentin that the practice of social or child welfare agencies or individuals going to different States for the purpose of collecting children for being given in inter-country adoption is likely to lead to considerable abuse, because it is possible that such social or child welfare agencies or individuals may, by offering monetary inducement, persuade indigent parents to part with their children and then give the children to foreigners in adoption by demanding a higher price, which the foreigners in their anxiety to secure a child for adoption may be willing to pay. But we do not think that if a child is relinquished by its biological parents or is an orphan or destitute or abandoned child in its parent State, there should be any objection to a social or child welfare agency taking the child to another State, even if the object be to give it in adoption, provided there are sufficient safeguards to ensure that such social or child welfare agency does not indulge in any malpractice. Since we are directing that every application of a foreigner for taking a child in adoption shall be routed only through a recognised social or child welfare agency and an application for appointment of the foreigner as guardian of the child shall be made to the court only through such recognised social or child welfare agency, there would hardly be any scope for a social or child welfare agency or individual who brings a child from another State for the purpose of being given in adoption to indulge in trafficking and such a possibility would be reduced to almost nil. Moreover before proposing a child for adoption, the recognised social or child welfare agency must satisfy itself that the child has either been voluntarily relinquished by its biological parents without monetary inducement or is an orphan or destitute or abandoned child and for this purpose, the recognised social or child welfare



agency may require the agency or individual who has the care and custody of the child to state on oath as to how he came by the child and may also, if it thinks fit, verify such statement, by directly enquiring from the biological parents or from the child care centre or hospital or orphanage from which the child is taken. This will considerably reduce the possibility of abuse while at the same time facilitating placement of children deprived of family love and care in smaller towns and rural areas. We do not see any reason why in cases of this kind where a child relinquished by its biological parents or an orphan or destitute or abandoned child is brought by an agency or individual from one State to another, it should not be possible to apply for guardianship of the child in the court of the latter State, because the child not having any permanent place of residence, would then be ordinarily resident in the place where it is in the care and custody of such agency or individual. But quite apart from such cases, we are of the view that in all cases where a child is proposed to be given in adoption, enquiries regarding biological parents, whether they are traceable or not and if traceable, whether they have voluntarily relinquished the child and if not, whether they wish to take the child back, should be completed before the child is offered for adoption and thereafter no attempt should be made to trace or contact the biological parents. This would obviate the possibility of an ugly and unpleasant situation of biological parents coming forward to claim the child after it has been given to a foreigner in adoption. It is also necessary while considering placement of a child in adoption to bear in mind that brothers and sisters or children who have been brought up as siblings should not be separated except for special reasons and as soon as a decision to give a child in adoption to a foreigner is finalised, the recognised social or child welfare agency must if the child has reached the age of understanding, take steps to ensure that the child is given proper orientation and is prepared for going to its new home in a new country so that the assimilation of the child to the new environment is facilitated.

We must emphasize strongly that the entire procedure which we have indicated above including preparation of child study report, making of necessary enquiries and taking of requisite steps leading upto the filing of an application for guardianship of the child proposed to be given in adoption, must be completed expeditiously so that the child does not have to remain in the care and custody of a social or child welfare agency without the warmth and affection of family life, longer than is absolutely necessary. We may also point out that if a child is to be given in intercountry adoption, it would be desirable that it is given in such adoption as far as possible before it completes the age of 3 years. The reason is that if a child is adopted before it attains the age of understanding, it is always easier for it to get assimilated and integrated in the new environment in which it may find itself on being adopted by a foreign parent. Comparatively it may be some what difficult for a grown up child to get acclimatized to new surroundings in a different land and some times a problem may also arise whether foreign adoptive parents would be able to win the love and affection of such grown up child. But we make it clear that we say this, we do not wish to suggest for a moment that children above the age of three years should not be given in inter-country adoption. There can be no hard and fast rule in this connection. Even children between the ages of 3 and 7 years may be able to assimilate themselves in the new surroundings without any difficulty and there is no reason why they should be denied the benefit of family warmth and affection in the home of foreign parents, merely because they are past the age of 3 years. We would suggest that even children above the age of 7 years may be given in inter-country



adoption but we would recommend that in such cases, their wishes may be ascertained if they are in a position to indicate any preference. The statistics placed before us show that even children past the age of 7 years have been happily integrated in the family of their foreign adoptive parents.

Lastly, we come to the procedure to be followed by the court when an application for guardianship of a child is made to it. Section 11 of the Guardians and Wards Act, 1890 provides for notice of the application to be issued to various persons including the parents of the child if they are residing in any State to which the Act extends. But, we are definitely of the view that no notice under this section should be issued to the biological parents of the child, since it would create considerable amount of embarrassment and hard ship if the biological parents were then to come forward and oppose the application of the prospective adoptive parent for guardianship of the child. Moreover, the biological parents would then come to know who is the person taking the child in adoption and with this knowledge they would at any time be able to trace the whereabouts of the child and they may try to contact the child resulting in emotional and psychological disturbance for the child which might affect his future happiness. The possibility also cannot be ruled out that if the biological parents know who are the adoptive parents they may try to extort money from the adoptive parents. It is therefore absolutely essential that the biological parents should not have any opportunity of knowing who are the adoptive parents taking the child in adoption and therefore notice of the application for guardianship should not be given to the biological parents. We would direct that for the same reasons notice of the application for guardianship should also not be published in any newspaper. Section 11 of the Act empowers the court to serve notice of the application for guardianship on any other person to whom, in the opinion of the court, special notice of the application should be given and in exercise of this power the court should, before entertaining an application for guardianship, give notice to the Indian Council of Child Welfare or the Indian Council for Social Welfare or any of its branches for scrutiny of the application with a view to ensuring that it will be for the welfare of the child to be given in adoption to the foreigner making the application for guardianship. The Indian Council of Social Welfare of the Indian Council of Child Welfare to which notice is issued by the court would have to scrutinise the application for guardianship made on behalf of the foreigner wishing to take the child in adoption and after examining the home study report, the child study report as also documents and certificates forwarded by the sponsoring social or child welfare agency and making necessary enquiries, it must make its representation to the court so that the court may be able to satisfy itself whether the principles and norms as also the procedure laid down by us in this judgment have been observed and followed, whether the foreigner will be a suitable adoptive parent for the child and the child will be able to integrate and assimilate itself in the family and community of the foreigner and will be able to get warmth and affection of family life as also moral and material stability and security and whether it will be in the interest of the child to be taken in adoption by the foreigner. If the court is satisfied, then and then only it will make an order appointing the foreigner as guardian of the child and permitting him to remove the child to his own country with a view to eventual adoption. The court will also introduce a condition in the order that the foreigner who is appointed guardian shall make proper provision by way of deposit or bond or otherwise to enable the child to be repatriated to India should it become necessary for and reason. We may point out that such a provision is



to be found in clause 24 of the Adoption of Children Bill No. 208 of 1980 and in fact the practice of taking a bond from the foreigner who is appointed guardian of the child is being followed by the courts in Delhi as a result of practice instructions issued by the High Court of Delhi. The order will also include a condition that the foreigner who is appointed guardian shall submit to the Court as also to the Social or Child Welfare Agency processing the application for guardianship, progress reports of the child along with a recent photograph quarterly during the first two years and half yearly for the next three years. The court may also while making the order permit the social or child welfare agency which has taken care of the child pending its selection for adoption to receive such amount as the Court thinks fit from the foreigner who is appointed guardian of such child. The order appointing guardian shall carry, attached to it, a photograph of the child duly counter- signed by an officer of the court. This entire procedure shall be completed by the court expeditiously and as far as possible within a period of two months from the date of filing of the application for guardianship of the child. The proceedings on the application for guardianship should be held by the Court in camera and they should be regarded as confidential and as soon as an order is made on the application for guardianship the entire proceedings including the papers and documents should be sealed. When an order appointing guardian of a child is made by the court, immediate intimation of the same shall be given to the Ministry of Social Welfare, Government of India as also to the Ministry of Social Welfare of the Government of the State in which the court is situate and copies of such order shall also be forwarded to the two respective ministries of Social Welfare. The Ministry of Social Welfare, Government of India shall maintain a register containing names and other particulars of the children in respect of whom orders for appointment of guardian have been made as also names, addresses and other particulars of the prospective adoptive parents who have been appointed such guardians and who have been permitted to take away the children for the purpose of adoption. The Government of India will also send to the Indian Embassy or High Commission in the country of the prospective adoptive parents from time to time the names, addresses and other particulars of such prospective adoptive parents together with particulars of the children taken by them and requesting the Embassy or High Commission to maintain an unobtrusive watch over the welfare and progress of such children in order to safeguard against any possible maltreatment, exploitation or use for ulterior purposes and to immediately report any instance of maltreatment, negligence or exploitation to the Government of India for suitable action.

We may add even at the cost of repetition that the biological parents of a child taken in adoption should not under any circumstances be able to know who are the adoptive parents of the child nor should they have any access to the home study report or the child study report or the other papers and proceedings in the application for guardianship of the child. The foreign parents who have taken a child in adoption would normally have the child study report with them before they select the child for adoption and in case they do not have the child study report, the same should be supplied to them by the recognised social or child welfare agency processing the application for guardianship and from the child study report, they would be able to gather information as to who are the biological parents of the child, if the biological parents are known. There can be no objection in furnishing to the foreign adoptive parents particulars in regard to the biological parents of the child taken in adoption, but it should be made clear that it would be entirely at the discretion of the foreign adoptive parents whether



and if so when, to inform the child about its biological parents. Once a child is taken in adoption by a foreigner and the child grows up in the surroundings of the country of adoption and becomes a part of the society of that country, it may not be desirable to give information to the child about its biological parents whilst it is young, as that might have the effect of exciting his curiosity to meet its biological parents resulting in unsettling effect on its mind. But if after attaining the age of maturity, the child wants to know about its biological parents, there may not be any serious objection to the giving of such information to the child because after the child attains maturity, it is not likely to be easily affected by such information and in such a case, the foreign adoptive parents may, in exercise of their discretion, furnish such information to the child if they so think fit.

These are the principles and norms which must be observed and the procedure which must be followed in giving a child in adoption to foreign parents. If these principles and norms are observed and this procedure is followed, we have no doubt that the abuses to which inter-country adoptions, if allowed without any safeguards, may lend themselves would be considerably reduced, if not eliminated and the welfare of the child would be protected and it would be able to find a new home where it can grow in an atmosphere of warmth and affection of family life with full opportunities for physical intellectual and spiritual development. We may point out that the adoption of children by foreign parents need not wait until social or child welfare agencies are recognised by the Government as directed in this order, but pending recognition of social or child welfare agencies for the purpose of inter-country adoptions, which interregnum, we hope, will not last for a period of more than two months, any social or child welfare agency having the care and custody of a child may be permitted to process an application of a foreigner, but barring this departure the rest of the procedure laid down by us shall be followed wholly and the principles and norms enunciated by us in this Judgment shall be observed in giving a child in inter-country adoption.

The writ petition shall stand disposed of in these terms. Copies of this order shall be sent immediately to the Ministry of Social Welfare of the Government of India and the Ministry of Social Welfare of each of the State Governments as also to all the High Courts in the country and to the Indian Council of Social Welfare and the Indian Council of Child Welfare. We would direct that copies of this Order shall also be supplied to the Embassies and Diplomatic Missions of Norway, Sweden, France, Federal Republic of Germany and the United States of America and the High Commissions of Canada and Australia for their informations since the statistics show that these are the countries where Indian children are taken in adoption. S.R.

#### **ANNEXURE-'A'**

1. Source of Referral.
2. Number of single and joint interviews.
3. Personality of husband and wife.
4. Health details such as clinical tests, heart condition, past illnesses etc. (medical certificates required, sterility certificate required, if applicable),
5. Social status and family background.
6. Nature and Adjustment with occupation.
7. Relationship with community.



8. Description of home.
9. Accommodation for the child.
10. Schooling facilities.
11. Amenities in the home.
12. Standard of living as it appears in the home.
13. Type of neighbourhood.
14. Current relationship between husband and wife.
15. (a) Current relationship between parents and children (if any children).  
(b) Development of already adopted children (if any) and their acceptance of the child to be adopted.
16. Current relationship between the couple and the members of each other's families.
17. If the wife is working, will she be able to give up the job ?
18. If she cannot leave the job, what arrangements will she make to look after the child ?
19. Is adoption considered because of sterility of one of the marital partners ?
20. If not, can they eventually have children of their own ?
21. If a child is born to them, how will they treat the adopted child ?
22. If the couple already has children how will these children react to an adopted child ?
23. Important social and psychological experiences which have had a bearing on their desire to adopt a child.
24. Reasons for wanting to adopt an Indian child.
25. Attitude of grand-parents and relatives towards the adoption.
26. Attitude of relatives, friends, community and neighbourhood towards adoption of an Indian child.
27. Anticipated plans for the adopted child.
28. Can the child be adopted according to the adoption law in the adoptive parents country ? Have they obtained the necessary permission to adopt ? (Statement of permission required.)
29. Do the adoptive parents know any one who adopted a child from their own country or another country ? Who are they ? From where did they fail to get a child from that source ?
30. Did the couple apply for a child from any other source ? If yes, which source ?
31. What type of child is the couple interested in ? (sex, age, and for what reasons.)
32. Worker's recommendation concerning the family and the type of child which would best fit into this home.
33. Name and address of the agency conducting the home study. Name of social worker, qualification of social worker.
34. Name of agency responsible for post placement, supervision and follow up.





IN THE HIGH COURT OF JHARKHAND AT RANCHI

**W.P.(PIL) No. 6823 of 2011**

***Susanna Kispotta ... .. Petitioner***

***Versus***

***The State of Jharkhand & Ors. ... .. Respondents***

**CORAM: HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE P.P. BHATT**

For the Petitioner: M/s J.J. Sanga

For the Respondents: Mr. Jalisur Rahman, JC to G.P.III, Mr. M. Khan, C.B.I.

**Order No.9**

**Dated: 28th November, 2011.**

By the order of the Coordinate Bench dated 18th October, 2011, this writ petition(Habeas Corpus) has been converted into 'Public Interest Litigation' after taking note of the fact that the missing boys could not be found out by the State police and thereafter the matter has been referred to Central Bureau of Investigation(C.B.I.) with direction that if other cases of similar nature are lingering unsolved, those cases should also be handed over to C.B.I.

In view of the above, office has raised a few objections with respect to the correction in the nature of the petition which appears to be done and it has been registered as Writ Petition (PIL) No.6823 of 2011 and if any other defect is there, learned counsel for the petitioner may correct the same within a period of one week.

In W.P.(Cr.) No.182 of 2008, which also stands converted into Writ Petition(PIL) No.6824 of 2011, by virtue of the order dated 18th October, 2011, passed in W.P.(PIL) No.6823 of 2011(original number W.P.(Cr.) No. 146 of 2011), the view expressed by the Coordinate Bench in the order dated 18th October, 2011 is fortified by the facts of the case in W.P.(PIL) No. 6824 of 2011 wherein three minor boys namely Akash Raj, Shashank Shekhar and Pawan Soni, who were of the age of near about 12 years and more, are missing since 30.03.2008 and F.I.R. was lodged against unknown persons which was registered as Gumla Police Station Case No.86 of 2008 dated 02.4.2008, corresponding to G.R. Case No.288 of 2008. In this case, looking to the gravity, vide order dated 16.11.2009, the Superintendent of Police, Gumla was directed to supervise the case.

Be that as it may, even then, the children are missing yet. We are also of the considered opinion that there are large number of similar cases wherein it has been alleged that children, girl or boys, and even adult girls are missing. In some of the cases, there are allegations against the named persons in the F.I.R. and in some cases, there are allegations against the certain criminals operating in certain areas of the State of Jharkhand. We are coming across reply filed by the State wherein plea taken was that some extremist activities are going on and they have put landmines, therefore, it is difficult to search out the missing children, as because of the land-mines even vehicles have been blown up. In number of cases, concerned Superintendent of Police was directed to remain present in the Court and in number of cases, Director General of Police, Jharkhand was directed to look into the matter.



Jharkhand is a newly established State and people, being down trodden members of Scheduled Castes and Scheduled Tribes, are living in the deep forest and because of the poverty, lack of education and other short-comings, the problem has been aggravated due to several reasons but at the same time, it is the State duty to provide security to the persons and more to the persons who cannot defend themselves, those are the children girls, irrespective of age, as alleged being member of Scheduled Castes and Scheduled Tribes.

Be that as it may, to know the gravity and to find out whether there is complete data-base information before the State Government at State level, we direct the learned counsel for the State to submit a report mentioning therein full details of the missing children, irrespective of gender and age, for whom any report in any form has been received by the State Government. In the report, it may be stated that from which date children are missing, their name and on what date report was lodged and whether the children were traced out or not and if there is allegation that children or such person himself/ herself is also engaged being member of any gang or terrorist group, it will not affect the investigation in any manner.

Learned counsel for the C.B.I. submitted that C.B.I. decided to challenge the order dated 18th October, 2011 passed in W.P. (PIL) No.6823 of 2011(original W.P.(Cr.) NO.146 of 2011) because of the reason that entire task of searching out the missing children will be handed over to C.B.I. and C.B.I. will be heavily burdened and may not be in a position to resolve the problem.

In view of the above statement of the learned counsel for the C.B.I., it is necessary to know what will be the volume of work so that appropriate order may be passed by this Court and State may also suggest the ways and means by which such problems can be avoided in future and what can be other line of action for tracing out the missing children.

At the request of the learned counsel for the State, let the matter be posted on 12th December, 2011.

On or before that date, the above information be furnished to the Court and at the same time, if the files have not been handed over to C.B.I. in pursuance to the order of this Court, the State will continue to search out the missing children in addition to any effort made by C.B.I. and for that purpose, either both may work together or may work independently and there should be no delay because of the conflict situation in searching out the missing children by two different agencies.

Put-up this matter on 12th December, 2011. Copy of this order be given to learned counsel for the petitioner, State as well as C.B.I.

**(Prakash Tatia,C.J.)**

**(P.P. Bhatt, J.)**

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

**W.P. (P.I.L.) No. 6823 of 2011**

*Susanna Kispotta*

*Vs.*

*State of Jharkhand & Ors.*

*With*

**W.P. (Cr.) No. 397 of 2010**

*Sunil Chandra Modi*

*Vs.*

*State of Jharkhand & Ors.*

**W.P. (P.I.L.) No. 6824 of 2011**

*Baliram Paswan & Ors.*

*Vs.*

*The State of Jharkhand & Ors.*

*With*

**W.P. (PIL) No. 1555 of 2013**

*Gopinath Ghosh*

*Vs.*

*The State of Jharkhand & Ors.*

**CORAM: HON'BLE THE CHIEF JUSTICE.  
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR.**

For the Petitioners: Mr. J.J. Sanga, Adv.

For the Respondents Mr. R.R. Mishra, Advocate.

**Order No. 20**

**Dated 24th January, 2014**

This Public Interest Litigation is related to trafficking of the children from the State of Jharkhand. In W.P. (Cr.) No. 182 of 2008, which also stands converted into Writ Petition (PIL) No. 6824 of 2011. In W.P. (P.I.L.) No. 6824 of 2011 which was originally instituted as W.P.(Cr.) No. 182 of 2008 whereby the matter was referred to the CBI. The order dated 16.08.2011 is quoted below:-

*"In this case inspite of the sufficient opportunity the State has failed to discharge it's duty. Therefore, we are constrained to order that CBI should investigate this case. The D.G.P. State of Jharkhand, will ensure that the records of this case are handed over to the Office of the CBI Ranchi within one week, after keeping a shadow copy of the records."*

2. As against the order referring the matter to the CBI, the CBI has filed an SLP before the Supreme Court in SLP (Crl.) No. 6566 of 2012 and the matter is



pending in the Supreme Court. Subsequently, various orders have been passed by this Court and the State has filed number of counter affidavits on various dates.

3. Regarding Child Trafficking and the measures taken to prevent the same, the learned Additional Solicitor General of India appearing for the Union of India shall file the necessary affidavit regarding the Central Government Scheme, Ujjwala Scheme.
4. The learned counsel appearing for the respondents shall file a comprehensive counter-affidavit suggesting the various measures and also naming the officials/agencies on the following points:-
  - (i) How to prevent the trafficking of the children and the various check and measures/directions to be issued and name the officials/agencies involved there. Thereafter, the State government to indicate the steps taken so far and the proposals by the State Government.
  - (ii) What are necessary steps to be taken by the various officials, the parents, other agencies and departments concerned to ensure the speedy recovery of the children who have been trafficked.
  - (iii) The counter-affidavit should refer the details of the trafficked children and recovery of trafficked children, not only from the State of Jharkhand but also the children recovered from other States.
  - (iv) After recovery of trafficked children, the handing over of the trafficked children to the respective parents or their guardians and in case, if the parents/guardians are not taking their children, what rehabilitative measures and alternate care programmes are available to rehabilitate the trafficked children such as adoption, foster care, sponsorship and after care as provided under Sections 33, 34, 35, 36 of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003.
  - (v) What measure have also been taken to prevent the trafficking of orphaned, abandoned, destitute and street children and after their recovery for their ultimate rehabilitation and social reintegration in order to restore their dignity and self worth and also the proposals to take more effective steps in this regard.
  - (vi) The State shall also to indicate the proposals to rehabilitate those children after recovery and also involving the other genuine agencies for their rehabilitation and social integration.
5. Let a copy of this order be given to the counsel for the parties.
6. Post the matter after four weeks.

**(R. Banumathi, C.J.)**

**(Shree Chandrashekhar, J)**

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

**W.P.(PIL) No. 6823 of 2011**

*Susanna Kispotta*

*Vrs.*

*State of Jharkhand and others*

**With**

**W.P.(PIL) No. 6824 of 2011**

*Baliram Paswan and others.*

*Vrs.*

*State of Jharkhand and others*

**With**

**W.P.(Cr.) No. 397 of 2010**

*Sunil Chandra Modi*

*Vrs.*

*State of Jharkhand and others*

**CORAM: HON'BLE MR. JUSTICE D. N. PATEL  
HON'BLE MR. JUSTICE APARESH KUMAR SINGH**

For the Petitioners : Mr. J.J. Sanga, Mr. A. K. Trivedi

For the Respondents : Md. Mokhtar Khan(CBI), Mr. R. Mukhodaphaya(State)  
Mr. Jalisur Rahman, JC to G.P.III

**10/Dated : 5th March, 2012**

1. Counsel appearing for the petitioners submitted that the details have been given by the State Government from the year 2008 indicating that there are 335 children are missing since 2008 and hardly 12% of the children have been found out by the respondent State and the rest of approximately 98% of the missing children are still missing and no satisfied steps have been taken for the respondent State nor they have followed their own instructions as stated in Annexure A to the counter affidavit filed by Criminal Investigation Department(C.I.D.) in Writ Petition(PIL) No. 6823 of 2011. These instructions envisage constitution of "Missing Persons Bureau". No such "Missing Persons Bureau" has been still constituted by the respondent State. Likewise, there is also provision for "Missing Persons Squad" in every district which has also not been constituted. Scientific method of investigation has also been pointed out, which has also not been followed by the State authority. Looking to the Annexure A, as stated hereinabove, which is part and parcel of the Police Manual and is meant for that purpose, has not been followed by the State itself.
2. Counsel appearing for the State is unable to point out anything about the "Missing Persons Bureau" nor he is in a position to point out whether the "Missing Persons Squad" has been constituted or not and therefore, there is no question of following any scientific methods of investigation whatsoever arise



by the State as stated in AnnexureA to the counter affidavit filed by the Criminal Investigation Department(C.I.D.)

3. It is, therefore, expected from the higher rank officers of the State that such type of “Missing Persons Bureau” may be constituted in the State of Jharkhand which is in the interest of the public at large and similarly, the “Missing Persons Squad ” will also be constituted so that in scientific method, investigation may be carried out for missing children. The data of missing children from the year 2008 is as under:

Year	Missing Children (Male)	Missing Children (Female)	Missing Children (Total)
1.	2.	3.	4.
2008	32	32	64
2009	57	50	107
2010	58	42	100
2011	35	29	64
Total	182	153	335

4. Counsel appearing for the petitioners apprehends that the figure given in the aforesaid affidavit reveals only for the cases which are recorded before the police station and there are many cases of missing children also which have not been registered at all and therefore, such type of “Missing Persons Bureau” is required to be constituted.
5. The aforesaid data has been supplied by the State in their counter affidavit filed by the Criminal Investigation Department(C.I.D.) where no satisfied steps taken by the State to find out the missing children of the State of Jharkhand has been stated, who are assets of the State of Jharkhand and who are the future of the State of Jharkhand. It, prima facie, appears that “Missing Persons Bureau” is yet to be constituted by the State Government. Therefore, the counsel for the respondent State is seeking time to get further instructions about the constitution of aforesaid “Missing Persons Bureau” as stated in AnnexureA to the counter affidavit filed by the Criminal Investigation Department(C.I.D.) in Writ Petition(PIL) No. 6823 of 2011.
6. We, therefore, expect from the Chief Secretary, State of Jharkhand that the aforesaid “Missing Persons Bureau” as well as “Missing Persons Squad” may be constituted keeping in mind the number of missing children from the State of Jharkhand as early possible and practicable, if not constituted so far, because the counsel appearing for the State have not been instructed by the officers of the State Government whether such type of Bureau or Squad is constituted or not.
7. Registry of this Court is directed to send a copy of this order to the Chief Secretary, State of Jharkhand through FAX and then, by Registered Post.
8. The matter is adjourned to be listed after three weeks.

(D.N. Patel, J.)

(Aparesh Kumar Singh, J.)



# Notifications





## पुलिस का फर्ज : क्या करें और क्या न करें

### 4.1 मुक्त कराना : क्या करें, क्या न करें

- विशेष पुलिस अधिकारी आइटीपीए की धारा 15 के तहत **बिना किसी वारंट के सर्च करने और मुक्त कराने का काम** कर सकता है। इसलिए एसपीओ अपनी पहल पर और तेजी के साथ कार्रवाई करने के लिए स्वतंत्र है।
- मजिस्ट्रेट (सब-इंस्पेक्टर और उससे ऊपर के पद के) **किसी भी पुलिस अधिकारी** को किसी भी व्यक्ति को किसी भी समय मुक्त कराने के लिए आइटीपीए की धारा 16 के तहत अधिकृत कर सकता है। यदि एसपीओ की नियुक्ति नहीं की गई है, तो उपलब्ध पुलिस अधिकारी इस प्रावधान के तहत अपने को ये काम करने का अधिकारी महसूस कर सकता है/सकती है। उसे मजिस्ट्रेट के पास जाना चाहिए, आदेश प्राप्त करना चाहिए और मुक्त कराने के काम में लग जाना चाहिए।
- मुक्त कराने के काम में किसी भी कीमत पर **देर न करें**। देर का मतलब है न्याय देने का विलंब और शोषण का जारी रहना। आसूचना (इंटेलिजेंस) जमा करें और समय पर कार्रवाई करें।
- मुक्त कराने के लिए सूचना का **स्रोत** कोई भी हो सकता है। इससे एनजीओ महत्वपूर्ण भूमिका निभाते हैं।
- मजिस्ट्रेट एनजीओ सहित **किसी भी व्यक्ति की रिपोर्ट** का संज्ञान (कॉग्निजेंस) ले सकता है। (आईटीपीए, धारा 16)
- जेएम/एमएम/एसडीएम/डीएम की श्रेणी का **कोई भी व्यक्ति** मजिस्ट्रेट हो सकता है (आईटीपीए, धारा 16)। एक मात्र शर्त यह है कि वह इलाका उसके अधिकार क्षेत्र में होना चाहिए।
- सर्च/रेस्क्यू पार्टी में दो **महिला पुलिस अधिकारियों** का होना आवश्यक है (धारा 15 (6ए))। अतः अपने थाने और पास के थाने के अधिकार क्षेत्र में तथा आसपास रह रही महिला पुलिस अधिकारियों की सूची तैयार रखें। अगर महिला पुलिस अधिकारियों की कमी हो, तो रिटायर महिला पुलिस अधिकारियों को आइटीपीए की धारा 13(2ए) के तहत एसपीओ नियुक्त कराएँ।
- सर्च के दौरान दो सम्माननीय व्यक्तियों का **गवाह** के बतौर मौजूद रहना आवश्यक है और इनमें से एक महिला होनी चाहिए (आईटीपीए, धारा 15(2))। इसके लिए एनजीओ संस्थाओं की सेवाओं का उपयोग करें। इलाके की एनजीओ संस्थाओं को करना चाहिए या उनमें से किसी एक की उपस्थिति में ही किया जाना चाहिए।



- आइटीपीए की धारा 15(16ए) के अनुसार मुक्त कराए गए व्यक्ति से **इंटरव्यू** सिर्फ महिला पुलिस अधिकारी या एनजीओ की किसी महिला की उपस्थिति में या उनके द्वारा किया जाना चाहिए। थाने में एनजीओ संस्थाओं की सूची बनाकर रखें।
- मुक्त कराए गए व्यक्तियों को मैजिस्ट्रेट के सामने तुरंत **पेश किया जाना चाहिए** (आइटीपीए, धारा 16)।
- उत्पीड़ित व्यक्तियों को आरोपित तथा संदिग्ध व्यक्तियों से **अलग रखें**, ताकि ये उत्पीड़ितों को धमका न सकें, न ही उनके अधिकारों का उल्लंघन कर सकें।
- मुक्त कराने की प्रक्रिया के दौरान और उसके बाद की स्थिति में उत्पीड़ित व्यक्तियों के **अधिकारों की रक्षा** की जानी चाहिए। इसके तहत ये बातें शामिल हैं :-
  - मुक्त कराई गई स्त्री को अपनी तमाम चीजें, जैसे कपड़ें, पैसे, गहने इत्यादि, अपने साथ ले जाने की **सुविधा प्रदान** करें।
  - यदि मुक्त कराई गई स्त्री के **बच्चे** उसके साथ हों, तो उन्हें उसके साथ ही रहने दें। इस बारे में अतिरिक्त सावधानी बरती जानी चाहिए कि बच्चे वेश्यालय में ही न छूट जाएं।
  - अपनी भाषा/मुद्रा/व्यवहार आदि के मामले में **सतर्क** रहें। उनमें गाली-गलौज या धमकी का तत्व नहीं होना चाहिए, न ही उसके द्वारा उत्पीड़ित स्त्री के अधिकारों का उल्लंघन होना चाहिए।
  - उत्पीड़ित स्त्रियों के बारे में **प्रचार** होने से रोकें, ताकि वे गुमनाम ही बनी रहें।
  - जहाँ से उत्पीड़ित स्त्रियों को छुड़ाया गया है, वहीं उनसे **मुख्तसर बातचीत** कर पता लगा लें कि उनकी उम्र क्या है (ताकि जेजे एक्ट का इस्तेमाल हो सकता है या नहीं, इसका निर्णय हो सके) और उनका निजी सामान कहाँ रखा है (ताकि ये चीजें उनके साथ ही ले जाई जा सके)। एक या दो अधिकारियों को खास तौर पर इस काम पर लगा देना चाहिए।
  - उत्पीड़ित स्त्री का **सामान** उचित स्थान और समय पर उसके हवाले कर दिया जाए, इसका ख्याल रखें (जैसे उत्पीड़ित के कपड़े वगैरह बरामदगी के तुरंत बाद उन्हें दे दिए जाने चाहिए)।
  - सदमे का असर कम करने के लिए **काउंसिलर** का प्रबंध करें। ऐसे एनजीओ और प्रशिक्षित काउंसिलरों की सूची बना कर रखें जो इस क्षेत्र में काम करने के इच्छुक हों।



- उत्पीड़िता को **कानूनी सलाह** उपलब्ध कराएँ। ऐसे वकीलों की सूची बना कर रखें जो उत्पीड़ित महिला के लिए काम करने के इच्छुक हों।
- **मेडिकल सहायता** तुरंत दी जानी चाहिए। मेडिकल सहायता में मानसिक स्वास्थ्य को जरूर शामिल करें। आइटीपीए की धारा 15(5ए) के तहत, मजिस्ट्रेट को ये जानकारीयाँ हासिल करने के लिए मेडिकल जाँच का आदेश देना चाहिए –
  - ✓ उम्र का निर्णय
  - ✓ चोट
  - ✓ यौन प्रहार
  - ✓ एसटीडी (संक्रामक यौन रोग)
- **बाल-संबंधित मामले** जेजे एक्ट में आते हैं। इसलिए जब मुक्त कराने का काम चल रहा हो, तब बालक-बालिकाओं को बालिग उत्पीड़ित व्यक्तियों से अलग कर लें और उनके साथ जे.जे. एक्ट के प्रावधानों के तहत पेश आएँ। ये ऐसे बच्चे हैं जिन्हें अधिक सावधानी और देखभाल की जरूरत है, अतः उनकी देखभाल जेजे एक्ट के तहत गठित बाल कल्याण समिति (सीडब्ल्यूसी) द्वारा होनी चाहिए।
- पुलिस अधिकारियों को पहले से यह पता होना चाहिए कि **रेस्क्यू होम** कहाँ स्थित है। यदि ऐसे केंद्र नहीं है और उनकी जरूरत है, तो इस बारे में संबद्ध अधिकारियों से संपर्क करना चाहिए। हाल में अनेक एनजीओ संस्थाओं ने इस तरह के होम स्थापित किए हैं। उनके पते, टेलीफोन नंबर, किस व्यक्ति से संपर्क किया जाए इत्यादि सूचनाओं की सूची बना कर रखें।
- रेस्क्यू का काम जैसे ही पूरा हो, कृपया संबंधित रेस्क्यू होम के अधिकारियों को तुरंत **सूचित करें** कि कितने व्यक्ति वहाँ लाए जा रहे हैं, ताकि वे उनके आगमन की तैयारी करके रखें और अपने को व्यवस्थित कर सकें।
- रेस्क्यू पार्टी के साथ पर्याप्त संख्या में **गाड़ियाँ** होनी चाहिए, ताकि मुक्त कराई गई स्त्रियों को, प्रचार और जनता की निगाहों से बचा कर, जल्द से जल्द ले जाया जा सके। अभियुक्त एवं संदिग्ध व्यक्तियों को मुक्त कराए गए व्यक्तियों के साथ कभी नहीं रखा जाना चाहिए।
- वेश्यालय में उपलब्ध दस्तावेजों सहित समस्त महत्वपूर्ण साक्ष्य की **तलाशी और जब्ती** महत्वपूर्ण काम है। जैसे ही मौका मिले, यह काम पूरा कर लिया जाना चाहिए, ताकि किसी के द्वारा, खासकर शोषकों के द्वारा, साक्ष्य नष्ट या गायब न कर दिया जाए।



2002 में मुंबई में रेस्क्यू के एक मामले में, रेस्क्यू पार्टी से जो दस्तावेज वेश्यालय में ही छूट गए, उनमें एक रजिस्टर भी था, जिसमें सीएसई के लिए मिले भुगतानों तथा विभिन्न शोषकों, सहायता प्रदान करनेवाली (एबेटर) और षड्यंत्रकारियों को दिए गए भुगतानों के ब्यौरे थे। इस दस्तावेज की जाँच-पड़ताल से ट्रैफिकिंग के जाल का पर्दाफाश किया जा सकता था और सभी अपराधियों को सजा दिलाई जा सकती थी। तफसील के लिए 'ट्रैफिकिंग इन वीमेन एंड चिल्ड्रेन' पर राष्ट्रीय मानव अधिकार आयोग की 2004 की शोध रिपोर्ट (ओरिएंट लांगमैन द्वारा प्रकाशित, 2005) देखें।

- उत्पीड़ित व्यक्तियों के साथ कैसे पेश आएँ, इस विषय पर पुलिस अधिकारियों का **प्रशिक्षण** बहुत ही जरूरी है, ताकि उन्हें संबद्ध मुद्दों के प्रति जागरूक और संवेदनशील बनाया जा सके। इस पुस्तिका की स्थानीय भाषा में अनुवादित प्रति एक उपयुक्त साधन का काम करेगी।
- रेस्क्यू में हिस्सा ले रहे प्रत्येक अधिकारी की **जवाबदेही** सुनिश्चित करें। ऊपर जिन बिंदुओं की चर्चा की गई है, उन सभी के बारे में रेस्क्यू के पहले ही उन्हें बता दें और ध्यान रखें कि हर बात का पालन हो। जवाबदेही का एक अहम पहलू है अच्छे काम की तारीफ और गलत काम की आलोचना। जो हुआ और जो नहीं हुआ, दोनों ही इसमें शामिल हैं। सर्च के दौरान की स्थिति और वर्तमान स्थिति को समझने तथा उनका आकलन करने के लिए किसी प्रतिष्ठित एनजीओ की सेवाएँ लें, जो निष्पक्षता के साथ यह काम कर सके, ताकि उचित कदम उठाए जा सकें।

#### 4.2 मुक्त कराने के बाद : क्या करें, क्या न करें

- मुक्त कराए गए व्यक्तियों के निजी विवरण, जैसे उनकी उम्र, मूल निवास, स्वास्थ्य की स्थिति, पारिवारिक इतिहास इत्यादि जानने के लिए और यह निश्चित करने के लिए उनका वास्तविक हित किसमें है, उनसे इंटरव्यू करना इसलिए भी जरूरी है ताकि ट्रैफिकिंग करनेवालों और अन्य शोषणकर्ताओं का पता लगाया जा सके और उन्हें सजा दिलाई जा सके। एनजीओ और प्रशिक्षित काउंसिलर उत्पीड़ित व्यक्ति को सदमे से बाहर लाने और उसकी हिचक दूर करने में उपयोगी हैं, ताकि पुलिस अधिकारी इंटरव्यू को जारी रख सकें। आइटीपीए की धारा 15(6ए) के मुताबिक इंटरव्यू अनिवार्य रूप से किसी महिला पुलिस अधिकारी अथवा महिला एनजीओ कार्यकर्ता की उपस्थिति में होना चाहिए।
- सीआरपीसी की धारा 161 और 164 के तहत एक या एक से ज्यादा बयान हो सकते हैं इसलिए जैसे-जैसे घटनाक्रम खुलता जाए और जब उत्पीड़िता बयान देने की हालत में हो, खासकर काउंसिलिंग के बाद, बयान दर्ज करते जाएँ।
- मुक्त कराए गए व्यक्तियों को (इन्हें आम तौर पर विक्टिम (उत्पीड़ित व्यक्ति) या सरवाइवर कहा जाता है) मजिस्ट्रेट के सामने पेश करने में देर न करें।



- एसपीओ छुड़ाए गए व्यक्ति को किसी भी मजिस्ट्रेट के सामने पेश कर सकता है - आइटीपीए, धारा 17
- सामयिक तौर पर हिरासत में रखने की अनुमति 10 दिन से ज्यादा समय के लिए प्राप्त नहीं की जा सकती। यह अवधि पूरी होने के पहले उत्पीड़ित व्यक्ति को उपयुक्त मजिस्ट्रेट के सामने पेश करना आवश्यक है। (आइटीपीए, धारा 17)
- छुड़ाए गए बच्चों को जेजे एक्ट के तहत गठित शिशु कल्याण समिति के सामने पेश किया जाना चाहिए।
- जब तक होम वेरिफिकेशन पूरा न हो जाए, उत्पीड़ित व्यक्ति को संबद्ध मजिस्ट्रेट की अनुमति हासिल करने के बाद किसी भी मान्यताप्राप्त पुनर्वास केंद्र में रखा जा सकता है।
- होम वेरिफिकेशन प्रोबेशनरी ऑफिसर द्वारा किया जाना चाहिए - वह एनजीओ की सेवाएँ ले सकता है।
- उत्पीड़ित व्यक्ति को जिस पुनर्वास गृह में रखा जाना है, वह स्थान उपयुक्त है या नहीं, इसकी जाँच पहले ही कर लेनी चाहिए।
- होम वेरिफिकेशन के लिए मजिस्ट्रेट पाँच एनजीओ संस्थाओं (तीन महिला एनजीओ कार्यकर्ताओं को मिला कर) की सेवाएँ ले सकता है और फैसला लेने की प्रक्रिया में उनसे विचार-विमर्श भी कर सकता है। (आइटीपीए, धारा 17(5))
- हादसा-ग्रस्त उत्पीड़ित व्यक्तियों की काउंसिलिंग के लिए एनजीओ संस्थाओं की सेवाएँ प्राप्त करना आदर्श है। ऐसे स्वैच्छिक कार्यकर्ताओं/एनजीओ संस्थाओं की सूची थाने में रखनी चाहिए जिनकी इस क्षेत्र में विशेषज्ञता है। अधिकांश राज्यों में कुछ खास थानों में फैमिली काउंसिलिंग सेंटर बनाए गए हैं। कुछ राज्यों में कुछ खास पुलिस स्टेशनों पर उपलब्ध परिवार काउंसिलिंग केंद्रों में प्रशिक्षित काउंसिलर उपलब्ध है, जिनकी सेवाएँ ली जा सकती हैं।
- कानूनी काउंसिलिंग के लिए वकीलों/एनजीओ संस्थाओं से नेटवर्किंग अपेक्षित है। इसके लिए इच्छुक वकीलों की सूची थाने में रखनी चाहिए। वकीलों की सूची के लिए बार काउंसिल तथा डिस्ट्रिक्ट लीगल सर्विसेज अथॉरिटी से संपर्क करें।
- मुक्त कराने के तुरंत बाद मेडिकल देखभाल (मानसिक स्वास्थ्य सहित) मुहैया करानी चाहिए। जरूरत हो, तो विशेषज्ञों द्वारा देखरेख की व्यवस्था करें। इसके लिए अस्पतालों में कार्यरत विशेषज्ञ डॉक्टरों के साथ-साथ मेडिकल एसोसिएशनों से भी संपर्क किया जा सकता है।
- पुनर्वास से संबंधित कदम उठाने के लिए उपयुक्त एजेंसियों (सरकारी, गैरसरकारी और औद्योगिक निगम) से नेटवर्क करें।



#### 4.2.1 क्या किसी बालिग व्यक्ति को हिफाजती हिरासत में लिया जा सकता है ?

उत्तर है, हाँ। आइटीपीए की धारा 17 बच्चों और बालिगों, दोनों पर लागू होती है। अगर जाँच से यह पता चलता है किसी व्यक्ति को, उसकी उम्र जो भी हो, देखभाल की जरूरत है, तो मजिस्ट्रेट को आइटीपीए की धारा 17(4) के तहत किसी सुरक्षा गृह में उसे हिफाजती हिरासत में रखने के लिए निर्देश देना चाहिए।

#### 4.3 थाने में अपराध ( एफआइआर ) दर्ज करना : क्या करें, क्या न करें

- एफआइआर दर्ज करने में देर न करें।
- एफआइआर शिकायतकर्ता के बयान पर आधारित होना चाहिए। पुलिस बयान को न बदल सकती है न उसमें उलटफेर कर सकती है। अगर शिकायतकर्ता उत्पीड़ित महिला स्वयं है, तो वह सदमे में हो सकती है और उन घटनाओं को ठीक-ठाक याद नहीं कर सकती जो अपराध की कोटि में आती है। पुलिस अफसर उन घटनाओं को याद करने में उसकी मदद कर सकता है। अन्यथा भी, सीआरपीसी की धारा 161 या 164 के तहत उत्पीड़ित व्यक्ति के बयान में, जो उचित प्रक्रिया में रिकॉर्ड की गई हो, सारी बातें तफसील से आनी चाहिए – वे बातें भी, जो एफआइआर में छूट गई हों।
- शिकायतकर्ता कोई भी हो सकता है। अगर शिकायत लिखाने के लिए कोई सामने नहीं आता, तो पुलिस अधिकारी को खुद शिकायतकर्ता बनना चाहिए।
- थाने के अधिकार क्षेत्र पर विवाद नहीं किया जाना चाहिए। चूँकि ट्रैफिकिंग एक सतत अपराध है, एफआइआर प्रारंभ या अंत, दोनों में से किसी भी जगह दर्ज की जा सकती है। यह अपराध दोनों जगहों की अदालतों के अधिकार क्षेत्र में आता है। आईटीपीए की धारा 5(3) में इसका खास तौर से प्रावधान है। अगर किसी एक ही मामले में दो या दो से अधिक एफआइआर जुदा-जुदा थानों में दर्ज की गई हों, तो पुलिस अधिकारी आपस में सलाह-मशविरा कर सारा साक्ष्य और केस के दस्तावेज किसी एक थाने में ट्रांसफर कर सकते हैं, जहाँ से भविष्य की कार्रवाई का संचालन होगा।
- एफआइआर की एक प्रति शिकायतकर्ता को निःशुल्क दी जानी चाहिए।
- महिला गवाहों/उत्पीड़ित व्यक्तियों का इंटरव्यू उस स्थान – विशेष पर लिया जाना चाहिए जहाँ वे चाहें। इंटरव्यू के लिए पुलिस को उनके पास जाना चाहिए – न कि उन्हें पुलिस के पास आना चाहिए।
- किसी भी महिला गवाह को सूर्यास्त के बाद थाने में नहीं बुलाना चाहिए।
- उत्पीड़ित व्यक्ति/शिकायतकर्ता का यह अधिकार है कि वे जाँच की प्रगति के बारे में जानें। उनका यह अधिकार छीना नहीं जाना चाहिए।



- उत्पीड़ित व्यक्ति और उसके शुभचिंतकों तथा उसकी देखरेख करनेवाले एनजीओ से उचित संपर्क बनाए रखें।
- न्याय प्रदान करने की दिशा में एफआईआर पहला दस्तावेज है। उसके बाद जो भी कार्रवाई होगी, वह मुख्यतः एफआईआर पर ही निर्भर है। तथ्यों को विकृत कर लिखी गई एफआईआर से, जिसमें उत्पीड़ित व्यक्ति को आरोपित के रूप में दिखाया गया है, उत्पीड़ित व्यक्ति को और अधिक नुकसान होता है। इसलिए उत्पीड़ित व्यक्ति को उत्पीड़ित के रूप में ही पेश किया जाना चाहिए और यह बात एफआईआर में ही और उससे आगे भी जोर देकर कहने की जरूरत है।
- केसों को आइटीपीए तथा लागू होनेवाले अन्य कानूनों जैसे आइपीसी तथा बांडेड लेबर सिस्टम (एबोलिशन) एक्ट, 1976, चाइल्ड लेबर (प्रोहिबिशन एंड रेगुलेशन) एक्ट, 1986, चिल्ड्रेन (प्लेजिंग ऑफ लेबर) एक्ट, 1933, महाराष्ट्र कंट्रोल ऑफ ऑर्गनाइज्ड क्राइम एक्ट, 1999 इत्यादि विशेष कानूनों की उपयुक्त धाराओं के तहत दर्ज किया जाना चाहिए।
- ट्रैफिकिंग के सारे केसों को 'गंभीर अपराध' अथवा 'स्पेशल रिपोर्ट क्राइम' (जहाँ जैसी भाषा चलती हो) के रूप में लिया जाना चाहिए और छानबीन और सुपरविजन वरिष्ठ पुलिस अधिकारियों द्वारा किया जाना चाहिए – खास तौर से उनके द्वारा, जो इसके लिए संवेदनशील और प्रशिक्षित किए गए हैं। इस दिशा में एसपी/डीसीपी द्वारा पहल की जानी चाहिए।
- दुरुपयोगकर्ता और दुरुपयोग के शिकार के बीच के डाइनॉमिक्स को समझने का प्रयास करें। सभी कदम इसी के अनुसार उठाए जाने चाहिए।

#### 4.4 ट्रैफिकिंग अपराधों की जाँच : क्या करें, क्या न करें

##### 4.4.1 मुख्य बातें

- खुफिया सूचनाओं और इंटरव्यू के आधार पर संदिग्ध/आरोपित व्यक्तियों और उत्पीड़ित व्यक्ति के बीच फर्क कीजिए। **उत्पीड़ित व्यक्तियों के साथ संदिग्ध या आरोपित व्यक्ति की तरह सलूक न करें।**
- आरोपित व्यक्ति के अधिकारों का ध्यान रखते हुए यह सुनिश्चित करना न भूलें कि **उत्पीड़ित व्यक्ति के अधिकारों** की भी रक्षा की जानी है। इसमें ये बातें शामिल है :
  - संदिग्ध और आरोपित व्यक्तियों को उत्पीड़ित व्यक्तियों से **अलग** रखें।
  - उत्पीड़ित व्यक्ति को शब्दों/क्रियाओं/भंगिमा/व्यवहार आदि के जरिए न **धमकाएँ** न उसके लिए अपमानजनक शब्दों का प्रयोग करें।



- **प्रचार** बिल्कुल न होने दें। उत्पीड़ित व्यक्ति का नाम सामने न आए, यह सुनिश्चित करें।
  - उत्पीड़िता का साथ दें। उसे जो क्षति पहुँची है, उसे प्रामाणिक बनाएँ। उसमें यह एहसास पैदा करें कि जो कुछ हुआ है, उसमें उसकी कोई गलती नहीं है, कि वह तो उत्पीड़न का शिकार हुई है, कि उसे चोट पहुँचाई गई है।
  - उत्पीड़ित व्यक्तियों को **अधिकार-संपन्न** बनाएँ। उन्हें उनके अपने अधिकारों के प्रति जागरूक करें, ताकि वे भी इसका ध्यान रखें कि उनके अधिकारों का उल्लंघन न होने पाए।
  - इस ओर ध्यान दें कि उत्पीड़ित व्यक्ति को उसका **सारा सामान, संपत्ति** इत्यादि, बिना देर किए, वापस मिल गया है या नहीं।
  - इस ओर ध्यान दें कि **उत्पीड़ित व्यक्तियों के बच्चों** को उचित सार-सँभल मिले। मुक्त कराए जाने के पहले अगर माँ और बच्चें साथ-साथ रह रहे थे, तो उन्हें एक-दूसरे से अलग न किया जाए।
  - उत्पीड़ित व्यक्ति को उसका **सारा बकाया और उचित दावे** मिल जाएँ, इसमें उसकी मदद करें, क्योंकि ज्यादातर वेश्यालय संचालक उत्पीड़ित व्यक्तियों को उनकी आमदनी देना नहीं चाहते।
  - मुक्त कराने के दौरान और बाद में एक स्थान से दूसरे स्थान पर ले जाने के दौरान उत्पीड़ित व्यक्तियों की शारीरिक **सुरक्षा** का ध्यान रखें।
  - उत्पीड़ित व्यक्ति की मेडिकल जाँच कराने में देर न करें। जहाँ तक संभव हो, महिला डॉक्टरों अथवा पैरा-मेडिकल स्टाफ की सेवाओं का उपयोग करें। उत्पीड़ित व्यक्ति के साथ महिला कांस्टेबल रखें। उम्र का वेरिफिकेशन मेडिकल जाँच का अंग है। अगर ऐसा लगे कि मेडिकल जाँच में बदनीयती हुई है - खास तौर से उम्र तय करने के मामले में, तो सक्षम न्यायिक अधिकारी की अनुमति प्राप्त कर मामले को मेडिकल बोर्ड के लिए रेफर कराएँ।
  - इन सभी गतिविधियों में महिला सामाजिक कार्यकर्ताओं/एनजीओ की सहायता लें। आइटीपीए की धारा 13(3)(बी) के प्रावधान का उपयोग करते हुए इन कार्यकर्ताओं और संस्थाओं को सलाहकार समिति में नोटिफाइ कराएँ। अगर वे नोटिफाइड नहीं हैं, तब भी पुलिस अपनी गतिविधियों में उन्हें अपने साथ जोड़ सकती है-इस पर कोई रोक नहीं है।
- वेश्यावृत्ति के साथ जुड़े हुए **सामाजिक लांछन** के कारण ट्रैफिकिंग के शिकार व्यक्तियों को 'वेश्या' कह कर उन्हें नीची निगाह से देखने की प्रवृत्ति पाई जाती



है। इस प्रवृत्ति की भर्त्सना की जानी चाहिए तथा इससे स्वयं भी बचना चाहिए, क्योंकि ट्रैफिकिंग की शिकार महिला न तो अभियुक्त है, न ट्रैफिकिंग में सहयोगी और न उसकी दुष्प्रेरक। उत्पीड़ित व्यक्ति की यह **पहचान कि वह उत्पीड़ित** है, बनाए रखी जानी चाहिए और पूरी प्रक्रिया के दौरान इसकी रक्षा की जानी चाहिए। इसके लिए उसे तमाम तरह की सुरक्षा दें और पूरी सावधानी बरतें।

- जाँच-पड़ताल की प्रक्रिया उत्पीड़ित व्यक्ति के लिए आतंककारी या उसके अधिकारों की अवहेलना करनेवाली नहीं होनी चाहिए। उदाहरण के लिए, विभिन्न स्तरों के पुलिस अधिकारियों द्वारा बार-बार इंटरव्यू करने से उत्पीड़ित व्यक्ति को बचाएँ, क्योंकि इससे उसे बार-बार उन्हीं घटनाओं को याद करना होगा और उसी हादसे से गुजरना होगा।
- यदि उत्पीड़ित व्यक्ति का बयान सीआरपीसी की धारा 164 के तहत रिकॉर्ड किया जाना है, तो यथाशीघ्र रिकॉर्ड कर लें, ताकि उसकी घर वापसी अथवा उसे उसके देश वापस भेजने में देर न हो। सीआरपीसी की धारा 161 और 164 के तहत आगे और बयान लेना संभव है, इसलिए इस काम को समाप्त करने की जल्दी न करें, विशेषतः जब उत्पीड़ित व्यक्ति हादसे के आतंक से बाहर न आ पाया हो।
- जाँच-पड़ताल एक ऐसी योजना पर आधारित होना चाहिए जो सहकर्मियों तथा अन्य प्रोफेशनल लोगों से विचार-विमर्श कर तथा उत्पीड़ित व्यक्ति के अधिकारों को केंद्र में रख कर बनाई गई हो।
- कानून का **वर्गीकरण** तथा अपराध के अलग-अलग पहलुओं की सूची बनाएँ। इसके बाद प्रत्येक पहलू की अंतर्वस्तु (कंटेन्ट) निश्चित करने का प्रयास करें। प्रत्येक पहलू की जाँच-पड़ताल करें, ताकि एक भी पहलू छूट न जाए। एक-एक पहलू के अनुसार गवाही का संयोजन करें, ताकि उसकी प्रस्तुति दमदार और कायल करनेवाली हो। प्रत्येक अपराध के अलग-अलग पहलू होते हैं, यद्यपि सभी अपराधों में कुछ साक्षा बिंदु भी होते हैं। चेकलिस्ट से मिला कर यह सुनिश्चित किया जा सकता है कि कोई भी पहलू छूट न सके। (आइटीपीए की दंडात्मक धाराओं के प्रमुख तत्वों और उनके लिए किस तरह की गवाही पेश की जा सकती है, यह परिशिष्ट-1 के तहत चेकलिस्ट में दिया गया है।)

#### 4.4.2. अपराध स्थल ( सीन ऑफ क्राइम ) की जाँच : क्या करें, क्या न करें

जाँच अधिकारी को देखना चाहिए कि जाँच में लापरवाही न बरती जाए न वह सतही हो। आम तौर पर अपराध स्थल का अर्थ वेश्यालय का एक कमरा समझा जाता है। यह गलत है। अपराध स्थल का दायरा विस्तृत होता है। इसके दायरे में ये सभी स्थान आते हैं : जहाँ उत्पीड़ित व्यक्ति की ट्रैफिकिंग हुई थी, वे सारी जगहें जहाँ उसे ले जाया गया, रास्ते के पड़ाव बिंदु, अंतिम स्थान, जहाँ उसका शोषण होता था इत्यादि। इसलिए अपराध स्थल में इन सभी स्थानों को शामिल करना चाहिए :



- **प्रारंभ बिंदु** (यानी जहाँ से उत्पीड़िता को उठाया गया)
- **ट्रैफिकिंग का रूट** (इसमें परिवहन के साधन भी शामिल हैं)
- **रास्ते में पड़ाव के बिंदु** (यानि ट्रैफिकिंग के दौरान में जहाँ-जहाँ ठहरा गया)
- **वह स्थान, जहाँ उत्पीड़िता को अंत में ले जाया गया**
- **शोषण के स्थान** (जैसे, वेश्यालय)
- **वे सभी स्थान, जहाँ यौन शोषण से बनी सामग्री भेजी गई** (यानी, सीएसई का इस्तेमाल अश्लील सामग्री के निर्माण के लिए गया हो, तो अपराध स्थल में वे जगहें भी शामिल की जाएंगी जहाँ वह अश्लील सामग्री भेजी गई, स्टोर की गई, ट्रांसपोर्ट की गई और जहाँ उसकी खरीद-बिक्री हुई इत्यादि)
- **ट्रैफिकिंग का नक्शा** : ट्रैफिकिंग के रूट का नक्शा बनाएँ और उसे केस डायरी का हिस्सा बना कर रखें। उसमें दिखाएँ कि ट्रैफिकिंग की शुरूआत कहाँ से हुई थी, वहाँ से उत्पीड़ित व्यक्ति को कहाँ-कहाँ ले जाया गया और उसे यौन शोषण के किन-किन स्थानों पर पहुँचाया गया। इस सबको एक सिलसिले के रूप में चिह्नित करें।
- **अपराध स्थल के दस्तावेज** : अपराध के विभिन्न स्थलों पर रखे गए रिकॉर्ड की तफतीश करें (यानी, वेश्यालय का वह रजिस्टर, जिसमें आमदनी, खर्च और संबंधित व्यक्तियों के नाम हों। जिनके नाम रजिस्टर में हो, उन शोषणकर्ताओं की भूमिका की जाँच करें और उनके विरुद्ध साक्ष्य का पता लगाएँ। यदि ठीक ढंग से जाँच की जाए, तो इन दस्तावेज का बहुत अधिक महत्व है - सूचनाएँ और गवाही दोनों हासिल करने के लिए।
- **अपराध स्थल की फोटोग्राफी/वीडियो चित्र** : इलेक्ट्रॉनिक दस्तावेजों से शोषण के दायरे और गहनता का दृश्यात्मक प्रभाव पैदा होता है। इस बात की सावधानी बरतनी चाहिए कि फोटोग्राफ और वीडियोग्राफ उत्पीड़ित व्यक्ति के अधिकारों की अवहेलना न करें (उदाहरण के लिए, उत्पीड़ित व्यक्ति की पहचान को सामने लाने के बचें)।

#### 4.4.3. अपराधियों की पहचान और गिरफ्तारी : क्या करें, क्या न करें

तफतीश का लक्ष्य यह होना चाहिए कि सभी शोषणकर्ताओं को सजा मिलें। उनकी भूमिकाओं में तारतम्य होता है और इसलिए लगातार तफतीश से उनका पारस्परिक संबंध एक के बाद एक खुलेगा और प्रत्येक की भूमिका स्पष्ट होगी। 'संगठित अपराध दृष्टिकोण' से काम लें और अतीत में तथा अन्यत्र अपराधों के अंतःसूत्रों के एक-दूसरे से जुड़ाव की जाँच करें। तफतीश करनेवालों के लिए यह सुनिश्चित करना एक वास्तविक चुनौती होती है कि समूचे साक्ष्य को सामने लाया जाए, चार्जशीट में उसे शामिल किया जाए और सभी शोषणकर्ताओं को अदालत



से सजा दिलाई जाए। कंविक्शन ही प्रोफेशनल तफतीश की सच्ची कसौटी है। इस सिलसिले में क्या करें, क्या न करें की सूची इस प्रकार है :

**शोषणकर्ता कौन हैं, जिनकी जाँच की जानी चाहिए ?**

- **ट्रैफिककर्ता** : (यानी उत्पीड़िता को पेशे में ले आनेवाले, उनके एजेंट, उनके बॉस, वे सभी जिनका दिमाग इस सबके पीछे काम कर रहा है इत्यादि)।
- **परिवहन करनेवाले** (जो ट्रांसपोर्ट करते हैं, ट्रांसपोर्ट का इंतजाम करते हैं और ठहरने की जगह का इंतजाम करते हैं)
- **षड्यंत्रकारी** (वे सभी जो ट्रैफिकिंग और शोषण के विभिन्न चरणों में योगदान करते हैं।)
- **दुष्प्रेरक** (अबेटर) (वे सभी, जो अपनी उपस्थिति, भागीदारी अथवा कुछ करके या करने से बच कर विभिन्न गतिविधियों में दुष्प्रेरक (अबेटर) का काम करते हैं)
- **पैसा लगानेवाले** (वे सभी जो विभिन्न गतिविधियों में पैसा लगाते हैं और जो शोषण के स्थानों पर ट्रैफिकिंग के शिकार व्यक्तियों को उधार के जाल में फँसाए रखने में योगदान करते हैं)
- **दुरुपयोगकर्ता** (ग्राहक, दलाल, वेश्यालय के मैनेजर अथवा मासी (मैडम) इत्यादि और वे सभी जो माँग पैदा करते हैं - खास तौर से वहाँ, जहाँ शोषण होता है)

शोषणकर्ताओं की सूची लंबी है, ये तो उनके कुछ उदाहरण भर हैं। जाँच-पड़ताल से जैसे-जैसे इन व्यक्तियों का संबंध स्पष्ट होता है, बहुत-से अन्य लोग सामने आएँगे। जाँच का काम है केस की गहराई में जाना, उसके सभी पहलुओं पर निगाह डालना और साक्ष्य को खोज निकालना। इसके लिए निम्नलिखित प्रयास करने होंगे :

- **अपराध स्थल का सर्च** : ढूँढ़ना निगाह के लिए अपराध ढेर सारे साक्ष्य उपलब्ध कराता है। सर्च व्यवस्थित और वैज्ञानिक तरीके होना चाहिए। किसी प्रकार की बाधा से बचने के लिए अपराध स्थल की पहले से घेराबंदी कर लें। उत्पीड़ित व्यक्तियों से पूछताछ जाँच अधिकारी को अनेक स्थानों तक, खासकर उन स्थानों तक जहाँ ट्रैफिक किए हुए व्यक्तियों को छिपा कर रखा गया है, ले जा सकती है। साक्ष्य जब्त करने, उस पर लेबल लगाने और उसे ले जाने में कस्टोडी की श्रृंखला बनानी चाहिए।
- **संदिग्ध व्यक्तियों की भूमिकाओं के बीच संबंध कायम करना** : उत्पीड़न व्यक्ति और अन्य गवाहों के बयान विस्तार से रिकॉर्ड किए जाने चाहिए, ताकि ट्रैफिकिंग और शोषण की पूरी प्रक्रिया में शामिल विभिन्न संदिग्ध व्यक्तियों की भूमिकाओं के बीच संबंध कायम किया जा सके। व्यक्ति जो भाषा बोलता है,



उसी भाषा में उसका बयान रिकॉर्ड करें। व्यक्ति द्वारा प्रकट किए जानेवाले आवेगों, भावनाओं और अन्य अभिव्यक्तियों की अनदेखी न करें।

- **संदिग्ध व्यक्तियों की मेडिकल जाँच**, जितनी जल्द संभव हो, की जानी चाहिए। ऐसे अपराध में, जहाँ आरोपित को संदिग्ध अवस्था में पकड़ा गया हो, मेडिकल जाँच से शोषण के स्तर का पता चल सकता है। मेडिकल जाँच के बाद अन्य वैज्ञानिक जाँच भी कराई जानी चाहिए, जैसे अपराध स्थल से बरामद की गई सामग्री की फॉरेंसिक जाँच।
- **संदिग्ध व्यक्तियों का इंटरव्यू** : इंटरव्यू करने से संदिग्ध व्यक्ति की पृष्ठभूमि पहचानने और उसकी शक्ति और कमजोरियों को समझने में मदद मिलती है, जिसका उपयोग जाँच के दौरान अपराध तंत्र के स्वरूप को रेखांकित करने के लिए किया जा सकता है। इसलिए पूछताछ वैज्ञानिक होनी चाहिए, ताकि अभियुक्त को घटना-क्रम की तफसील में ले जाया जा सके। इंडियन एविडेंस एक्ट (धारा 25) के अनुसार, पुलिस अधिकारी के सामने की गई स्वीकारोक्ति (कन्फेशन) अदालत में मान्य नहीं है, अगर उस स्वीकारोक्ति के परिणामस्वरूप कोई बरामदगी नहीं होती। इसलिए जाँच अधिकारी को जाँच के दौरान ज्ञात चीजों को **बरामद** करने और **नई चीजों का पता लगाने** का प्रयास करना चाहिए। बहरहाल, पुलिस अधिकारी के सामने आरोपित द्वारा की गई स्वीकारोक्ति (कन्फेशन) में अनेक ऐसी बातें मिल सकती हैं जिनके सहारे जाँच को आगे बढ़ाया जा सकता है। अभियुक्त के एलिबाई को और ज्यादा वेरिफाई करना चाहिए और वह गलत साबित हुआ, तो गवाही में उसका खंडन किया जाना चाहिए। उसका खंडन करनेवाले साक्ष्य को तथा गवाहों के मौखिक बयानों को केस डायरी में शामिल किया जाना चाहिए।
- **संदिग्ध व्यक्तियों से पूछताछ** विस्तार से होनी चाहिए, ताकि अन्य संदिग्ध व्यक्तियों की भूमिका, अपराध की मात्रा, अन्य अपराधों में भागीदारी, ट्रैफिकिंग और शोषण की प्रक्रिया के विभिन्न पहलू, उससे होनेवाली आमदनी, खर्च, अनाई गई संपत्ति, किया गया विनिवेश आदि तथ्य सामने आ सकें। ये सारी बातें रिकॉर्ड में आनी चाहिए, ताकि कंविक्शन होने की स्थिति में इन गैरकानूनी संपत्तियों को जब्त किया जा सके। इसलिए जाँच अधिकारी को अपराध के सभी पहलुओं (**क्या, कौन, कब, कहाँ, क्यों और कैसे**) के बारे में संदिग्ध व्यक्ति से पूछताछ करनी चाहिए।
- **अपराधियों की गिरफ्तारी** उपयुक्त समय पर होनी चाहिए। गिरफ्तार करने में उतावली का कोई औचित्य नहीं है, क्योंकि इससे चार्ज शीट फाइल करने के लिए मिलनेवाला समय कम हो जाता है। सीआरपीसी की धारा 167 के अनुसार, यदि गिरफ्तारी के 60 दिनों के भीतर (गंभीर अपराधों के मामले में 90 दिनों के



भीतर) चार्ज शीट फाइल नहीं होती, तो गिरफ्तार व्यक्ति को जमानत पर रिहा कर दिया जाएगा। यहाँ यह उल्लेखनीय है कि अधिकांश मामलों में सीबीआई जाँच-पड़ताल पूरी हो जाने के बाद ही गिरफ्तारी करती है। यदि गिरफ्तारी के पहले पर्याप्त साक्ष्य जुटाया जा सके और तर्तीब से पेश किया जा सके, जो यह अदालत में जमानत का विरोध करने में उपयोगी होना। बहरहाल, कुछ स्थितियों में (जैसे गिरफ्तार नहीं किए जाने पर अभियुक्त लापता हो जाएगा और उसका पता नहीं चल सकेगा या वह और अपराध करेगा, उत्पीड़ित व्यक्ति या गवाहों को नुकसान पहुँचाएगा या केस को नुकसान पहुँचाएगा), गिरफ्तार करने में देर नहीं की जानी चाहिए।

आइटीपीए के अंतर्गत, ट्रैफिकिंग का प्रयत्न करना भी अपराध है। अतः जाँच अधिकारी के पास ऐसे व्यक्तियों की लंबी सूची होती है, जिन्हें ट्रैफिकिंग के आरोप के दायरे में लाया जा सकता है। ऐसे हर व्यक्ति से पूछताछ होनी चाहिए और उसे रिकॉर्ड पर लाया जाना चाहिए, जो ट्रैफिकिंग के किसी कृत्य में शामिल हो – भले ही आंशिक रूप से या जिसने उसमें योगदान किया हो या जिसकी भूमिका ट्रैफिकिंग की प्रक्रिया की ओर जाता हो। अपराधी का इरादा और उसकी जानकारी, अपराध को कायम करने में दो महत्वपूर्ण तत्व हैं। अगर किसी व्यक्ति का इरादा न भी हो, पर यह उसकी जानकारी में हो कि उसके काम से ट्रैफिकिंग में मदद मिलती है, तो उसे अपराधी की कोटि में शामिल करने के लिए यह काफी है। अतएव जाँच करनेवालों को सिर्फ जो हुआ और जो नहीं हुआ, ऐसे कामों की ही नहीं, बल्कि इन कामों के पीछे की मानसिकता की भी जाँच करनी चाहिए।

#### 4.4.4. अभियुक्त की गिरफ्तारी : आइटीपीए के कानूनी प्रावधान

- आइटीपीए की धाराओं 3, 4, 5, 6, 7, 8 और 9 में बताए गए अपराध संज्ञेय (कॉग्निजेबल) हैं। आइटीपीए की उपयुक्त धाराओं तथा आइपीसी एवं लागू हो सकनेवाले अन्य कानूनों का उपयोग करें। कानून की गंभीरता धाराएँ लगाने से जमानत पर छूटना आसान नहीं होगा। जहाँ भी लागू हो सकते हैं, विशेषण कानूनों के प्रावधानों का प्रयोग करें, जैसे बांडेड लेबर सिस्टम (एबोलिशन) एक्ट, 1976, चाइल्ड लेबर (प्रोहिबिशन एंड रेगुलेशन) एक्ट, 1986, चिल्ड्रेन (प्लेजिंग ऑफ लेबर) एक्ट, 1933, महाराष्ट्र कंट्रोल ऑफ ऑर्गनाइज्ड क्राइम एक्ट, 1999, गोआ चिल्ड्रेन्स एक्ट, 2003 इत्यादि।
- नोटिफाइड एसपीओ को वारंट के बिना गिरफ्तार करने का पूरा अधिकार है (आइटीपीए की धारा 14 (i))।
- एसपीओ गिरफ्तार करने के लिए किसी भी पुलिस अधिकारी को लिखित आदेश दे सकता है और उसे उसके लिए अधिकृत कर सकता है (आइटीपीए की धारा 14(ii))।



- एसपीओ, अर्जेंट होने पर, किसी भी पुलिस अधिकारी को लिखित स्वीकृति के बगैर भी अधिकृत (आइटीपीए की धारा 14 (iii)) कर सकता है, यदि :
  - अभियुक्त के भाग निकलने की आशंका हो
  - अभियुक्त की पहचान संदिग्ध हो
- जिस आधार पर पुलिस अधिकारी को अधिकृत किया गया है, उसे पुलिस दस्तावेजों (जनरल डायरी और केस डायरी) में स्पष्ट तौर पर रिकॉर्ड किया जाना चाहिए।
- गिरफ्तारी के लिए अधिकार पत्र किसी अधिकारी के नाम पर होना चाहिए - अगर नाम का उल्लेख नहीं है, तो अधिकार पत्र मान्य नहीं होगा।
- गिरफ्तारी के लिए अधिकार पत्र जाँच करने के अधिकार पत्र से अलग है।
- सिर्फ सक्षम और नोटिफाइड अधिकारी ही अपराध की जाँच कर सकता है। तकनीकी गलतियों के कारण अक्सर अदालत में केस डिस्चार्ज हो जाते हैं।
- आरोपित की गिरफ्तारी पर सीआरपीसी और एविडेंस एक्ट के प्रावधान लागू होते हैं, जैसे वे किसी भी अन्य अपराध पर लागू होते हैं।

#### 4.4.5. उत्पीड़ित व्यक्तियों को पहुँचाई गई क्षति का आकलन

आजकल जाँच के दौरान आम तौर पर इस पहलू की उपेक्षा कर दी जाती है। उत्पीड़ित व्यक्तियों को पहुँचाए गए तमाम तरह के नुकसान और क्षति का आकलन करें और उसे दस्तावेज में दर्ज करें। इसमें ये नुकसान शामिल हैं :

- शारीरिक हमले से लगनेवाली चोट (मार-पीट, सिगरेट से जलाना इत्यादि)
- बलात्कार और अन्य यौन आक्रमणों से लगनेवाली चोट
- शोषण के विभिन्न कृत्यों के परिणामस्वरूप पहुँचनेवाली चोट (जैसे सुरक्षित यौन क्रिया से वंचित कर दिए जाने के कारण गर्भपात)
- मेडिकल देखभाल और सावधानी से वंचित करने से होनेवाली शारीरिक क्षति (जैसे यूटीआई, जो पहले की मामूली चोटों का समय पर इलाज न होने से हो जाता है)
- मेडिकल स्थिति - इसमें एसटीडी, एचआईवी आदि शामिल हैं (एचआईवी परीक्षण के लिए उस व्यक्ति की सहमति आवश्यक है)
- न केवल शोषण और धमकियों से तथा प्राइवसी और गरिमा के नकार से, बल्कि अपनी, अपने बच्चों की उपेक्षा और बच्चों के दुरुपयोग से होनेवाली मनोवैज्ञानिक क्षति (व्यक्ति को दी गई मानसिक यंत्रणा, सदमा, तनाव इत्यादि)



- उत्पीड़ित व्यक्ति के बच्चों को, खासकर उन बच्चों को उनके साथ रह रहे हैं, पहुँचाई गई शारीरिक और मानसिक चोट।

क्षति का आकलन डॉक्टरों, फॉरेंसिक विशेषज्ञों, मनश्चिकित्सकों और मनो-सामाजिक विशेषज्ञों की मदद से प्रोफेशनल स्तर पर किया जा सकता है। उत्पीड़ित व्यक्ति के अपने अनुभव तथा उसके साथ संबद्ध एनजीओ, काउंसिलरों आदि के अवलोकन भी महत्वपूर्ण हैं। उन्हें ठीक तरह से रिकॉर्ड किया जाना चाहिए और केस के दस्तावेजों में शामिल किया जाना चाहिए। भाषा में तोड़-मरोड़ न करें। उत्पीड़ित व्यक्ति की अपनी भाषा में ही उसका बयान रिकॉर्ड करें। उत्पीड़ित व्यक्ति की अपनी भाषा में ही उसका बयान रिकॉर्ड करें। उत्पीड़ित व्यक्ति द्वारा प्रकट किए जानेवाले संवेगों, भावनाओं आदि क उपेक्षा न करें। इन सबको दर्ज करें। जहाँ तक उत्पीड़ित बच्चों का सवाल है, वे घटनाओं को जिस तरह बयान करें, उन्हें उसी तरह रिकॉर्ड करें – न उसकी भाषा बदलें, न विषयविस्तु।

#### 4.4.6. शोषणकर्ता के मुनाफे का आकलन

यह जाँच कार्य का एक और पहलू है, जिसकी आम तौर पर उपेक्षा की जाती है। ट्रैफिकिंग के केसों में, शोषणकर्ताओं को आर्थिक तथा अन्य प्रकार के फायदे होते हैं, जबकि उत्पीड़ित व्यक्ति का नुकसान और शोषण जारी रहता है। इसके अलावा, लड़की की उम्र जितनी कम होती है, उसका उतना ही ज्यादा शोषण होता है और परिणामस्वरूप शोषणकर्ता को उतनी ही ज्यादा 'आमदनी' होती है। एनएचआरसी के अध्ययन से यह बात सामने आई है कि ट्रैफिककर्ताओं और अन्य शोषणकर्ताओं ने बिना किसी लागत के या बहुत मामूली लागत से हैरतअंगेज रूप से भारी मुनाफा कमाया है। इसलिए इन संपत्तियों का आकलन करना और ट्रैफिकिंग को रोकना तथा उसका मुकाबला करना जरूरी है। इस सिलसिले में 'क्या करें' और 'क्या न करें' की सूची इस प्रकार है :

- ट्रैफिकिंग से संबंधित तमाम संपत्तियों, आमदनियों, मुनाफों और खर्चों की जाँच करें और उन्हें रिकॉर्ड में शामिल करें।
- 'अपराध से हुए मुनाफे' का ट्रैफिकिंग के अपराध से संबंध स्थापित करने के लिए दस्तावेजी और मौखिक गवाही का उपयोग करें (उदाहरण के लिए, ट्रैफिकिंग करनेवालों की चल-अचल संपत्ति, उनकी ऐयाशी-भरी जीवन शैली और खर्चों की जाँच करें)।
- सावधानी के साथ इंटरव्यू के जरिए इन पहलुओं के बारे में ट्रैफिकिंग के शिकार उत्पीड़ित व्यक्तियों, उनके अभिभावकों/पालितों से खुफिया सूचनाएँ संग्रहीत करें।
- मुनाफे, धन जमा करने के स्थानों, धन/संपत्तियों का इस्तेमाल इत्यादि के ब्यौरों का पता लगाने के लिए अभियुक्त तथा संदिग्ध व्यक्तियों के साथ लगातार पूछताछ करें।



- अन्य शोषणकर्ताओं तथा मुनाफेबाजों से के संबंध को उजागर करने के लिए ट्रैफिककताओं की ट्रैफिकिंग करनेवालों की संपत्तियों और मुनाफों की जाँच करें। इससे शोषण की गंभीरता और मात्रा पर प्रकाश पड़ेगा।
- इस दिशा में की गई जाँच के ब्यौरे केस डायरी में दर्ज किए जाने चाहिए और ट्रायल के दौरान अदालत का ध्यान उनकी ओर आकर्षित किया जाना चाहिए, ताकि सजा होने पर इस सारी संपत्ति को जब्त करने के लिए अदालत में दरखास्त दी जा सके।

#### 4.4.7 उत्पीड़ित व्यक्तियों से इंटरव्यू : क्या करें, क्या न करें

- उत्पीड़ित महिलाओं से इंटरव्यू महिला पुलिस अधिकारी को करना चाहिए। यदि महिला पुलिस अधिकारी उपलब्ध नहीं हो, तो इंटरव्यू की प्रक्रिया में महिला एनजीओ कार्यकर्ता या काउंसिलर को शामिल करें।
- यह सुनिश्चित करें कि आरोपित/संदिग्ध अपराधी आसपास मौजूद न हों।
- इंटरव्यू उस स्थान पर करें, जहाँ उत्पीड़ित सुविधा का अनुभव करती हो। यह स्थान उसकी पसंद का होना चाहिए।
- माहौल को बच्चों के साथ दोस्ताना बनाए रखे, अगर उत्पीड़ित बालक या बालिका है।
- ऐसे व्यक्ति को संबद्ध करें जिसकी उपस्थिति में उत्पीड़िता आश्वस्त अनुभव करती हो। इस मौके पर बच्चों की प्रोफेशनल देखभाल करनेवाला व्यक्ति, परामर्शदाता आदि उपयुक्त रहेंगे।
- इंटरव्यू को बहुत सारे दर्शकों, हस्तक्षेपों और शोरगुल से मुक्त रखें।
- जब भी जरूरत हो, मनश्चिकित्सकों और फॉरेंसिक विशेषज्ञों को शामिल करें।
- बेहद जरूरी न हो, तो बार-बार इंटरव्यू करने से बचें। वरिष्ठ अधिकारियों और सुपरवाइज करनेवाले अधिकारियों को चाहिए कि वे जाँच अधिकारी द्वारा किए जा रहे इंटरव्यू में हिस्सेदारी करें। बार-बार इंटरव्यू करने से इसलिए बचना चाहिए कि उत्पीड़ित व्यक्ति को उस हादसे से बार-बार न गुजरना पड़े।
- हादसे से मुक्त होने में उत्पीड़ित व्यक्ति की सहायता करनी चाहिए, ताकि वह घटनाओं को ठीक-ठाक, तार्किक ढंग से और पूरी तरह याद कर सके।
- उत्पीड़िता का साथ दें। उसे जो क्षति पहुँची है, उसे प्रामाणिक बनाएँ। उसमें यह एहसास पैदा करें कि जो कुछ हुआ है, उसमें उसकी कोई गलती नहीं है, कि वह तो उत्पीड़न का शिकार हुई है, कि उसे चोट पहुँचाई गई है।
- उत्पीड़ित व्यक्ति को सावधानी और सहानुभूति के साथ सुनें। उसे उसके नजरिए से समझने की कोशिश करें। उत्पीड़ित बालक/बालिका को बालिगों की भाषा



और शब्दावली की जानकारी नहीं होती। जाँच अधिकारी को उसकी समझ के स्तर तक जाने का प्रयास करना चाहिए।

- अच्छा या बुरा जैसे फैसले देने तथा टिप्पणी और आलोचना करने से बचें।
- याद रखें कि ट्रैफिकिंग और शोषण के सभी पहलुओं के बारे में बताने के लिए उत्पीड़ित व्यक्ति सर्वोत्तम गवाह है। अतः उसका बयान तार्किक और विस्तृत होना चाहिए और उसमें ट्रैफिकिंग की प्रक्रिया के सभी पहलुओं का समावेश होना चाहिए, जैसे शोषण, उसमें शामिल विभिन्न व्यक्तियों की भूमिका और घटनाओं की पूरी श्रृंखला।
- उन घटनाओं, तथ्यों और विषयवस्तुओं की चेकलिस्ट बनाएँ जिनके बारे में उत्पीड़ित व्यक्ति से इंटरव्यू करने की जरूरत है। जैसे-जैसे इंटरव्यू आगे बढ़ेगा, नई घटनाएँ, तथ्य और विषयवस्तु उभरेंगे। इंटरव्यू का तार्किक ढाँचा ऐसा होना चाहिए जिससे सभी जरूरी ब्यौरे सामने आ जाएँ।
- उत्पीड़ित व्यक्तियों का इंटरव्यू बहुत सावधानी से और उनका ख्याल रखते हुए किया जाना चाहिए। इसका ध्यान रखें कि जाँच की प्रक्रिया उसे दुबारा हादसे से न भर दे। गवाही के लिहाज से महत्वपूर्ण सभी तथ्यों को याद करने में उत्पीड़ित व्यक्ति की सहायता करने की दृष्टि से संवेदनशील तकनीकों (यानी कॉग्निटिव इंटरव्यू) का उपयोग करना आवश्यक है। संभव है उत्पीड़ित महिला इन तथ्यों के महत्व के बारे में न जानती हो, लेकिन पुलिस अधिकारी को इसका पता होना चाहिए। इंटरव्यू उत्पीड़ित व्यक्ति के सर्वोत्तम हित में होना चाहिए न कि किसी और व्यक्ति के हित में।
- उत्पीड़ित व्यक्ति को पूरी जानकारी दे कर उसको सहमति से उसके बयान की इलेक्ट्रॉनिक रिकॉर्डिंग (जैसे, वीडियोग्राफी) की जा सकती है, जिसका उपयोग अंततः अदालत में हो सकता है। हर हाल में, उसकी गुमानीयता की रक्षा करने की पूरी कोशिश होनी चाहिए।
- उत्पीड़ित महिला कुछ पूछना चाहती है या कोई शक जाहिर करना चाहती है, तो इसमें उसकी मदद करें। इससे बातचीत खुलेगी।
- उत्पीड़ित व्यक्ति का बयान उसकी ही भाषा में दर्ज करें। उसका अनुवाद बाद में हो सकता है। इंटरव्यू के दौरान प्रकट होनेवाली भावनाओं और 'बॉडी लैंग्वेज' को इंटरव्यू के रिकॉर्ड में शामिल करना न भूलें।
- बयान दर्ज करनेवाले पुलिस अधिकारी को बयान पर हस्ताक्षर करना चाहिए और अपना पूरा नाम, पद और पता दर्ज करना चाहिए।
- उत्पीड़ित व्यक्ति और उसके बयानों का प्रचार बिल्कुल नहीं होना चाहिए। सभी अवसरों पर (इनमें अदालत ले जाना और वहाँ से वापस लाना भी शामिल है) गुमनामियत बनाए रखें।



- यदि दुबारा परीक्षण करने की जरूरत हो, तो उत्पीड़ित व्यक्ति की सहमति माँगे और उसकी सुविधा का ध्यान रखें।
- सीआरपीसी की धारा 161 और धारा 164 के तहत उत्पीड़ित का बयान रिकॉर्ड करने में देर न करें, अन्यथा उसकी वापसी/अपने देश भेजे जाने में विलंब हो सकता है। इस मामले में जल्दी भी नहीं मचाई जानी चाहिए। उत्पीड़ित व्यक्ति जब भी बयान देना चाहता है, उस समय उसका अतिरिक्त बयान लेने पर कोई रोक नहीं है।
- उत्पीड़ित व्यक्ति को जहाँ ठहराया जाए या ले जाया जाए, उसे महिला पुलिस अधिकारी का समुचित संरक्षण प्रदान करें।
- उत्पीड़ित व्यक्ति के आराम का ख्याल जरूर रखें। उसके लिए विश्राम, शौच आदि के स्थान की व्यवस्था की जानी चाहिए। जब और जहाँ जरूरत हो, खाना, पानी, चाय आदि का इंतजाम करें। खाने-पीने के मामले में बाल उत्पीड़ितों की जरूरतों पर विशेष ध्यान देना चाहिए।
- यह सुनिश्चित करें कि पुलिस द्वारा की गई सभी कार्रवाईयाँ उत्पीड़ित के सर्वोत्तम हित में हों। निर्णय करने का आदर्श आधार यह पता लगाना है कि उत्पीड़ित का सर्वोत्तम हित किसमें है।
- इंटरव्यू के बाद उत्पीड़ित व्यक्ति को धन्यवाद देना न भूलें।

#### 4.4.8 उत्पीड़ित व्यक्तियों की मेडिकल देखभाल : क्या करें, क्या न करें

- सभी परीक्षण महिला डॉक्टर द्वारा होने चाहिए। यदि महिला डॉक्टर उपलब्ध न हो, तो मेडिकल परीक्षण के दौरान अन्य महिलाओं जैसे नर्सों/काउंसिलरों/एनजीओ कार्यकर्ताओं की मौजूदगी सुनिश्चित करें।
- अगर महिला अधिकारी उपलब्ध है तो पुरुष पुलिस अधिकारियों तथा अन्य पुरुषों को, जहाँ जाँच हो रही हो, उस स्थान से दूर रहना चाहिए।
- डॉक्टर को सिर्फ शारीरिक चोटों का नहीं, बल्कि मनोवैज्ञानिक क्षति का भी आकलन करना चाहिए। आवश्यकता पड़ने पर किसी मनश्चिकित्सक को संबद्ध करें।
- मेडिकल साक्ष्य को खूब सँभालकर रखें और उसकी श्रृंखलाबद्ध कस्टडी सुनिश्चित करें।
- मेडिकल देखभाल का इंतजाम करने में देर न करें। समय पर सहायता मिलने से उत्पीड़ित व्यक्ति को तनावरहित बनाने और उसकी हादसा-ग्रस्तता कम करने में सहायता मिलती है।

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## आइटीपीए की खूबियाँ और उनका सर्वोत्तम इस्तेमाल कैसे किया जाए

आइटीपीए एक विस्तृत कानून है। यह कानून ट्रैफिकिंग रोकने और उसका मुकाबला करने के लिए कानून को लागू करानेवाली तथा न्याय दिलानेवाली एजेंसियों को पूरे अधिकार और ताकत देता है। यह कानून 1956 में बनाया गया था। उसके बाद भारत की संसद ने इसे दो बार संशोधित किया – पहली बार 1978 में और दूसरी बार 1986 में। इन संशोधनों में ट्रैफिकिंग को रोकने पर जोर दिया गया है। यह बात दूसरे देशों में बनाए गए कानूनों में आम तौर पर नहीं मिलती। बहरहाल, कई वजहों से इस विशेष कानून की धाराओं का इस्तेमाल नहीं हो पा रहा है। इससे भी अधिक चिंता की बात यह है कि इन धाराओं का अक्सर गलत उपयोग तथा दुरुपयोग होता है। रिसर्च से पता चलता है कि इसका मुख्य कारण है, इन धाराओं की जानकारी न होना और इन धाराओं में जो बातें कही गई हैं, उनके बारे में समझ की कमी। नीचे जो चेकलिस्ट दी जा रही है, वह कानून का पालन करनेवाली एजेंसियों और इस समस्या से जूझ रहे अन्य व्यक्तियों के लिए गाइड बुक का काम कर सकती है। इससे उन सवालों का जवाब मिल जाएगा जो अक्सर पूछे जाते हैं (या, अक्सर नहीं पूछे जाते) और जिन पहलुओं की ओर अक्सर ध्यान नहीं दिया जाता, उन पहलुओं की ओर ध्यान जाएगा।

### 3.1 ट्रैफिकिंग के मामलों में किन कानूनों का उपयोग किया जा सकता है

ट्रैफिकिंग के मामलों में जिन कानूनों का उपयोग किया जा सकता है, वे इस प्रकार हैं :

- इम्मॉरल ट्रैफिक (प्रिवेन्शन) एक्ट, 1956 (आइटीपीए)
- जुवेनाइल जस्टिस (केयर एंड प्रोटेक्शन ऑफ चिल्ड्रेन) एक्ट, 2000 (जेजे एक्ट, 2000)
- गोआ चिल्ड्रेंस एक्ट, 2003 (सिर्फ गोआ राज्य में लागू)
- इंडियन पीनल कोड, 1860 (आपीसी) (इस अधिनियम की कौन-कौन सी धाराएँ लागू हो सकती हैं, इसकी चर्चा पहले की जा चुकी है)
- प्रॉसिज्योर से संबंधित कानून (क्रिमिनल प्रॉसिज्योर कोड अर्थात सीआरपीसी, इंडियन एविडेंस एक्ट, इत्यादि)
- सीआरपीसी की वे धाराएँ, जिनका संबंध अपराध को रोकने यानी उसे न होने देने से हैं।
- इस सिलसिले में लागू हो सकनेवाले अन्य, कानून (जैसे, ट्रैफिकिंग के शिकार व्यक्ति (स्त्री-पुरुष) का शोषण अश्लील सामग्री तैयार करने के लिए किया जाता है और किस इलेक्ट्रॉनिक माध्यम से अथवा इंटरनेट के जरिए इस सामग्री को प्रसारित किया जाता है) तो इन्फॉर्मेशन टेक्नोलॉजी एक्ट, 2000 (यानी, आइटी एक्ट की धारा 67) का इस्तेमाल किया जा सकता है।



## 3.2 आइटीपीए की अंतर्निहित खूबियाँ

### 3.2.1 सामान्य प्रावधान

- यह कानून पुरुषों और स्त्रियों की ट्रैफिकिंग पर लागू होता है।
- किसी भी व्यक्ति का व्यापारिक यौन शोषण अपराध है। उस व्यक्ति की उम्र चाहे जो भी हो और वह पुरुष हो या स्त्री, इससे कोई फर्क नहीं पड़ता।
- यह कानून स्त्रियों और बच्चों के अधिकारों को खास तवज्जो देता है।
- इस कानून में खास तौर से बताया गया है कि ट्रैफिकिंग की चुनौती का सामना करने में गैरसरकारी संगठनों (एनजीओ) तथा समाज की भूमिका क्या होनी चाहिए। शायद कोई और उदाहरण नहीं है, जहाँ मानव ट्रैफिकिंग विरोधी कानूनी को लागू करने में गैरसरकारी संगठनों को अधिकार दिए गए हैं।
- इस कानून का जोर ट्रैफिकिंग की समस्या से निजात पाने पर है, न कि वेश्यावृत्ति को रोकने पर, जैसा कि आम तौर पर मान लिया जाता है।
- यह कानून न्यायिक मजिस्ट्रेटों और कार्यपालक मजिस्ट्रेटों को भी निर्दिष्ट अधिकार प्रदान करता है।
- यह कानून तलाशी लेने (सर्च), छुड़ाने आदि में हिस्सा ले रहे पुलिस अधिकारियों, गैरकानूनी संगठनों आदि को उनके खिलाफ किसी भी आपराधिक या सिविल कार्यवाही से विशेष सुरक्षा प्रदान करता है।

### 3.2.2 आइटीपीए के तहत परिभाषित अपराध

- **धारा 3, आइटीपीए :** वेश्यालय चलाया या उसका इंतजाम देखना (या, वेश्यालय चलाने अथवा उसका इंतजाम देखने में मदद करना या किसी स्थान का (इसमें वाहन भी शामिल है) इस्तेमाल वेश्यालय की तरह होने देना या इसके लिए अनुमति देना।
- **धारा 4, आइटीपीए :** वेश्यावृत्ति की कमाई पर गुजर करना (पूर्णतः अथवा अंशतः)।
- **धारा 5, आइटीपीए :** वेश्यावृत्ति के लिए व्यक्तियों (स्त्री या पुरुष) को हासिल (प्रोक्योर) करना, लालच देना, उनकी ट्रैफिकिंग करना अथवा उन्हें लेना। हासिल करने या लेने का प्रयास भी इस धारा के तहत अपराध में आता है।
- **धारा 6, आइटीपीए :** किसी व्यक्ति को ऐसे स्थान पर (वेश्यालय या किसी अन्य स्थान पर) रोक कर रखना, जहाँ वेश्यावृत्ति की जाती हो।



- **धारा 7, आइटीपीए :** किसी सार्वजनिक स्थान (इसमें होटल, वाहन आदि शामिल हैं) के आसपास जो कोई व्यक्ति (व्यक्ति या पुरुष) वेश्यावृत्ति करता है या वह व्यक्ति जिसके साथ वेश्यावृत्ति की जाती है।
- **धारा 8, आइटीपीए :** किसी सार्वजनिक स्थान पर अथवा ऐसे स्थान पर जो किसी सार्वजनिक स्थान से दिखाई पड़ता हो, लोगों को वेश्यागमन के लिए लालच देना (सेड्यूस करना) अथवा इसके लिए आग्रह (सॉलिसिट) करना।
- **धारा 9, आइटीपीए :** जो व्यक्ति हिरासत में हो, उसे वेश्यावृत्ति के लिए लालच देना (इसमें हिरासत में रह रहे व्यक्ति को वेश्यावृत्ति के लिए लालच दिलवाना या इसमें सहायता करना भी शामिल है)।

### 3.2.3 क्या ग्राहक पर भी केस बनता है

हाँ, ग्राहक पर भी केस बनता है। पहले तो उस पर आइटीपीए की धारा 5(1) और धारा 7(1) के तहत केस कायम करना चाहिए। यह वह व्यक्ति है जो अन्य व्यक्ति द्वारा वेश्यावृत्ति करने का **कारण बनता है या उसे इसके लिए प्रेरित करता है**, अतः वह धारा 5(1)(डी) के तहत दंडनीय है (चेरियन बनाम केरल, 1973, सीआरएल, एल, जे./839, इसके अलावा, यह वह व्यक्ति है, **‘जिसके साथ वेश्यावृत्ति की जाती है’** और वह धारा 7(1) के तहत दंडनीय है। इसके अलावा, आइटीपीए की धारा 7 की उपधारा 1ए में साफ-साफ बताया गया है कि यदि ‘वेश्यावृत्ति’ का अपराध किसी बाल या नाबालिग के साथ किया गया है, तो **यह अपराध करनेवाला** (इसमें ग्राहक भी शामिल है) ज्यादा कड़े दंड और जुर्माने का भागी है और उसे कम से कम 7 वर्ष की सजा मिलेगी।

आइटीपीए के इन प्रावधानों के अलावा, वह उत्पीड़िता के अधिकारों के सभी उल्लंघनों का **दुष्प्रेरक** (अबेटर) है, इसलिए उस पर आइपीसी की धारा 114 के तहत मामला बनता है। यदि उत्पीड़ित व्यक्ति **बालक या बालिका** है, तो ‘ग्राहक’ पर लगाए गए आरोपों में **बलात्कार** (धारा 376, आइपीसी) भी जोड़ देना चाहिए। यदि उत्पीड़ित व्यक्ति **बालिग** है, तब आइपीसी की धारा 376 लागू होगी, यदि यह साबित किया जा सके कि उत्पीड़िता की रजामंदी में **जानकारी या स्वेच्छा** शामिल नहीं थी। इसके अलावा, उत्पीड़िता के साथ **प्रकृति-विरुद्ध** (परवर्स) **यौन क्रियाएँ** आइपीसी की धारा 377 के तहत दंडनीय हैं।

### 3.2.4 ट्रैफिककर्ताओं की कानूनी दंडनीयता (लाइबिलिटी)

आइटीपीए की धारा 5 के तहत, ट्रैफिकिंग तो दंडनीय है ही, इसकी **कोशिश भी** दंडनीय है और बात से कोई फर्क नहीं पड़ता कि इसमें ट्रैफिकिंग के शिकार व्यक्ति की रजामंदी थी। **ट्रैफिकिंग** के कई तरीके हो सकते हैं, जैसे प्रोक्योर करना या प्रोक्योर करने की कोशिश करना, प्रेरित करना, ले जाना, ले जाने की कोशिश करना, किसी व्यक्ति को ले जाए जाने का कारण बनना, किसी व्यक्ति द्वारा वेश्यावृत्ति करने का कारण बनना अथवा उसे फुसलाना इत्यादि।



यदि ट्रैफिकिंग का अपराध उत्पीड़िता की रजामंदी के खिलाफ किया गया है, तो अपराधी ज्यादा कड़ी सजा पाने के काबिल है। यदि ट्रैफिक किए गए व्यक्ति की उम्र 12 साल से कम है यानी वह बालक या बालिका है, तो इसके लिए कम से कम 7 वर्ष के सश्रम कारावास की सजा है। मामले से जुड़े हुए तथ्यों और परिस्थितियों के अनुसार ट्रैफिकर्ता आईटीपीए की धारा 4, धारा 6 और धारा 9 के तहत भी अपराधी हैं। इसके अलावा, दुष्प्रेरक (अबेटर) और/अथवा षड्यंत्रकारी होने के नाते उन पर आईपीसी के तहत मुकदमा चलाया जा सकता है (इसकी चर्चा ऊपर की जा चुकी है)।

### 3.2.5 पुलिस और अदालतों का क्षेत्राधिकार (जूरिसडिक्शन)

ट्रैफिकिंग का मामला किस पुलिस स्टेशन में दर्ज किया जाना चाहिए ? ऐसे केसों में सुनवाई करने का अधिकार किस अदालत को है ? ट्रैफिकिंग एक 'शृंखलाबद्ध अपराध' है, अतः इनमें से किसी भी स्थान पर मुकदमा दर्ज किया जा सकता है (आईटीपीए की धारा 5(3) के प्रावधान देखें) :

- वह स्थान, जहाँ से ट्रैफिकिंग के शिकार व्यक्ति को हासिल (प्रोक्योर) किया गया है, जहाँ से जाने के लिए उसे प्रेरित किया गया है, जहाँ से उसे ले जाया गया है अथवा जहाँ से जाने के लिए उसे मजबूर किया गया है, जहाँ से उसे हासिल करने (प्रोक्योर) या ले जाने की कोशिश की गई है। **इसका मतलब है वह स्थान, जहाँ से ट्रैफिकिंग की शुरूआत हुई।**
- वह स्थान, जहाँ जाने के लिए ट्रैफिकिंग के शिकार व्यक्ति (स्त्री या पुरुष) को दुष्प्रेरित किया गया है अथवा जहाँ उसे ले जाया गया है या ले जाने के लिए मजबूर किया गया है या जहाँ ले जाने की कोशिश की गई है। **यानी वह स्थान, जहाँ ट्रैफिक किए गए व्यक्ति को ले जाया जाता है अथवा उसका शोषण होता है और पारगमन के वे बिंदु, जहाँ शोषण जारी रहता है।**

चूँकि अदालत के क्षेत्राधिकार (जूरिसडिक्शन) में ये तीनों स्थान आते हैं - जहाँ से ट्रैफिकिंग की शुरूआत हुई, जहाँ-जहाँ उत्पीड़िता को ले जाया गया और जहाँ उसे पहुँचाया गया, अतः इन सभी स्थानों के पुलिस स्टेशनों का भी क्षेत्राधिकार बन जाता है। इस संदर्भ में, 'क्या करें' और 'क्या न करें' की सूची इस प्रकार है :

- ट्रैफिकिंग के किसी मामले में, ट्रैफिकिंग के प्रारंभ (सोर्स) बिंदु, पारगमन (ट्रांजिट) बिंदु और लक्ष्य (डेस्टिनेशन) बिंदु पर स्थित पुलिस एजेंसियों का फर्ज और जिम्मेदारी है कि वे अपने पुलिस स्टेशनों में एफआईआर दर्ज करें।
- प्रारंभ बिंदु और लक्ष्य बिंदु दोनों ही स्थानों पर एफआईआर दर्ज करने पर कोई कानूनी रोक नहीं है - अगर पहले स्थान (सोर्स) पर सिर्फ ट्रैफिकिंग का मामला दर्ज किया जाता है और दूसरे स्थान (डेस्टिनेशन) पर सिर्फ यौन शोषण का मामला दर्ज होता है। वैसे, सबसे अच्छी स्थिति यह होगी कि दोनों में से किसी



एक ही स्थान पर एफआइआर दर्ज की जाए और प्रारंभ बिंदु से अंतिम बिंदु तक हुए सभी अपराधों को जाँच के दायरे में लाया जाए।

- अगर प्रारंभ बिंदु और अंतिम बिंदु, दोनों ही स्थानों पर एफआइआर दर्ज की जाती है, तो जब और जैसे ही इसका सबूत मिल जाए कि दोनों के बीच कोई कड़ी काम कर रही है, तो दोनों स्थानों पर हो रही जाँच को एक साथ मिला देना चाहिए। इसके बाद, पुलिस दोनों में से किसी भी एक स्थान पर अदालत में चार्ज रिपोर्ट फाइल कर सकती है और इसके साथ ही दूसरे स्थान पर की जा रही जाँच को बंद कर सकती है, ताकि दुहरी मेहनत या दुहरे संकट के कानून से बचा जा सके।
- चूँकि ट्रैफिकिंग की कोशिश भी आइटीपी की धारा 5(3) के तहत अपराध है, इससे कानून को लागू करनेवाली एजेंसियों को बहुत मजबूत हथियार मिल जाता है जिसका इस्तेमाल कर वे ट्रैफिकिंग करनेवालों के साथ-साथ ट्रैफिकिंग के लिए उकसानेवालों, इसमें सहायता करनेवालों और इसकी साजिश करनेवालों, सभी को सजा दिलवा सकती हैं।

दुहरे संकट का कानून उस स्थिति में लागू नहीं होगा जब कथित अपराधों पर कार्रवाई अलग-अलग स्थानों पर अलग-अलग धाराओं के तहत की जा रही हो, भले ही वे अपराध एक ही कड़ी के अंग हों। उदाहरण के लिए, यदि एक जगह ट्रैफिकिंग के लिए आइटीपीए की धारा 5 के तहत एफआइआर दर्ज की गई है और दूसरी जगह आइटीपीए की धारा 7, आईपीसी की धारा 376 इत्यादि के तहत यौन शोषण के लिए एफआइआर दर्ज की गई है, और दोनों का ताल्लुक एक ही अपराध से है, तो यह कानूनी रूप से कहीं से भी गलत नहीं है।

### 3.2.6 पूर्वानुमान का सिद्धांत ट्रैफिकिंग को रोकने और उससे लड़ने के लिए एक सशक्त औजार है।

आइटीपीए इस तथ्य के माध्यम से कि पूर्वानुमान के निर्दिष्ट प्रावधान प्रमाणित करने की जिम्मेदारी अभियुक्त की मानी जाती है, कानून को लागू कराने वाली एजेंसियों को काफी शक्ति प्रदान करता है। ये प्रावधान इस प्रकार हैं :

- धारा 3 में वेश्यालय चलाने अथवा किसी स्थान का वेश्यालय की तरह इस्तेमाल होने देने के लिए सजा की व्यवस्था है। धारा 3(2ए) में कहा गया है कि **यह माना जाएगा** कि संबंधित व्यक्ति (उस स्थान का मालिक, किराएदार, जिसने उस स्थान को लीज पर लिया है या वह स्थान जिसके चार्ज में है) को उपर्युक्त बात की जानकारी है, अगर :
  - किसी स्थानीय अखबार में यह रिपोर्ट छपी हो कि खोजबीन के दौरान पाया गया कि उस स्थान का इस्तेमाल वेश्यावृत्ति के लिए हो रहा है।
  - सर्च लिस्ट की एक प्रति उस व्यक्ति को दी गई है।



- यदि यह साबित हो जाए कि कोई व्यक्ति के, जिसकी उम्र 18 साल से ज्यादा है, किसी अन्य व्यक्ति ख के आने-जाने को नियंत्रित या प्रभावित करता है – इस तरह से कि क वेश्यावृत्ति करने में ख की सहायता कर रहा है या इसके लिए उसे मजबूर कर रहा है, तो **यह माना जाएगा** कि क ख की वेश्यावृत्ति की कमाई पर, जानते-समझते हुए, गुजर कर रहा है। ऐसा व्यक्ति आइटीपीए की धारा 4 के तहत दंडनीय है।
- अगर कोई व्यक्ति वेश्यालय में किसी बालक या बालिका के साथ पाया जाता है, तो **यह माना जाएगा** कि उस व्यक्ति ने उस बालक या बालिका को सीएसई के लिए रोक रखा है। ऐसा व्यक्ति आइटीपीए की धारा 6(2) के तहत दंडनीय है।
- यदि मेडिकल जाँच से यह साबित हो जाए कि किसी वेश्यालय में जिस बालक या बालिका को रोक कर रखा गया है, उसके साथ यौन कुचेष्टा हुई थी, तो **यह माना जाएगा** कि उसे सीएसई के लिए रोका हुआ था और उसका यौन शोषण किया गया है। यह कानूनी अनुमान उसे रोक कर रखनेवाले के खिलाफ एक असरदार औजार है।
- आइटीपीए की धारा 6(3) के अनुसार, **यह माना जाएगा** कि किसी व्यक्ति ने किसी स्त्री या (किसी भी उम्र की) लड़की को वेश्यालय में या किसी भी स्थान पर सीएसई के लिए रोक कर रखा था, अगर उस व्यक्ति ने उस स्त्री या लड़की की कोई चीज (जैसे गहना, कपड़ा, पैसा इत्यादि) इस इरादे से अपने पास रख रखी हो कि वह वहाँ से भाग न सके। वह व्यक्ति तब भी दोषी माना जाएगा अगर उसने किसी स्त्री या लड़की को धमकाया हो कि वह उस व्यक्ति द्वारा या उसके कहने पर किसी और व्यक्ति दी गई अथवा उधार दी गई कोई चीज ले कर भागी, तो उसे मारा-पीटा जाएगा।

### 3.2.7 बाल और नाबालिगों का सीएसई

बाल (बालक-बालिकाओं) और नाबालिगों के सीएसई को कानून गंभीर अपराध मानता है। ऐसे मामलों में, उस बालक/बालिका या नाबालिग व्यक्ति की सहमति हो या न हो आइटीपीए की धारा 7 के तहत निम्नलिखित विशेष प्रावधान किए गए हैं :

- सहमति थी, इससे कोई फर्क नहीं पड़ता
- बाल (बालक-बालिका) या नाबालिग से वेश्यावृत्ति कराने के लिए सजा में बढ़ोतरी
- न्यूनतम सजा : 7 वर्ष का सश्रम कारावास
- जेल के साथ-साथ जुर्माना भी
- यदि किसी बालक/बालिका का यौन शोषण होटल में होता है, तो होटल का लाइसेंस रद्द किया जा सकता है (देखें धरा 7(2)(सी) के तहत प्रावधान)।



### 3.2.8 ट्रैफिकिंग के शिकार को मुक्त कराने का आदेश कौन दे सकता है ?

आइटीपीए की धारा 16 में हर ऐसे व्यक्ति को (उसकी उम्र जो भी हो) मुक्त कराने का अधिकार दिया गया है, जिससे किसी वेश्यालय में वेश्यावृत्ति कराई जा रही है, मुक्त कराया जा सकता है। यह अधिकार जुडिशियल मजिस्ट्रेट (एमएम या जेएम) और एग्जिक्यूटिव मजिस्ट्रेट (डीएम या एसडीएम), दोनों को है। इसलिए वेश्यावृत्ति के शिकार व्यक्ति को छुड़ाने के आदेश (ऑर्डर) के लिए इनमें से किसी से भी दरखास्त की जा सकती है। मजिस्ट्रेट के पास यह मानने का कारण हो कि कोई व्यक्ति वेश्यालय में वेश्यावृत्ति कर रहा है या उससे वेश्यावृत्ति कराई जा रही है, तो वह उसे मुक्त कराने का आदेश दे सकता है।

आइटीपीए की धारा 15 विशेष पुलिस अधिकारियों को वारंट के बगैर सर्च करने का और धारा 15(4) के तहत मुक्त कराने का अधिकार देती है। इसके तहत विशेष पुलिस अधिकारियों को व्यापक अधिकार मिले हुए हैं।

### 3.2.9 क्या किसी नागरिक को भी (जैसे, कोई एनजीओ) ट्रैफिकिंग के शिकार को मुक्त कराने के लिए मजिस्ट्रेट को दरखास्त करने और आदेश माँगने का अधिकार है?

उत्तर है, हाँ। आइटीपीए की धारा 16 के तहत, मजिस्ट्रेट के पास यह मानने का कारण हो कि किसी व्यक्ति को मुक्त कराने की जरूरत है, तो वह इसके लिए किसी भी पुलिस अधिकारी को (जिसका पद एसआई से नीचे न हो) आदेश दे सकता है। मजिस्ट्रेट को यह सूचना सरकारी एजेंसियों से मिल सकती है या **किसी भी अन्स स्रोत से**। इस प्रकार इनमें से किसी से भी मजिस्ट्रेट को सूचना मिल सकती है :

- पुलिस
- राज्य सरकार द्वारा अधिकृत कोई व्यक्ति (जैसे, उत्तर प्रदेश सरकार द्वारा अधिसूचित (नोटिफाइड) रेस्क्यू ऑफिसर)
- कोई भी एनजीओ
- कोई अन्य स्रोत

### 3.2.10 अगर नोटिफाइड पुलिस अधिकारी उपलब्ध नहीं है, तब भी क्या मुक्त कराना संभव है ?

हाँ, संभव है। आइटीपीए की धारा 16 के तहत, मजिस्ट्रेट किसी भी पुलिस अधिकारी को (उसे आइटीपीए की धारा 13 के तहत नोटिफाइ किया गया हो अथवा नहीं) इसके लिए अधिकृत कर सकता है, बशर्ते वह पुलिस अधिकारी एसआई या इससे ऊँचे पद पर हो।

### 3.2.11 सार्वजनिक स्थानों का दुरुपयोग कैसे रोका जाए ?

आइटीपीए की धारा 7 में कानून लागू करानेवाली एजेंसियों को बहुत ही महत्वपूर्ण भूमिका सौंपी गई है। उनका कर्तव्य न केवल सार्वजनिक स्थानों का दुरुपयोग करनेवालों के खिलाफ कार्रवाई



करनी है, बल्कि इस दुरुपयोग को रोकना भी है। इस सिलसिले में निम्नलिखित पहलुओं पर ध्यान देना चाहिए।

### 3.2.11.1 सार्वजनिक स्थान किसे कहते हैं ?

आइटीपीए की धारा 7 के अनुसार, 'सार्वजनिक स्थान' की परिभाषा में ये सभी स्थान शामिल हैं:

- सरकार द्वारा नोटिफाइड किसी भी क्षेत्र के भीतर आनेवाला स्थान
- सार्वजनिक पूजा, शिक्षा संस्थान, होटल, अस्पताल, नर्सिंग होम या सार्वजनिक उपयोग के किसी अन्य सरकारी अथवा गैरसरकारी स्थान से 200 मीटर की दूरी के दायरे में आनेवाला स्थान
- कोई भी होटल (होटल रिसीट्स टैक्स एक्ट, 198 में होटल की परिभाषा यह दी गई है : ऐसा कोई भी स्थान होटल है, जहाँ निवास की सुविधा व्यवसाय के तौर पर, मुद्रा के एवज में, दी जाती है)
- कोई भी ट्रांसपोर्ट या वाहन, जिसका इस्तेमाल आम जनता कर सकती है।
- 'कोई भी स्थान जो जनसाधारण के इस्तेमाल के लिए आशयित है या जहाँ तक जनसाधारण की पहुँच है' सार्वजनिक स्थान है। 'यह आवश्यक नहीं है कि वह सार्वजनिक संपत्ति हो।' 'यदि वह निजी संपत्ति है, तो इतना काफी है कि वहाँ तक जनसाधारण की पहुँच है।' (गौरव जैन बनाम भारत सरकार, एआईआर 1997 एससी 2021)

### 3.2.11.2 अगर किसी होटल में वेश्यावृत्ति होती है, तो क्या उस होटल का लाइसेंस सस्पेंड किया जा सकता है ?

हाँ। आइटीपीए की धारा 7(2)(सी) के तहत, यदि वह स्थान, जिसका दुरुपयोग हो रहा है, कोई होटल है, तो उस होटल का लाइसेंस कम से कम 3 महीने के लिए सस्पेंड किया जा सकता है। यह अवधि एक साल तक बढ़ाई जा सकती है। ऐसी स्थितियों में होटल का लाइसेंस सस्पेंड करने के लिए पुलिस अधिकारी को संबंधित अदालत (इस मामले में डिस्ट्रिक्ट मजिस्ट्रेट सक्षम अदालत है) में दरखास्त देनी चाहिए।

### 3.2.11.3 क्या होटल का लाइसेंस रद्द किया जा सकता है ?

हाँ। आइटीपीए की धारा 7(2)(सी) के तहत, यदि यह साबित किया जा सकता है कि होटल में वेश्यावृत्ति या सीएसई का शिकार कोई बाल या नाबालिग है (यानी वह व्यक्ति, पुरुष या स्त्री, जिसकी उम्र 18 वर्ष से कम है), तो होटल का लाइसेंस रद्द किया जा सकता है। इसके लिए पुलिस अधिकारी को डिस्ट्रिक्ट मजिस्ट्रेट की अदालत में दरखास्त देनी चाहिए।

### 3.2.11.4 सार्वजनिक स्थानों के दुरुपयोग की जिम्मेदारी किन पर है ?

आइटीपीए की धारा 7 के तहत, इन व्यक्तियों की जिम्मेदारी बनती है :



- ऐसा कोई भी व्यक्ति, जो वेश्यावृत्ति करता है या करती है
- ऐसा कोई भी व्यक्ति, जिसके साथ वेश्यावृत्ति की जाती है (जैसे, ग्राहक)
- सार्वजनिक स्थान का संचालन करनेवाला कोई भी व्यक्ति जो यह दुरुपयोग होने देता है
- ऐसा कोई भी व्यक्ति, जिसने वह स्थान किराए या लीज पर लिया है, जिसका उस पर कब्जा है या वह स्थान जिसके चार्ज में है (जैसा कि इसके पहले चर्चा की जा चुकी है), जो उस स्थान का या उसके किसी हिस्से का दुरुपयोग होने देता है।
- ऐसा किसी भी स्थान का मालिक, उसे लीज पर देनेवाला या उस जमीन का मालिक या उनका एजेंट, जो उस स्थान का या उसके किसी हिस्से का दुरुपयोग होने देता है या जो स्वेच्छया इस दुरुपयोग में शामिल है

### 3.2.11.5 नोटिस दे कर वेश्यालयों को बंद या खाली कराना

- डिस्ट्रिक्ट मजिस्ट्रेट, आइटीपीए की धारा 18(1) के तहत, पुलिस, एनजीओ या किसी भी अन्य व्यक्ति से प्राप्त सूचना के आधार पर कार्रवाई कर सकता है। पुलिस कमिश्नर या कोई भी अन्य अधिकारी, जिसे डिस्ट्रिक्ट मजिस्ट्रेट के अधिकार दिए गए हैं, कानून की इस धारा के तहत कार्रवाई कर सकता है।
- सूचना यह मिलनी चाहिए कि किसी सार्वजनिक स्थान से 200 मीटर के दायरे में स्थित किसी मकान, कमरे, जगह या उसके एक हिस्से का इस्तेमाल किसी व्यक्ति द्वारा वेश्यालय के रूप में या किसी व्यक्ति के यौन शोषण के व्यापार (सीएसई) के लिए हो रहा है।
- डिस्ट्रिक्ट मजिस्ट्रेट (उस मकान, कमरे, जगह या उसके हिस्से के) मालिक, उसे लीज पर देनेवाले या उस जमीन के मालिक या उनके एजेंट को और इसके साथ ही ऐसे मकान, कमरे, जगह या उसके हिस्से के किराएदार, उसे लीज पर लेनेवाले, उस पर कब्जेदार या उसका चार्ज सँभालनेवाले व्यक्ति को नोटिस जारी कर सकता है।
- डिस्ट्रिक्ट मजिस्ट्रेट द्वारा भेजी गई उपर्युक्त नोटिस यह निर्देश देती है कि नोटिस पाने के 7 दिनों के भीतर कारण बताया जाए कि दुरुपयोग की वजह से उस संपत्ति को जब्त क्यों न कर लिया जाए।
- निर्णय करने के पहले डिस्ट्रिक्ट मजिस्ट्रेट को आरोपित व्यक्ति का पक्ष सुनना चाहिए।
- सुनवाई के बाद, अगर डिस्ट्रिक्ट संतुष्ट हो जाता है कि दुरुपयोग का आरोप सही है, तो वह (क) आदेश जारी करने के 7 दिनों के भीतर कब्जेदार को वहाँ से



हटाने का निर्देश दे सकता है और (ख) निर्देश दे सकता है कि अगले एक वर्ष के दौरान (अगर उस स्थान की तलाशी के दौरान वहाँ कोई बालक/बालिका या नाबालिग पाया या पाई गई है, तो यह अवधि 3 वर्ष की होगी) उस स्थान को फिर किराए पर देने के पहले डिस्ट्रिक्ट मजिस्ट्रेट की अनुमति लेना जरूरी है।

- आइटीपीए की धारा 18(3) के अनुसार, डिस्ट्रिक्ट मजिस्ट्रेट के इस आदेश के विरुद्ध न तो अपील की जा सकती है और न उसे स्थगित (स्टे) किया जा सकता है।
- चूँकि वेश्यालय बंद कर दिए जाने से शोषण करनेवालों की 'आय' रुक जाती है और अपील के जरिए उन्हें कोई राहत भी नहीं मिल सकती, अतः यह कानून की एक कठोर धारा है। इसका इस्तेमाल प्रशासक, पुलिस, प्रॉसिक्यूटर और एनजीओ ट्रैफिकिंग को खत्म करने और रोकने लिए असरदार ढंग से कर सकते हैं।
- सब डिविजनल मजिस्ट्रेट (एसडीएम) भी इन शक्तियों का उपयोग कर सकते हैं।

#### 3.2.11.6 नोटिस दिए बिना वेश्यालयों को बंद और खाली कराना

आइटीपीए की धारा 18(2) के अनुसार, किसी व्यक्ति को आइटीपीए की धारा 3 (वेश्यालय चलाना इत्यादि) अथवा धारा 7 (सीएसई के लिए सार्वजनिक स्थानों का दुरुपयोग) के तहत सजा देते हुए, अदालत ऐसे व्यक्ति को नोटिस दिए बगैर वेश्यालय को बंद या खाली कराने का आदेश जारी कर सकती है। अतः आइटीपीए की धारा 3 अथवा धारा 7 के तहत सजा दिए जाने के मामले में पुलिस/प्रॉसिक्यूटर को आइटीपीए की धारा 18 के तहत वेश्यालय को बंद या खाली कराने के आदेश के लिए अदालत में दरखास्त देनी चाहिए।

बहरहाल, न्यायिक मजिस्ट्रेट द्वारा जारी वेश्यालय को खाली कराने का आदेश जिस व्यक्ति से खाली कराया जा रहा है, उसकी दोष-सिद्धि (कन्विक्शन) के बाद का घटनाक्रम है। यह दोष-सिद्धि के पहले नहीं हो सकता। (ए.सी. अगरवाल तथा अन्य बनाम राम कली, 1968 सीआरआइ.एल.जे. 82)

#### 3.2.11.7 वेश्यालय को बंद या खाली कराने के आदेश के खिलाफ अपील नहीं की जा सकती

आइटीपीए की धारा 18(3) के अनुसार, डिस्ट्रिक्ट मजिस्ट्रेट द्वारा आइटीपीए की धारा 18(1) के तहत और सजा देनेवाली अदालत द्वारा धारा आइटीपीए की 18(2) के तहत जारी आदेशों के खिलाफ अपील नहीं जा सकती और न ही कोई सिविल या क्रिमिनल अदालत उन्हें स्थगित या रद्द कर सकती है। इसलिए सक्षम अदालत द्वारा किए गए आदेश की अंतिमता सीएसई से संघर्ष का बहुत ही शक्तिशाली औजार है।

#### 3.2.11.8 बाल ( 16 वर्ष से कम ) और नाबालिग ( 18 वर्ष से कम ) के सीएसई के विरुद्ध विशेष प्रावधान



किसी बाल या नाबालिग के सीएसई में जो भी शामिल है, उसके लिए न्यूनतम सजा 7 वर्ष का कारावास है, जिसे आजीवन कारावास तक बढ़ाया जा सकता है (आइटीपीए, धारा 7(1ए))।

- ऐसे व्यक्ति की सजा तय करने के समय कारावास के साथ-साथ जुर्माना लगाना अनिवार्य है।
- अगर दुरुपयोग की घटना किसी होटल में होती है और शिकार बाल या नाबालिग है, तो होटल का लाइसेंस रद्द किया जा सकता है। (धारा 7(2)(सी) आइटीपीए)

### 3.2.12 सजायापत्ता व्यक्तियों की निगरानी

आइटीपीए की धारा 11 के अनुसार आइटीपीए अथवा आइपीसी की संबंधित धाराओं (धारा 363, 365, 366, 366ए, 366बी, 367, 368, 370, 371, 372 या 373) के तहत जो व्यक्ति पहले सिद्धदोष हो चुका है, उसे आइटीपीए इत्यादि के तहत दो वर्ष या उससे अधिक अवधि के लिए दुबारा सजा दी जाती है, तो राज्य सरकार द्वारा इस बारे में बनाए गए नियमों के अनुसार अदालत उसे यह आदेश दे सकती है कि वह रिहा होने के 5 वर्ष तक अपने निवास स्थान में परिवर्तन अथवा वहाँ से अपनी गैरहाजिरी की सूचना देता रहे। यदि राज्य सरकार की ओर से इस तरह के नियम बनाए गए हैं, तो कानून का पालन करानेवाली एजेंसियों के पास यह एक जोरदार हथियार है, जिसकी मदद से सजा-प्राप्त व्यक्ति के आवागमन और उसकी गतिविधियों पर निगरानी रखी जा सकती है, ताकि भविष्य में इस प्रकार के अपराधों को घटित होने सरोका जा सके। जिस राज्य में इस तरह के नियम नहीं बनाए गए हैं, वहाँ राज्य सरकार से अनुरोध किया जा सकता है कि वह आइटीपीए के तहत इस बारे में विस्तृत कानून बनाए

### 3.2.13 सजायापत्ता व्यक्तियों को इलाका-बदर करना

आइटीपीए की धारा 20 के अनुसार, डिस्ट्रिक्ट मजिस्ट्रेट, सब-डिविजनल मजिस्ट्रेट अथवा राज्य सरकार द्वारा अधिकृत एग्जिक्यूटिव मजिस्ट्रेट को यह अधिकार है कि वह सजायापत्ता व्यक्ति को इलाका-बदर कर किसी ऐसी जगह भेज दे जो उसके अधिकार क्षेत्र के दायरे में अथवा उस दायरे के बाहर है। यह सजायापत्ता व्यक्तियों को भविष्य में शोषण करने से रोकने का जबरदस्त हथियार है। कॉन्विक्शन के तुरंत बाद पुलिस को संबंधित मजिस्ट्रेट की अदालत में आवेदन करना चाहिए ताकि वह इलाका-बदर करने की कार्यवाही शुरू कर सके।

### 3.2.14 कार्यवाही की अंतिमता तथा तीव्रगति न्यायतंत्र

आइटीपीए एक विशेष कानून है, जिसमें कुछ ऐसे प्रावधान रखे गए हैं जिससे कानूनी कार्यवाही बहुत दिनों तक न खिंचती रहे। इन प्रावधानों और प्रतिबंधों का इस्तेमाल पुलिस, प्रॉसिक्यूटर और न्यायालय द्वारा किया जाना चाहिए, ताकि ट्रायल जल्दी से जल्दी पूरा हो और न्याय में विलंब न हो। ये प्रावधान इस प्रकार हैं :

- आइटीपीए की धारा 18 के तहत, मजिस्ट्रेट अथवा कोर्ट द्वारा जारी वेश्यालय को खाली कराने के आदेश के खिलाफ न तो अपील की जा सकती है, न इस आदेश को स्थगित (स्टे) किया जा सकता है।



- आइटीपीए की धारा 17(4) के तहत एहतियाती हिरासत के लिए मजिस्ट्रेट (एसडीएम, डीएम, एमएम अथवा जेएम) द्वारा जारी आदेश के विरुद्ध अपील सेशन कोर्ट में ही की जा सकती है, जिसका निर्णय अंतिम होगा। साफ है कि सेशन कोर्ट से ऊपर अपील नहीं की जा सकती।
- आइटीपीए के तहत आनेवाले अपराधों के ट्रायल के लिए विशेष अदालतों (इनमें एक्सक्लूसिव अदालतें शामिल हैं) का गठन राज्य सरकारें (आइटीपीए की धारा 22ए के तहत) ही नहीं, बल्कि केंद्र सरकार (आइटीपीए की धारा 22ए के तहत) भी कर सकती है।
- समरी ट्रायल : जब भी जरूरी हो, राज्य सरकार (समरी ट्रायल से संबंधित सीआरपीसी की धाराओं 262, 263, 264 और 265 के प्रावधानों के अनुसार) मुकदमों का समरी ट्रायल करने के लिए अदालत को अधिकृत कर सकती है। लेकिन समरी ट्रायल में अधिकतम सजा एक वर्ष की ही हो सकती है। अगर अदालत को लगता है कि सजा की मात्रा इससे ज्यादा होनी चाहिए, तो मुकदमे को नियमित ट्रायल के लिए लौटाया जा सकता है।

### 3.2.15 राज्य सरकार का विशेष पुलिस अधिकारी

आइटीपीए की धारा 13(1) के तहत, राज्य सरकार, नोटिफिकेशन जारी कर, एक या एक से अधिक पुलिस अधिकारियों को, जिनका दर्जा पुलिस इंस्पेक्टर से नीचे का नहीं होना चाहिए, विशेष पुलिस अधिकारी (एसपीओ) नियुक्त कर सकती है, जिसका अधिकार क्षेत्र सुनिश्चित होना चाहिए। यह अधिकार क्षेत्र पूरे राज्य तक हो सकता है। चूंकि ट्रैफिकिंग के बहुत से मामलों का संबंध कई जिलों अथवा कई राज्यों से होता है, ऐसे नोटिफिकेशन जारी करते समय अधिकार-क्षेत्र को सीमित न करना ही बेहतर है। एसपीओ का अधिकार क्षेत्र कम से कम 'अपराधी के कार्य-क्षेत्र' तक विस्तृत तो होना ही चाहिए, ताकि एसपीओ की तफतीश किसी विशेष इलाके तक सीमित न रहे। (यहाँ संयुक्त राज्य अमेरिका का एंटी-ट्रैफिकिंग एक्ट, 2000 उल्लेखनीय है, जिसमें कानून को लागू करानेवाली एजेंसी का अधिकार क्षेत्र दुनिया के किसी भी कोने तक है, जहाँ अपराध की जाँच करते हुए वह पहुँचता है।)

### 3.2.16 अगर किसी जिले में पुलिस अधिकारियों की कमी हो, तो ट्रैफिकिंग से जूझने के लिए इस समस्या का कोई निदान है ?

हाँ, है। आइटीपीए की धारा 13(2ए) डिस्ट्रिक्ट मजिस्ट्रेट को अधिकार देती है कि वह किसी रिटायर पुलिस अधिकारी को (रिटायरमेंट के समय उसका दर्जा पुलिस इंस्पेक्टर से नीचे का नहीं होना चाहिए) अथवा किसी रिटायर सैनिक अधिकारी को (रिटायरमेंट के समय उसका दर्जा कमीशंड ऑफिसर से नीचे का नहीं होना चाहिए) एसपीओ नियुक्त कर सकता है। यह अपेक्षित है कि पुलिस अधीक्षक (एसपी) उपयुक्त रिटायर अधिकारियों की पहचान करे तथा अधिसूचना के लिए डीएम से संपर्क करे। यदि महिला पुलिस अधिकारी उपलब्ध नहीं है, तो एसपीओ को महिला गैरसरकारी संगठन/सामाजिक कार्यकर्ता की सहायता लेनी चाहिए।



### 3.2.17 क्या महिला पुलिस अधिकारी का होना जरूरी है ?

आइटीपीए की धारा 13(3)ए के अनुसार, पर्याप्त संख्या में अधीनस्थ पुलिस अधिकारी-इन अधिकारियों में, जहाँ भी व्यावहारिक हो, महिला अधिकारी शामिल होंगी, राज्य सरकार द्वारा नियुक्त एसपीओ की सहायता करेगी। सर्वोत्तम स्थिति यह होगी कि प्रत्येक यूनिट के लिए नियुक्त पुलिस अधिकारियों में पुरुष और महिला, दोनों होने चाहिए। जहाँ भी इंस्पेक्टर या इससे ऊपर के दर्जे की महिला पुलिस अधिकारी उपलब्ध हों, उन्हें एसपीओ नियुक्त करना चाहिए। यदि महिला पुलिस अफसर उपलब्ध नहीं है, तो एसपीओ का महिला/सामाजिक कार्यकर्ता की सहायता लेनी चाहिए।

### 3.2.18 क्या भारत सरकार आइटीपीए के तहत विशेष पुलिस अधिकारी नियुक्त कर सकती है ?

आइटीपीए की धारा 13(3)(4) के तहत, भारत सरकार अधिसूचना के माध्यम से एंटी-ट्रैफिकिंग पुलिस अधिकारी (एटीपीओ) नियुक्त कर सकती है। इनका अधिकार क्षेत्र पूरा भारत होगा। एटीपीओ की नियुक्ति इन अपराधों की तफतीश के लिए की जा सकती है :

- जो अपराध आइटीपीए के तहत आते हैं
- तो अपराध एक से अधिक राज्यों में होनेवाले, व्यक्तियों के यौन शोषण से संबंधित किसी भी कानून के तहत आते हैं। इस प्रकार, नोटिफाइड एटीपीओ न केवल ट्रैफिकिंग से संबंधित अपराधों की, बल्कि इस प्रकार के अन्य अपराधों की भी जाँच कर सकता है, जैसे अश्लील सामग्री तैयार करनेवाले रैकेट, औरतों की 'बिक्री' और 'खरीद' इत्यादि, जिनका दायरा कई राज्यों और कई देशों तक फैला हुआ होता है।

भारत सरकार ने (देखें, नोटिफिकेशन संख्या 2-27/2001-सीपी, तारीख 28 अगस्त 2001, महिला और शिशु कल्याण विभाग, मानव संसाधन विकास मंत्रालय) सीबीआई ( सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन ) में पुलिस इंस्पेक्टर या इससे ऊपर के दर्जे के अधिकारियों को ( एंटी- ) ट्रैफिकिंग पुलिस अधिकारी नियुक्त किया है। इन अधिकारियों का अधिकार-क्षेत्र आइटीपीए के तहत आनेवाले अपराधों अथवा एक से अधिक राज्यों में होनेवाले, व्यक्तियों के यौन शोषण से संबंधित किसी भी अन्य कानून के तहत आनेवाले अपराधों की तफतीश के लिए पूरा भारत होगा।

### 3.2.19 सीबीआई को जाँच कैसे सौंपें

चूँकि सीबीआई के अधिकारों का स्रोत डीएसपीई (दिल्ली स्पेशल पुलिस इस्टैब्लिशमेंट) एक्ट है और भारत के संविधान के अनुसार कानून और व्यवस्था राज्य सरकारों का विषय है, अतः डीएसपीई की धारा 6 के तहत अधिसूचना राज्य सरकार द्वारा की जानी चाहिए, जिसके द्वारा ऐसे अपराधों की जाँच-पड़ताल के लिए सीबीआई को अधिकृत किया जाए। इसके बाद भारत सरकार डीएसपीई की धारा 5 के तहत अधिसूचना जारी करती है, जिसके द्वारा सीबीआई को



इ जाँ-पड़ताल के लिए अधिकृत किया जाता है। अतः पिछले पैराग्राफ में उद्धृत, भारत सरकार द्वारा जारी 28 अगस्त 2001 की अधिसूचना के बावजूद, सीबीआई ट्रेफिकिंग से संबंधित किसी अपराध की तफ्तीश का काम तभी अपने हाथ में लेती है, जब राज्य की पुलिस, उपर्युक्त मामला जिसके मूल अधिकार क्षेत्र में आता हो, उस केस की फाइल सीबीआई को सौंप दे। लेकिन अगर उच्चतम न्यायालय या कोई उच्च न्यायालय सीबीआई को ऐसा कोई मामला अपने हाथ में लेने का निर्देश देता है, तो सीबीआई सरकार की अधिसूचना की प्रतीक्षा नहीं कर सकती, न करेगी। अक्सर उच्च न्यायालय अथवा उच्चतम न्यायालय द्वारा ऐसे निर्देश जन हित याचिकाओं (पब्लिक इंटरेस्ट लिटिगेशन-पीआईएल) पर विचार करते समय दिए जाते हैं।

### **3.2.20 कानून लागू कराने और न्याय प्रदान करने में गैरसरकारी संगठनों ( एनजीओ ) की भूमिका**

आइटीपीए एक सामाजिक कानून है, जिसमें एनजीओ/सीबीओ और सामाजिक कार्यकर्ताओं की बहुत बड़ी भूमिका है। उनकी ये भूमिकाएँ उल्लेखनीय है :

- **सलाहकार परिषद** : राज्य सरकार, आइटीपीए की धारा 13(3)(बी) के तहत, अधिसूचना निकाल कर प्रमुख सामाजिक कार्यकर्ताओं की गैरसरकारी सलाहकार परिषद गठित कर सकती है। महिला सामाजिक कार्यकर्ताओं को मिला कर इन कार्यकर्ताओं की संख्या पाँच से ज्यादा नहीं होनी चाहिए। इस परिषद को आइटीपीए की कार्यशीलता (वर्किंग) के बारे में आम महत्व के प्रश्नों पर एसपीओ को सलाह देने का अधिकार है। यह परिषद पुलिस को इन मामलों में सलाह दे सकती है और इसके लिए सुविधा प्रदान कर सकती है - (क) मुक्त कराना, (ख) मुक्त कराए गए व्यक्तियों के अधिकारों की सुरक्षा सुनिश्चित करना, (ग) उत्पीड़ित व्यक्तियों की ऐसी देखभाल, जो उनके सर्वोत्तम हित में हो, (घ) उत्पीड़ित व्यक्तियों के सशक्तीकरण तथा पुनर्वास के लिए कदम उठाना, (ङ) ट्रेफिकिंग करनेवालों तथा अन्य शोषकों के खिलाफ कठोर कदम उठाना, (च) ट्रेफिकिंग की रोकथाम के लिए कदम उठाना और कार्यान्वित करना और (छ) सभी संबद्ध सरकारी और गैरसरकारी एजेंसियों से नेटवर्किंग करना।

- **सर्च के दौरान पुलिस के साथ रहना** : उत्पीड़ित व्यक्तियों अथवा आरोपित व्यक्तियों के लिए सर्च के समय उपस्थित रहने और सर्च का गवाह बनने के लिए एसपीओ को इलाके के दो या दो से अधिक सम्मानीय व्यक्तियों, जिनमें से एक महिला होनी चाहिए (आइटीपीए, धारा 15(2) की मौजूदगी का प्रबंध करना चाहिए। ऐसी स्थितियों में पुलिस द्वारा संपर्क करने के लिए एनजीओ सबसे उपयुक्त संगठन है। आइटीपीए की धारा 15(2) के प्रावधान के तहत पुरुष गवाह उसी इलाके का होना चाहिए, जबकि महिला गवाह किसी भी इलाके की हो सकती है। किसी महिला सामाजिक कार्यकर्ता को साथ ले कर जाना बेहतर रहेगा। पुलिस अधिकारियों को पहले से ही उन महिला कार्यकर्ताओं और



एनजीओ संस्थाओं की सूची बना कर अपने पास रखनी चाहिए, जिनकी सेवाएँ ऐसी स्थितियों में ली जा सकती हैं। यह धारा गैरसरकारी संगठनों को मुक्त कराने की प्रक्रिया का अंग होने का कानूनी अधिकार देती है।

- **मुक्त कराए गए/हटाए गए व्यक्तियों से इंटरव्यू करना :** आइटीपीए की धारा 15(6ए) के तहत कोई भी पुलिस अधिकारी किसी भी महिला से, जो सर्च के दौरान मुक्त कराई या हटाई गई हो (इनमें उत्पीड़ित, संदिग्ध तथा आरोपित, तीनों प्रकार की महिलाएँ शामिल हैं) इंटरव्यू किसी महिला पुलिस अधिकारी अथवा एनजीओ की महिला सदस्य की उपस्थिति में ही कर सकता है। यह धारा गैरसरकारी संगठनों को जाँच प्रक्रिया का अंग बनने का कानूनी अधिकार देती है।
- **मुक्त कराए गए व्यक्तियों का होम वेरिफिकेशन :** आइटीपीए की धारा 17(2) में मजिस्ट्रेट को यह अनिवार्य जिम्मेदारी दी गई है कि वह मुक्त कराए गए व्यक्ति के पुनर्वास पर अंतिम निर्णय लेने के पहले उसका होम वेरिफिकेशन कराए। इस बारे में निर्देश प्रोबेशन अधिकारी (प्रोबेशन ऑफ ऑफेंडर्स एक्ट, 1958 के तहत) को दिया जाना है। मजिस्ट्रेट इस काम के लिए किसी एनजीओ को भी कह सकता है। प्रोबेशन अधिकारी भी, जिसे यह जिम्मेदारी दी गई है, यह काम एनजीओ को सौंप सकता है। यह धारा गैरसरकारी संगठनों को पुनर्वास प्रक्रिया का अंग बनने का कानूनी अधिकार देती है।
- **पुनर्वास के बारे में एनजीओ द्वारा मजिस्ट्रेट को सलाह दिया जाना :** मुक्त कराए गए व्यक्ति के होम वेरिफिकेशन और पुनर्वास के मामले में सहायता प्राप्त करने के लिए मजिस्ट्रेट, आइटीपीए की धारा 17(5) के तहत, पाँच सम्माननीय व्यक्तियों के समूह को समन कर सकता है—इनमें से तीन महिलाएँ होनी चाहिए। बेहतर होगी कि मजिस्ट्रेट को ऐसी गैरसरकारी संस्थाओं की सूची दी जाए जो इस क्षेत्र में काम कर रही हो, ताकि उपयुक्त समय पर उनकी सेवाओं का उपयोग किया जा सके। यह धारा गैरसरकारी संगठनों को न्याय प्रदान करने की प्रक्रिया का भी अंग बनने का कानूनी अधिकार और यह सुनिश्चित करने का अवसर देती है कि यह प्रक्रिया मानव अधिकारों के सिद्धांतों के अनुकूल हो और सभी निर्णय मुक्त कराए गए व्यक्ति के सर्वोत्तम हित में हों।

### 3.2.21 सर्च और मुक्त कराने में क्या कोई गवाह पुलिस से सहयोग करने से मना कर सकता है ?

आइटीपीए की धारा 15(3) के अनुसार, ऐसा व्यक्ति, जिसे सर्च के दौरान उपस्थित रहने तथा गवाह बनने के लिए लिखित आदेश दिया गया है अथवा इस आदेश की सुपुर्दगी हुई है, बिना किसी उचित कारण के इससे इनकार करता है या इसे नजरअंदाज करता है, उसे आइपीसी की धारा 187 (कानून द्वारा परिबद्ध होने पर लोक सेवक की सहायता करने से इनकार) के तहत



अपराधी माना जाएगा। यह असंज्ञेय (नॉन-कॉग्निजेबल) और जमानती (बेलेबल) अपराध है, इसके लिए 6 महीने तक के कारावास और जुर्माने का प्रावधान है।

### 3.2.22 मुक्त कराए गए व्यक्तियों का होम वेरिफिकेशन कैसे किया जाए ?

आइटीपीए की धारा 17(2) का अनिवार्य तकाजा है कि मुक्त कराए गए व्यक्ति का होम वेरिफिकेशन किया जाए। वेरिफिकेशन में ये बातें शामिल हैं : (क) उसके द्वारा बताई गई उम्र सही है कि नहीं, (ख) उसका चरित्र और इतिहास, (ग) क्या उस व्यक्ति के माता-पिता/अभिभावक/पति उसकी जिम्मेदारी लेने में सक्षम हैं? (घ) अगर वह घर भेज दी जाती है, तो उस पर घर की स्थिति का कैसा प्रभाव पड़ने की संभावना है, (ङ) उसका व्यक्तित्व और (च) आइटीपीए की धारा 17(5) के तहत उसके पुनर्वास की संभावनाएँ। चूँकि वेरिफिकेशन का काम एनजीओ को सौंपा जा सकता है, अतः कानून का पालन करानेवाले अधिकारियों को चाहिए कि वे उपयुक्त एनजीओ संगठनों के संपर्क में रहें और उनका नाम, पता तथा अन्य तफसीलें मजिस्ट्रेट की जानकारी में लाएँ। किसी एनजीओ को जिम्मेदारी सौंप दिए जाने के बाद उसे आवश्यक सुविधाएँ प्रदान की जानी चाहिए, ताकि वेरिफिकेशन में देर न हो। वेरिफिकेशन के काम में किसी प्रकार का व्यक्तिगत पूर्वग्रह नहीं होना चाहिए। वेरिफिकेशन करनेवाले व्यक्ति/व्यक्तियों को उत्पीड़िता, उसके शुभचिंतकों, मित्रों, माता-पिता, अभिभावकों, पड़ोसियों और उन सभी व्यक्तियों से, जो सूचना दे सकते हैं, विचार-विमर्श करना चाहिए। ऐसे कई उदाहरण हैं, जिनमें अभिभावक ट्रैफिकिंग में खुद शामिल रहे हैं। इसलिए किसी नतीजे तक पहुँचने के लिए बहुत अधिक सतर्क रहने की आवश्यकता है (होम वेरिफिकेशन की तफसील के लिए देखें- पाटकर, 2004)।

### 3.2.23 मुकदमेबाजी के विरुद्ध पुलिस अधिकारियों और एनजीओ संस्थानों की सुरक्षा

आइटीपीए की धारा 15(6) में नेकनीयत (बोनाफाइड) काम के लिए सुरक्षा की व्यवस्था है। जो अधिकृत पुलिस अधिकारी, गवाह और एनजीओ सर्च में भाग लेते हैं, सर्च के मौके पर उपस्थित रहते हैं या उसका गवाह बनते हैं, उनके विरुद्ध सर्च से संबंधित या उस उद्देश्य से किए गए किसी नेकनीयत (बोनाफाइड) काम के लिए किसी प्रकार की मुकदमेबाजी अथवा सिविल या क्रिमिनल कार्यवाही नहीं हो सकती आइटीपीए, धारा 15)।

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## पुलिस आदेश 44/2011

विषय : गुमशुदा व्यक्तियों के पंजीकरण, जाँच एवं अभिलेख संधारण संबंधी संस्थागत व्यवस्था।

वर्तमान समय में बालश्रम, मानव अंग प्रतिरोपण, फिरौती के लिए अपहरण, वेश्यावृत्ति जैसे अवैध मानव व्यापार (विशेष तौर पर महिलाओं एवं बच्चों का) के अपराध में उतरोतर वृद्धि हो रही है जिसके कारण गुमशुदा व्यक्तियों के संबंध में पुलिस हस्तक में उल्लेखित नियमों के तहत की जाने वाली कार्रवाई पर्याप्त नहीं है। उपरोक्त अपराध की गुरुत्ता तथा उससे गुमशुदा व्यक्ति की घटनाओं के परस्पर संबंध रहने के संदर्भ में गुमशुदा घटनाओं की जाँच के संबंध में विस्तृत दिशा निर्देश जारी करने की आवश्यकता महसूस की गई ताकि गुमशुदा घटनाओं की जाँच का अनुसरण प्रभावी ढंग से किया जा सकता सके। उक्त पृष्ठभूमि में यह पुलिस आदेश निर्गत किया जाता है।

पुलिस हस्तक के नियम 415 (1), तथा परिशिष्ट 81 में लापता व्यक्ति ब्यूरो के संबंध में नियम प्रतिपादित है जिसके तहत विभिन्न पंजियों का संधारण, जाँच एवं 90 दिनों के अन्दर वांछित प्रपत्रों में प्रतिवेदन समर्पित करने का उल्लेख है। इस संबंध में आम तौर से निम्नलिखित त्रुटियाँ पाई जाती हैं:-

- 1) किसी व्यक्ति के खोने पर थाना में सूचना दर्ज करने में परेशानी होती है क्योंकि ऐसी घटना को बहुत हल्का तथा सामान्य लिया जाता है एवं इसे कोई अपराध की घटना नहीं माना जाता है।
- 2) चूँकि यह सूचना थाने में दर्ज नहीं होती है ऐसी घटनाओं से अचल निरीक्षक/अनुमण्डल पुलिस पदाधिकारी अनभिज्ञ होते हैं।
- 3) ऐसी घटनाओं की सूचनाओं का आदान-प्रदान सीमावर्ती थाना/जिला/राज्यों में करने की परम्परा प्रयोग में नहीं रह गई है।
- 4) इस संबंध में पुलिस हस्तक प्रपत्र कम्प्यूटर में प्रयोग के योग्य नहीं रह गये हैं।
- 5) अपहृत व्यक्ति जो लम्बी अवधि तक बरामद नहीं होते हैं को लापता व्यक्ति के रूप में अभिलेखित कर रखने का प्रावधान नहीं है।
- 6) उत्तर प्रदेश में निठारी हत्याओं की घटनाओं के उद्भेदन तथा इस तरह के अन्य घटनाओं के आलोक में माननीय उच्चतम न्यायालय द्वारा होरी लाल बनाम पुलिस आयुक्त, नई दिल्ली में बच्चों एवं महिलाओं की खोज के अनुसरण करने के लिए विशेष रूप से दबाव दिया गया है।

उपरोक्त तथ्यों का ध्यान में रखते हुए इस संबंध में निम्नलिखित आदेश दिया जाता है:-

- क) पुलिस अधीक्षक यह सुनिश्चित करें कि लापता व्यक्ति के संबंध में हर थाना में सूचना दर्ज कराने के लिए आम जनों को प्रोत्साहित किया जाय। चौकीदारी पैरेड में भी इस बिन्दु पर सूचना संग्रह कर मामला दर्ज किया जाए।



- ख) पुलिस अधीक्षक यह सुनिश्चित करायेंगे कि थाना के द्वारा इस तरह की सूचनाओं को दर्ज नहीं करने की स्थिति में आम जनों को अन्य विकल्प उपलब्ध कराया जाय, यथा टॉल-फ्री नम्बर हेल्प लाईन के माध्यम से इसे दर्ज कर कार्रवाई की जाय। इस विकल्प के नहीं उपलब्ध होने की स्थिति में, जिला नियंत्रण कक्ष का दूरभाष, महिला पुलिस स्टेशन का दूरभाष, अनैतिक मानव व्यापार यूनिट के दूरभाष पर ऐसी सूचनाओं को दर्ज करने के लिए विकल्प उपलब्ध कराया जाय। ऐसी सूचना दूरभाष पर प्राप्त होते ही इसे तत्काल संबंधित थाना प्रभारी को आवश्यक क्रियार्थ संप्रेषित कर दी जायेगी।
- ग) गुमशुदा व्यक्तियों के संबंध में स्थानीय समाचार पत्रों, दूरदर्शन चैनलों पर प्रचार-प्रसार कराया जाय।
- घ) अधिकांश जिलों में महिला पुलिस स्टेशन कार्य रह रहा है। महिला पुलिस स्टेशन द्वारा पुलिस हस्तक प्रपत्र 221 के तहत गुमशुदा व्यक्तियों का सूचना दर्ज कर इसे डी0सी0बी0/ संबंधित थाना को अग्रसारित किया जायेगा।
- ङ) पुलिस अधीक्षक यह सुनिश्चित करेंगे कि जैसे ही लापता व्यक्ति के बारे में सूचना दर्ज होती है, इसी प्रतिलिपि डी0सी0बी0 तथा लापता व्यक्ति ब्यूरो को भेज दी जाय।
- च) डी0सी0बी0 द्वारा सभी लापता व्यक्ति, बरामद व्यक्ति तथा अज्ञात बरामद शव के संबंध में विवरणी संधारित की जायेगी तथा उनके द्वारा पुलिस हस्तक नियम के परिशिष्ट 81 के तहत उल्लेखित प्रावधानों के तहत कार्रवाई की जायेगी।
- छ) प्रभारी पुलिस अधीक्षक लापता व्यक्ति ब्यूरो, अपराध अनुसंधान विभाग द्वारा यह सुनिश्चित किया जायेगा कि अपराध अनुसंधान विभाग मुख्यालय ऐसे सभी दर्ज मामलों का सम्पूर्ण विवरणी कम्प्यूटरिकृत कर कम्प्यूटर में उपलब्ध रखा जाय। समय-समय पर इन लापता व्यक्तियों के संबंध में सूचनाओं को दैनिक अखबार पत्र, दूरदर्शन चैनल एवं इंटरनेट के माध्यम से आम जनों के समक्ष प्रदर्शित किया जाय ताकि आम जनों को इसकी जानकारी हो सके तथा लापता व्यक्तियों/अज्ञात शवों/मानसिक रूप से विक्षिप्त की पहचान स्थापित हो सके।
- ज) पुलिस अधीक्षक यह सुनिश्चित करें कि अपहृत काण्डों/अन्य काण्डों जिनमें लापता व्यक्ति की बरामदी यदि छः माह तक नहीं होती है तो पुलिस हस्तक प्रपत्र 221 में लापता व्यक्ति की प्राथमिकी दर्ज कर अग्रतर कार्रवाई शुरू की जाय। इसे दर्ज करने की जिम्मेदारी मुख्य रूप से संबंधित काण्ड के अनुसंधानकर्ता की होगी।
- झ) पुलिस अधीक्षक यह सुनिश्चित करें कि यदि कोई व्यक्ति अपनी निर्धारित यात्रा के बाद लम्बी अवधि तक वापस नहीं होता है, इस स्थिति में भी पुलिस हस्तक प्रपत्र 221 के तहत लापता व्यक्ति के रूप में मामला दर्ज की अग्रतर कार्रवाई की जाय।
- ञ) इस आदेश के साथ लापता व्यक्ति के संबंध में शिकायत दर्ज करने के लिए पुलिस हस्तक प्रपत्र 221 के अतिरिक्त एक नया प्रपत्र तैयार किया गया है जो तीन भाग में है।



इसका भाग A एवं भाग B शिकायतकर्ता द्वारा भरे जायेंगे तथा भाग C शिकायत प्राप्त करने वाले पुलिस पदाधिकारी द्वारा भरे जायेंगे। ये सभी प्रपत्र चार प्रति में भरे जायेंगे। इसकी मूल प्रति डी०सी०बी० को, द्वितीय प्रति शिकायतकर्ता को तथा तृतीय प्रति लापता व्यक्ति ब्यूरो, अप०अनु०विभाग मुख्यालय को भेजी जाय। इसकी चौथी प्रति संबंधित पुलिस स्टेशन द्वारा अपने अभिलेख के रूप में सुरक्षित रखी जायेगी।

**अनुलग्नक:- प्रपत्र।**

ह०/-

**( गौरी शंकर रथ )**

**महानिदेशक एवं पुलिस महानिरीक्षक,  
झारखण्ड, राँची**

**ज्ञापांक 1173/एन०जी०ओ०**

**महानिदेशक एवं पुलिस महानिरीक्षक का कार्यालय, झारखण्ड, राँची।**

राँची, दिनांक-09.06.2011

**प्रतिलिपि :-**

- 1) सभी अपर पुलिस महानिदेशक, झारखण्ड को सूचनार्थ एवं आवश्यक क्रियार्थ।
- 2) पुलिस महानिरीक्षक, प्रोविजन/मानवाधिकार/मुख्यालय/बजट/अभियान/झा०स०पु०/प्रशिक्षण, झारखण्ड, राँची को सूचनार्थ एवं आवश्यक क्रियार्थ।
- 3) सभी प्रक्षेत्रीय पुलिस महानिरीक्षक (रेल/निगरानी/रा०अ०अभि०ब्यू०/एस०टी०एफ० सहित), झारखण्ड को सूचनार्थ एवं आवश्यक क्रियार्थ।
- 4) सभी क्षेत्रीय पुलिस उप महानिरीक्षक (रेल/पी०टी०सी०/जं०वा०फे०स्कू० सहित), झारखण्ड को सूचनार्थ एवं आवश्यक क्रियार्थ।
- 5) पुलिस उप महानिरीक्षक (कार्मिक), झारखण्ड, राँची को सूचनार्थ एवं आवश्यक क्रियार्थ।
- 6) वरीय पुलिस अधीक्षक, राँची/जमशेदपुर/सभी पुलिस अधीक्षक (रेल/वितन्तु/झा०स०पु०प्र०के० पदमा सहित)/प्राचार्य, टी०टी०एस०, जमशेदपुर को सूचनार्थ एवं आवश्यक क्रियार्थ।
- 7) सभी समादेष्टा, झा०स०पु० (आई०आर०बी० सहित), झारखण्ड को सूचनार्थ एवं आवश्यक क्रियार्थ।

ह०/-

**महानिदेशक एवं पुलिस महानिरीक्षक,  
झारखण्ड, राँची**

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## पुलिस आदेश संख्या 57/2013

विषय :- माननीय सर्वोच्च न्यायालय द्वारा W.P. (C) No.-75/2012 Bachapan Bachao Andolan Vs. Union of India & Ors. में परित न्यायादेश के आलोक में कार्रवाई हेतु।

उपर्युक्त विषय पर माननीय सर्वोच्च न्यायालय द्वारा Missing Children (लापता बच्चों) के संबंध में पुलिस द्वारा अपेक्षित कार्रवाई हेतु व्यापक दिशा-निर्देश दिए गए हैं। माननीय सर्वोच्च न्यायालय द्वारा पारित न्यायादेश के प्रासंगिक अंश (Relevant) एवं उस पर पुलिस अधिकारियों द्वारा अपेक्षित कार्रवाई बिन्दुवार निम्नवत हैं :-

1. "We make it clear that, in case of every missing child reported, there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same provided otherwise. Accordingly whenever complain is filed before the police authorities regarding a missing child; the same must be entertained under Section 154 Cr.P.C. However, even in respect of complaints made otherwise with regard to a child, which may come within the scope of Section 155 Cr.P.C., upon making an entry in the Book to be maintained for the purposes of Section 155 Cr.P.C., and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint. The Magistrate, upon receipt of the information recorded under Section 155 Cr.P.C., shall proceed, in the meantime, to take appropriate action under sub-section(2), especially, if the complaint relates to a child and in particular, a girl child."

अतः इस आदेश के पारित होने के पश्चात् सभी थाना प्रभारियों एवं सभी नियन्त्री तथा पर्यवेक्षी अधिकारियों की जवाबदेही है कि वह जब कभी भी गुमशुदा बच्चों की थाना में रिपोर्ट प्राप्त होती है तो माननीय सर्वोच्च न्यायालय के आदेश के आलोक में धारा 154 द0प्र0सं0 के अन्तर्गत प्राथमिकी दर्ज करेंगे। यदि गुमशुदा बच्चे की रिपोर्ट/रिपोर्ट करने वाले व्यक्ति के बयान में किसी प्रकार के संज्ञोय अपराध की विवरणी उपलब्ध नहीं है तब भी उसे abduction (अपहरण) या trafficking (मानव तस्करी) मानते हुए इन अपराधों के लिए बने कानूनों की सुसंगत धाराओं में प्राथमिकी दर्ज करेंगे।

2. "Each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act."

पूर्व में पुलिस मुख्यालय, झारखण्ड, राँची का द्वारा दिनांक 14.03.13 द्वारा सभी पुलिस अधीक्षकों को निर्देशित किया गया था कि प्रत्येक थाना में बाल कल्याण पदाधिकारी (Juvenile Welfare Officer) की नियुक्ति करेंगे। माननीय सर्वोच्च न्यायालय के आदेश के आलोक में सभी पुलिस अधीक्षकों को निर्देश दिया जाता है कि इस संबंध में प्रत्येक थाना में एक बाल अधिकारी को नामित करना सुनिश्चित करेंगे।

3. "Every found/recovered child must be immediately photographed by the police for purposes of advertisement and to make people aware of the missing child. Photographs of the recovered child should be published on the website and through the newspapers and even on the T.V. so that parents of the missing



child could locate their missing child and recover him or her from custody of the police."

सभी जिलों के D.C.B. (जिला अपराध अभिलेख ब्यूरो) में Missing Person Bureau गठित है। Missing Person (लापता बच्चों) के संबंध में पुलिस हस्तक नियम 415(1) एवं Appendix (परिशिष्ट)-81 में व्यापक दिशा निर्देश उपलब्ध है। सभी पुलिस अधीक्षक सुनिश्चित करेंगे कि उक्त दिशा निर्देशों का कड़ाई से पालन हो साथ-साथ माननीय सर्वोच्च न्यायालय के आदेश के आलोक में यदि गुमशुदा व्यक्ति बच्चा है तो निम्न अतिरिक्त आदेश/व्यवस्था तत्काल लागू की जाती है :-

- क) संबंधित जिला के पुलिस अधीक्षक सुनिश्चित करेंगे कि उक्त गुमशुदा बच्चों का फोटो/हुलिया एवं पूर्ण विवरणी स्थानीय दैनिक समाचार पत्रों/न्यूज चैनलों में प्रकाशित करायेंगे। (परन्तु यह कार्य करने से पूर्व गुमशुदा बच्चे के माता पिता/अभिभावक से लिखित अनुमति प्राप्त कर लेंगे, ताकि Juvenile Justice Act, 2000 की धारा-21 का उल्लंघन न हो)।
- ख) सभी पुलिस अधीक्षक इन सभी गुमशुदा बच्चों की सम्पूर्ण विवरणी को [www.trackingthemissingchild.gov.in](http://www.trackingthemissingchild.gov.in) पर अपलोड करने की व्यवस्था सुनिश्चित करेंगे (भारत सरकार की महिला एवं बाल मंत्रालय के द्वारा उक्त वेबसाइट का संचालन किया जा रहा है तथा पूरे देश के सभी राज्यों के गुमशुदों का डाटा उक्त वेबसाइट पर उपलब्ध है)। यदि किसी पुलिस अधीक्षक को [www.tackingthemissingchild.gov.in](http://www.tackingthemissingchild.gov.in) पर डाटा अपलोड करने में कठिनाई हो तो अपराध अनुसंधान विभाग, झारखण्ड, राँची से सहयोग प्राप्त करेंगे।
- ग) पुलिस अधीक्षक, अपराध अनुसंधान विभाग (MPB (Missing Person Buereu) के प्रभार में) का दायित्व होगा कि प्रत्येक माह के अन्त में सभी जिला के MPB से गुमशुदा व्यक्ति (विशेष कर गुमशुदा बच्चों) का हुलिया की विवरणी प्राप्त कर उसे झारखण्ड पुलिस की वेबसाइट [jhpolicе.gov.in](http://jhpolicе.gov.in) पर अपलोड कराने हेतु CD/Pen Drive में डाल कर प्रभारी पुलिस अधीक्षक, वितन्तु (जो [jhpolicе.gov.in](http://jhpolicе.gov.in) के रखरखाव हेतु सक्षम अधिकारी है) को भेजेंगे। (उल्लेखनीय है कि पुलिस मैनुअल के प्रावधानों एवं चली आ रही परिपाटी के अनुसार पूर्व से ही अपराध अनुसंधान विभाग, झारखण्ड द्वारा प्रकाशित मासिक C.I.G. में अन्य विवरणी के अतिरिक्त गुमशुदा की विवरणी भी उपलब्ध रहती है। इस आदेश के माध्यम से उक्त चली आ रही परिपाटी में ये अतिरिक्त व्यवस्था लागू की गई है कि C.I.G. में प्रकाशन के अतिरिक्त विशेष गुमशुदा व्यक्तियों की विवरणी झारखण्ड पुलिस के वेबसाइट पर उपलब्ध रहे।

4. "In case where First Information Reports have not been lodged at all and the child is still missing, an F.I.R. should be lodged within a month from the date of communication of this Order and further investigation may proceed on that basis."



माननीय सर्वोच्च न्यायालय के आदेश के आलोक में सुनिश्चित करेंगे कि पूर्व में लापता बच्चों के संबंध में भी इस आदेश को लागू किया जाय।

5. "Any private Home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply will all the provisions of the Juvenile Justice Act, including registration."

माननीय सर्वोच्च न्यायालय के आदेश के आलोक में सभी पुलिस अधिकारी सुनिश्चित करेंगे कि जब कभी गुमशुदा बच्चा या CHILD IN NEED OF CARE AND PROTECTION (CINCP) प्राप्त होता है/पुलिस को मिलता है एवं उक्त बरामद/गुमशुदा बच्चा या CINCP को किसी Shelter Home में रखने की आवश्यकता है तो उक्त बच्चे को निजी Shelter Home में रखने के पूर्व CWC (बाल कल्याण समिति) के समक्ष अवश्य प्रस्तुत कर देंगे। बच्चे को Shelter Home में रखने से पूर्व सुनिश्चित कर लिया जाय की Shelter Home, J.J. Act, के सभी प्रावधान (including registration) को अवश्य पूरा करता है।

( राजीव कुमार )

महानिदेशक एवं पुलिस महानिरीक्षक,  
झारखण्ड, राँची

ज्ञापांक 1676/एन0जी0ओ0

महानिदेशक एवं पुलिस महानिरीक्षक का कार्यालय, झारखण्ड, राँची।

राँची, दिनांक-06.08.2013

प्रतिलिपि :-

1. अपर पुलिस महानिदेशक, रेल/अप0अनु0 विभाग, झारखण्ड, राँची को सूचनार्थ प्रेषित।
2. पुलिस महानिरीक्षक, सभी प्रक्षेत्र/अप0अनु0 विभाग/रेल सहित, झारखण्ड को सूचनार्थ प्रेषित।
3. पुलिस उप-महानिरीक्षक, सभी क्षेत्र/अप0अनु0 विभाग/रेल सहित, झारखण्ड को सूचनार्थ प्रेषित।
4. वरीय पुलिस अधीक्षक, राँची/जमशेदपुर को सूचनार्थ एवं सुनिश्चित करें कि इस आदेश की एक प्रति सभी थाना प्रभारी/ओ0पी0 प्रभारी को अविलम्ब कराई जाय।
5. सभी पुलिस अधीक्षक (रेल सहित)/वितन्तु संवाद/अप0अनु0विभाग को सूचनार्थ एवं सुनिश्चित करें कि इस आदेश की एक प्रति सभी थाना प्रभारी/ओ0पी0 प्रभारी को अविलम्ब उपलब्ध कराई जाय।

महानिदेशक एवं पुलिस महानिरीक्षक  
झारखण्ड, राँची।

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**F.NO.15011/6/2009-ATC (Advisory)**

**GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
NORTH BLOCK NEW DELHI/CS DIVISION**

**New Delhi, the 09.09.2009**

**OFFICE MEMORANDUM**

**Subject : Advisory on Preventing and Combating Human Trafficking in India**

**Introduction:**

The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.

**Human Trafficking and Indian Laws:**

Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23 (1). Following specific legislations deal with Trafficking in Human Beings (THB)

- Laws relating to trafficking in women and children being administered by the MWCD ([wcd.nic.in](http://wcd.nic.in))
  - i. Immoral Traffic (Prevention) Act, 1956,
  - ii. Prohibition of Child Marriage Act (PCMA), 2006.
- The “Bonded Labour System (Abolition) Act, 1976”, being administered by Ministry of Labour and Employment ([labour.nic.in](http://labour.nic.in)), provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.
- Further, commercial dealing in human organs is a punishable offence under the Transplantation of Human Organs act, 1994, being administered by Ministry of Health and family Welfare ([mohfw.nic.in](http://mohfw.nic.in)). The appropriate authorities appointed under the Act are responsible and empowered to check the illegal activities of human organs traffickers.
- Specific Sections in the IPC, e.g., Sections 372 and 373 dealing with selling and buying of girls for the purposes of prostitution.

‘Public Order’ and ‘Police’ as per the 7th Schedule of the Constitution of India, are State subjects and, as such, detection, registration, investigation and prevention of crime is primarily the responsibility of the State Governments. However, Central Government supplements the efforts of the State Governments by providing policy guidelines, financial assistance for modernization of the State Police Forces in terms of weaponry, communication, equipment, mobility, training and other infrastructure under the Scheme of Modernization of State Police Forces.



A working Group comprising of Directors General of Police of some of the affected States was constituted in 2004 by MHA to study the issues relating to cross border trafficking. The recommendations of this group were sent to the State Governments and they were advised to evolve a comprehensive strategy for effectively dealing with the problem of trafficking. Also an **“Integrated National Plan of Action to Prevent and Combat Trafficking in Human Beings Specially Women and Children”** ([nhrc.nic.in/planofaction.doc](http://nhrc.nic.in/planofaction.doc)), which has been worked out through a consultation process of all related Ministries and other stakeholders, has been adopted by Government of India in the Ministry of Women and Child Development. This plan deals with all aspects of prevention, rescue, registration of cases, investigations, prosecution, conviction, cross border trafficking issues, rehabilitation, repatriation and reintegration of victims etc. Based on these the recommendations of DGPs and the integrated action plan stated above the State Governments may evolve a holistic approach towards combating Trafficking in Human Beings (THB), encompassing all aspects of prevention, rescue and rehabilitation. Convergence should be adopted between various state departments and stakeholders for effective of handling of crime of Trafficking in Human Beings (THB).

Following key points of advice have been worked out in collaboration with the related Ministries of Women and Child Development, Labour and Employment, and Health and family Welfare where the assistance/ action by the State Government/ Police would be required for the effective implementation/ enforcement of laws relating to Trafficking in Human Beings (THB):

1. **Constitution of the State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation.**

According to the Supreme Court order dated 2/05/09 (Vishal Jeet Vs Union of India), every State Government should set-up a State Advisory Committee for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation. Ministry of Women & Child Development (MWCD) has already issued an advisory in this regard to all the State Governments. .

2. **Implementation of Immoral Traffic (Prevention) Act (ITPA), 1956.**

- 2.1. Since ITPA is the main Act that can be used to book trafficking for commercial sexual exploitation, its implementation is essential for counter-trafficking. Under Section 23, the State Government may, by notification in the Official Gazette, **make rules for carrying out the purposes of the Act**. Such rules may be formulated, notified and intimated to MWCD with a copy to MHA.
- 2.2. Under Section 13, the State Government may **appoint ‘Special Police Officers (SPOs)’** and the ‘Non-official advisory bodies’ to advise the SPOs for dealing with offences under the Act.
- 2.3. Under Section 21, the State Governments may set-up ‘Protective homes’ and ‘Corrective institutions’ for ensuring proper implementation of the provisions of the Act. **The information regarding these homes may be circulated to all Police Stations and officers dealing with the trafficking cases.**



- 2.4. Under Section 22-A, the State Government may, by notification in the Official Gazette, and **after consultation with the High Court, establish one or more Courts** for providing speedy trial of the offences under the Act.
- 2.5. It is generally noticed that sections 8 and 20 of ITPA, which focuses on the victims, are more often invoked as a result of which the victim is re-victimized and the exploiters are not punished. It is, therefore, advised that sections 3, 6 and 7 which pertains to pimps, brothel owners, clients who are actual perpetrators of the crimes need to be invoked rather than sections 8 and 20. **Law enforcement agencies need to adopt a victim centric approach in the investigations.**
3. **Implementation of Juvenile Justice Act (JJ Act), 2000:** Juvenile Justice Act provides comprehensive mechanism for care and protection of children including rehabilitation and social integration of children. Therefore, its implementation is essential to address trafficking of children. Following provisions of the Act are concerned with the Home Department/ Police and require action by the State Governments:
  - 3.1. Under Section 62-A, the State Government shall constitute 'Child Protection Units' for the State and districts to fulfill its responsibilities as stipulated under the Act.
  - 3.2. Under Section 63, in each police station, at least one police officer may be designated as the 'Juvenile or Child Welfare Officer' to handle a juvenile or child in coordination with the police.
  - 3.3. Under Section 68, the State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
4. **Implementation of Prohibition of Child Marriage Act (PCMA), 2006:** Prohibition of Child Marriage Act (PCMA) was enacted in 2006 repealing Child Marriage Restraint Act, 1929. It is reported that traffickers in some pockets in the country are exploiting evil custom of child marriage to target innocent girls for trafficking. Therefore, it is essential to implement the Act to address this modus operandi of traffickers.
  - 4.1. As per PCMA, State Governments under Section 19 (1), may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.
  - 4.2. Under Section 16, the State Government may appoint 'Child Marriage Prohibition Officers' to fulfill the mandate as stipulated in the Act. State Governments may intimate the MWCD about the status of appointment of Prohibition Officers and Rules.
  - 4.3. The State Governments are to maintain MIS and send quarterly information on number of cases registered under PCMA and convictions.
  - 4.4. On receiving a complaint about child marriage, police are required to follow the procedure laid down in the Code of Criminal Procedure, 1973, which include registering an FIR and carrying out investigation.



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- 4.5. The offences under PCMA are cognizable and non-bailable, hence, immediate arrest of offenders is necessary.
- 4.6. Extra vigilance should be maintained during festivals such as 'Akshya Tritha' to ensure that no child marriage takes place.
5. **Capacity building of the State machinery:** Implementation of the legal provisions in relation to applicable Acts- CLPRA, BLSA, IPTA, JJA and IPC involves not only police but many other officials dealing with the Criminal Justice System - notably the executive magistrates, the labour officials, CWC members and in-charges of Homes. Therefore, the State government may initiate a time bound action plan to build the required capacity of the state investigation and prosecution machinery in this regard. Some of the key areas identified for capacity building are listed below.
- 5.1. Identification of victims of trafficking for the purpose of commercial sexual exploitation, child/bonded/forced labour and for illegal organ removal.
- 5.2. Recognition of all applicable legal provisions of the law to a case of trafficking (not just one Act or two) by law enforcement machinery.
- 5.3. Understanding of legal and administrative provisions for inter-state and cross border investigation.
- 5.4. Understanding of legal provisions for closure of places of exploitation.
- 5.5. Understanding of legal provisions for confiscation of proceeds of crime.
- 5.6. Understanding of the mechanism in place for victim support and assistance.
- 5.7. Integrated actions on prosecution, prevention and protection by building linkages with other Government departments and agencies, including NGOs.
- 5.8. For capacity building the Bureau of Police Research and Development (BPR&D) ([www.bprd.gov.in](http://www.bprd.gov.in)), at the behest of MHA, has prepared a **training manual on Human Trafficking Handbook for Investigators** and this has been circulated to the States for use in the police Training Institutes. All the training materials have also been uploaded on BPR&D website. BPR&D has already translated the training material in Hindi, Telugu and Marathi languages. 12 Resource Books on "Training and Investigation on Anti-Human Trafficking" prepared as a result of pilot project between MHA and UNODC ([www.unodc.org/india/ind\\_s16.html](http://www.unodc.org/india/ind_s16.html)) have also been uploaded on BPR&D website. These resource materials should be used by State Governments for the capacity building of all agencies involved in prevention of human trafficking.
- 5.9. Also MWCD, in collaboration with National institute of Public Cooperation and Child Development (NIPCCD) and UNICEF, has developed manuals for training of stakeholders such as 'Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation', 'Manual for Medical Officers for dealing with Child Victims
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of Trafficking and Commercial Sexual Exploitation', counseling services for Child survivors of trafficking', Counseling services for Child survivors of trafficking', Social workers.

- 5.10. States may organize training/workshops/awareness campaign to sensitize their SHOs/Dy. SP/ACP and other law enforcement agencies towards the crime, safety and security of women and children.
- 5.11. The **Compendium of Best Practices in handling cases of human trafficking** ([www.unodc.org/india/ind\\_s16.html](http://www.unodc.org/india/ind_s16.html)) **has already been circulated** to all the State Governments and UT Administrations for information and appropriate use.

## 6. **Prevention of Trafficking:**

- 6.1. It has been noticed that people, especially women and children are vulnerable to trafficking during 'distress migration' and from 'disaster prone areas'- such as during floods, earthquakes, crop failures, riots, terrorist activities etc. Therefore, it is important to establish extra vigilance in this regard around transit points and at borders- inter-district/inter-state and international.
- 6.2. Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery for spotting and rescuing the victims.
- 6.3. Effective patrolling and vigil at locations prone to trafficking such as highways, dhabas, railway stations and bus stations for suspicious movement of traffickers and victims and monitoring, through involvement of village community, the suspicious/ unnecessary movements of strangers in the villages.
- 6.4. Pro-active policing through information exchange with representatives from the local Government, community, NGOs with a view to raise awareness and garner active support of the community.
- 6.5. Periodical checks on transporters to prevent physical transportation of the trafficked persons.
- 6.6. Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- 6.7. Facilitating inter-State collaboration by sharing data on missing children/ kidnappings and suspected offenders. Development of victim and offender profiles on an inter-agency basis.
- 6.8. Sensitization programmes/workshops for police officers/railway police force and prosecutors on various legislations mentioned above in relation to trafficking. State nodal officers may hold periodical meetings to review and monitor the efforts taken to prevent and combat the crime of trafficking.



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- 6.9. In case of child trafficking, following provisions also need to be kept in view:-
- 6.9.1. Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies, NGO or members of the public, following up reports of missing children).
  - 6.9.2. Report instances of children in need of protection to relevant child protection agencies. For this purpose the Police Stations could be sensitized.
  - 6.9.3. The development of victim profiling with other agencies.
  - 6.9.4. Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans.
  - 6.9.5. Carry out checks on sponsors and people who claim to be the relatives of children identified as being at risk of trafficking.
  - 6.9.6. Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate.
  - 6.9.7. If children disappear, initiate missing person's procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required.
  - 6.9.8. Ministry of Labour & Employment has developed a detailed protocol for prevention, rescue, repatriation, rehabilitation and reintegration of migrant and trafficked child labour. The protocol has been issued to all State Governments for implementation.
7. **Investigation & Prosecution:**
- 7.1. Standard operating procedures for Investigation have been developed under the pilot project between MHA and UNODC as mention in para 5.8 above, which can be used for effective investigation in trafficking related crimes.
  - 7.2. One of the effective means of securing better conviction rates of perpetrators of crime of trafficking is to base the case on documentary, forensic and material evidence. At present, most of the time, the victim is being used as a witness and more often than not, he/she can easily be intimidated. State Governments are advised to encourage the law enforcement agencies to build full proof investigation against the traffickers, so that, convictions can be guaranteed.
  - 7.3. Use of fast track courts and video conferencing to the extent possible.
8. **Rescue and Rehabilitation**
- 8.1. Police should work with other agencies and stakeholders to ensure that those who are rescued or who choose to return are not re-trafficked; this
-



- should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).
- 8.2. Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available. The Ministry of Women and Child Development runs short stay homes Swadhar shelter homes for women in difficult circumstances ([wcd.nic.in/Comscheme.doc](http://wcd.nic.in/Comscheme.doc)). These cater to trafficked women/girls rescued or runaway from brothels or victims of sexual crimes who are disowned by family or who do not want to go back to respective family for various reasons. The schemes provide for shelter, food, clothing for women and children below the age of 18 years, counseling, clinical, medical, legal and other support, training and economic rehabilitation and helpline facilities.
  - 8.3. Anewscheme-UJJAWALA ([wcd.nic.in/Comscheme.doc](http://wcd.nic.in/Comscheme.doc)) – a comprehensive scheme for prevention of trafficking, rescue, rehabilitation, reintegration and repatriation of the victims of commercial sexual exploitation has been launched on 04.12.2007 by the Ministry of women and Child Development which should be effectively used by the State Governments.
  9. MHA has already established an Anti Trafficking Cell (ATC) under the Director (SR) which deals with the following major subject matters:
    - 9.1. All matters pertaining to the criminal aspect of trafficking in human beings especially of women and children, which is the fastest growing organised crime and an area of concern.
    - 9.2. To act as the Nodal cell for dealing with the criminal aspect of Human Trafficking in India, hold regular meetings of all States and UTs, communicating various decisions and follow up on action taken by the State Governments.
    - 9.3. To interface with other Ministries like MWCD, MSJE, MEA, MOIA, MOLE, MOL, MOT and NCRB regarding the criminal aspect of human trafficking.
    - 9.4. All matters relating to the UNODC, UNIFEM, their meetings, conferences, conventions, reports etc. in the context of the criminal aspect of Human Trafficking.
  10. The Anti Trafficking Nodal Cell of MHA has developed an MIS proforma for the monitoring of the action taken by various State Governments regarding the criminal aspect of human trafficking as well as crime against women. The State Governments are requested to send quarterly information on 1st January, 1st April, 1st July and 1st October of the year in the prescribed proforma.
  11. You are requested to issue suitable directions to all concerned under intimation to this Ministry. It is further requested that action taken in this regard may be regularly / periodically reviewed by the State Governments and UT administrations and a report indicating the present status sent to this Ministry within a month.
  12. This advisory is being issued in consultation with the Ministry of Women and Child Development and Ministry of Labour and Employment.



The receipt of this letter may kindly be acknowledged immediately.

Yours faithfully,

-Sd-

(Nirmaljeet Singh Kalsi)

Joint Secretary to the Government of India

Ministry of Home Affairs, North Block

New Delhi - 110001, Tel. No. 23092630

To,

**The Chief Secretaries &  
The Principal Secretary / Secretary (Home)  
All State Governments and Union Territory Administrations – for  
information and necessary action.**

**Copy for information and necessary action to:**

- i. The DGs / IGs (In-charge of Prisons)/ - All State Governments / UTs for information and necessary action.
- ii. Ministry of Women and Child Development (Mrs. Manjula Krishnan, Advisor & Joint Secretary, MWCD, Ms. P. Bolena, Joint Secretary) Shastri Bhawan, New Delhi.
- iii. Ministry of Labour (Shri S.K. Dev Verman, Jt. Secy.), Shram Shakti Bhavan, New Delhi.
- iv. Ministry of Social Justice and Empowerment (Sh. D.V.S. Ranga, Joint Secretary), Shastri Bhawan, New Delhi.
- v. Ministry of Overseas Indian Affairs (Shri G. Gurucharan, Jt. Secy.), New Delhi.
- vi. Ministry of External Affairs, (Joint Secretary SAARC and Joint Secretary UNES) South Block, New Delhi.
- vii. Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
- viii. Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi-110 001.
- ix. Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- x. Director General, NCRB, RK Puram, New Delhi.
- xi. Director General, BPR&D, New Delhi.
- xii. Director General Border Security Force, New Delhi
- xiii. Director, CBI, New Delhi.
- xiv. JS (UT)/ JS (NE) /JS (K), MHA, North Block, New Delhi.
- xv. Under Secretary (Parliament), MHA, North Block, New Delhi.

-Sd- (Nirmaljeet Singh Kalsi)

Joint Secretary to the Govt. of India

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**F.NO.15011/60/2011**

**GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
NORTH BLOCK NEW DELHI/CS DIVISION**

New Delhi, the 31st January 2012

**OFFICE MEMORANDUM**

**Subject: Advisory on missing children-measures needed to prevent trafficking and trace the children-regarding.**

1. The issue of missing and untraced children, based on police records, is a matter of deep concern to the Government of India. It requires a concerted and systematic attention of Central and State Governments. As missing children are exposed to high risk situations, they are vulnerable and fall prey to crimes of exploitation, abuse, including human trafficking. It is, therefore, necessary that effective steps be taken for effective investigation of cases relating to missing children and tracing of these children. This advisory is in continuation of the advisories dated 09.09.2009, 14.7.2010 02.12.2011 and 4.1.2012 issued by this Ministry to all the States / UTs on similar/related issues of crimes against children.
2. A missing child is defined as a person below 18 years of age whose whereabouts are not known to the parents, legal guardians or any other person who may be legally entrusted with the custody of knowing the whereabouts/well being of the child whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection, until located and/or his/her safety/well being is established.
3. The legal provisions as existing in the Juvenile Justice (Care and Protection of Children) Act, 2000 and other laws, several rulings of the Hon'ble Supreme Court of India and High Courts and the recommendations of NHRC, inter alia, emphasize the immediacy of prompt action by law enforcement agencies following disappearance of the child, especially minor girls to maximize chances of tracing/recovery.
4. The guidelines of NHRC which has already been communicated to the States/UTs with respect to missing children should be implemented and their monitoring ensured (refer website [www.nhrc.nic.in/ Reports/misc/MCR Report.doc](http://www.nhrc.nic.in/Reports/misc/MCR%20Report.doc)).
5. The Hon'ble Supreme Court of India has issued guidelines in respect of missing children on 14/11/2002 (WP (Cri) No.610 of 1996) in Horilal Vs Commissioner of Police, Delhi and Sampurna Behura vs. Union of India & Ors dated 12/10/11(WP (Civil) No.473 of 2005). These instructions should also be complied with and monitoring ensured.
6. An officer not below the rank of a DIG should be declared Nodal Officer for every state/UT for handling the cases of missing children.
7. Supervision of investigation of such cases by senior police officers of the level of Dy.SP/Addl.SP may be ensured.



8. When, any heinous crime or organized crime on missing children, such as, victims of rape, sexual abuse, child pornography, organ trade etc, is reported, and then the investigation of such cases should be taken over by the CID of the States/UTs to expedite the investigation and to ensure prosecution of the offenders.
9. State Crime branch should maintain close links with District Missing Children Unit (DMCU) and ensure that uploading of data and matching of missing children with UIDBs/Children found is carried out effectively.
10. The Missing Persons Squad (MPS) will match the information regarding missing children with the data available with the MPS and if matched it should be communicated to the concerned police station. A monthly report should be sent to DMCU.
11. When the missing person is traced through search or rescue from places of exploitation, the police control room, District Missing Persons Unit (DMPU) and Missing Persons Squad (MPS) should be informed immediately for updating the record and for discontinuing the search.
12. Whether these missing children land up in Begging Rings, Prostitution, Pedophilic Net and Organ Trade or end up getting exported for Camel Jockeying etc., it is always an Organised Crime. Profile of all traffickers who facilitate such trafficking should be maintained at PS level in Gang Registers.
13. The State CID should use data mining to analyse patterns, gather intelligence and to build profiles which have inter state ramifications, ascertain angles of trafficking, organized crime, number age/sex profile and maintain liaison with other central agencies dealing with the matter.
14. All police officers and men, especially the team of officers handling investigation into these cases need to be trained and sensitized on an ongoing basis to the issues concerned. The issues of missing children, human trafficking along with JJ Act may be made part of syllabus in the state police training colleges to sensitize the police force. The training should focus on imparting knowledge of the substantial and procedural laws, court rulings, administrative procedures, skills in child-friendly investigations, including interviewing, interrogation, scientific data collection, presentation in the court of law, networking with the prosecutors, facilitating victims/witness protection programmes etc.
15. As there is considerable overlap in the problems of missing children and trafficked children, AHTUs should play an active role.
16. The Superintendent of Police in the districts and Commissioners of Police in the metropolitan areas should review each case of missing children/persons during their monthly crime review meetings to find out the actual number of missing children, number of children traced/untraced, children, the reasons for child disappearance/missing and its links to human trafficking and to take stringent action against the perpetrators of the crime. They should also take strong measures for successful prosecution of the offenders in the court of law.
17. In cases where children and women have been smuggled illegally out of the country, the investigation agencies should utilize Interpol channels to



communicate with member countries and if need be, have appropriate Interpol Notices issued through CBI/Interpol wing, in order to trace the victims.

18. An exercise to check all the unclaimed and unidentified children who are kept under safe custody in various shelter homes of the government/non-governmental agencies may be undertaken and details may be matched with the available missing children data base in the country as most of the children lodged in these shelter homes are indeed missing children. Missing Persons Bureau in the state should have a centralized data on children lodged in these shelter homes run by the government/nongovernmental agencies in the state with mechanism to update the data on regular basis. This data along with the photographs of the children should be digitized and regularly sent to NCRB and NCRB will upload this data in their website [www.ncrb.gov.in](http://www.ncrb.gov.in) for pan-India search by other state police/stake holders.
19. A number of children reportedly die after disappearance/missing and their dead bodies remain unidentified. States/UTs should also consider making it mandatory for the investigating officers and provide the necessary infrastructure to have the DNA profiling of all such unidentified dead bodies for future comparison and identification. DNA profile of the nearest blood relative through informed consent should be done if child is not found for 3 months. Both the DNA data base may be maintained at the state MPS for future comparison and matching.
20. Similarly, in order to curtail offences of child sex abuse, in all cases of pornography, cyber crimes etc. under investigation, efforts should be made to correlate the pictures of the child with the details of missing children and vice-versa.
21. The data available in each missing children file should be uploaded to the computer maintained at the police station for this purpose. It will be the responsibility of each I.O. to ensure that efforts made towards tracing the missing children is also uploaded on the computer, which would be linked to national database and via CCTNS, eventually. CCTNS should update it promptly on the proposed 'Khoya Bachpan' website.
22. The SHO/Inspector of the police station will ensure that the computerized record of missing children is maintained up-to-date and the same is sent to DCRB and from there to SCRB. The State and District/City police Control Room/ local Police net, ZIP NET, [www.trackthemissingchild.gov.in](http://www.trackthemissingchild.gov.in) should be updated immediately. It would be useful to access data on missing children through other websites maintained by [www.childlineindia.org.in](http://www.childlineindia.org.in) and [www.stoptrafficking.in](http://www.stoptrafficking.in) to mention a few.
23. NCRB is mandated to function as a national repository of crime and criminal related data in the country and the States /UTs should evolve a mechanism to share the data on missing children and human trafficking cases to NCRB in the prescribed proforma of NCRB on monthly basis for analysis and study to find the emerging trends in these sensitive issues.
24. NCRB should device methods of uploading the data on a real-time basis not only of missing persons but also with respect to traced and un-traced persons as well as linking the database with those of rescued persons from different places including children rescued from exploitative or forced labour.



25. The universal number 1098 for reporting of missing children 24x7 is being run in some States / UTs, but there is no uniformity. It needs to be made effective and operational if not done earlier. There should be at least one dedicated police personnel at this helpline on 24x7 basis with proper monitoring mechanism. In the meantime BPR&D would explore further possibilities of integrating 1098 with 100 to make it toll free.
26. Responsible and competent NGOs be earmarked as Nodal NGOs in States for assisting the law enforcement agencies in this regard. The NGOs who have done work in this field with commitment be supported by the law enforcement agencies and synergy be established so that they could work in tandem.
27. When training the police, they must be oriented to undertake all preventive steps including steps to identify children in distress, watch of suspicious persons, special attention at transit points viz. border areas, ICPs, railway stations, bus stations, airports, ports etc., identify vulnerable population/places and take steps to address the vulnerability on time.
28. BSF/ITBP/SSB personnel in outposts on borders should be trained to look-out for trafficked children on the borders. They should be sensitized to question and detect unaccompanied minors/children or accompanying adults with suspicious behaviour during pursuant checking of vehicles/public transport.
29. The law enforcement agencies may involve representatives of Panchayati Raj Institutions and the community at large, such as, Village Watch & ward/ Municipal Committees/Neighbourhood Committees/Resident Welfare Associations etc.. This will enable the community to get fully involved along with the administration/police in identification, tracing & recovery of missing and trafficked children and arrest of accused persons.
30. Community awareness programmes on the issue of missing children and its links with human trafficking may be undertaken by the District administration. Periodic interface with Public and Safety Awareness Campaign should be conducted in schools and vulnerable areas, jointly by the district administration. Schools must be encouraged to issue Identity cards to children.
31. The activities of various departments and agencies in the States /UTs need to be integrated through a nodal agency. These includes Home Department, Police Department, Social Welfare Department, Women and Child Welfare Department, Juvenile Justice Department, Child Welfare Committees, Labour Department, Health Department, Tourism Department as well as other agencies like State Human Rights Commission, State Women's Commission, State Commission for Child Rights, Railways, RPF, BSF, SSB, ITBP etc. State governments may institutionalize a coordinating mechanism among all these agencies through an SOP clearly mandating the roles and responsibilities of each of these agencies.
32. In places, where vulnerable groups of children are found in large numbers, a mechanism should be evolved in partnership with NGOs and social workers, where by apart from rendering counseling to them, awareness-raising activities are also carried out.



33. The protocols and SOPs developed by UNODC in the Joint Project of MHA-UNODC, during 2006-2008, including protocol on interstate transfer of rescued victims may be effectively utilized (refer [www.unodc.org/india](http://www.unodc.org/india)).
34. The States/UTs may bring out an SOP for guidance of all concerned.  
The receipt of this letter may kindly be acknowledged immediately.

Sd/-

**(B. Bhamathi)**

Additional Secretary  
to Govt. of India,  
Ministry of Home Affairs,  
North Block, New Delhi – 110001  
Tel. No. 23092514

To,

The Chief Secretaries & The Principal Secretary/Secretary (Home)  
All State Governments and Union Territories

Copy also for information and necessary action to:

- i. The DGs of all State Governments/UTs.
- ii. National Commission for Protection of Child Rights
- iii. Director General BPR&D
- iv. Director NCRB
- v. Director CBI
- vi. Director General BSF
- vii. Director General ITBP
- viii. Director General SSB
- ix. Ministry of Women and Child Development
- x. Ministry of Labour
- xi. Ministry of Social Justice and Empowerment

Sd/-

**(B. Bhamathi)**

Additional Secretary  
to Govt. of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi – 110001  
Tel. No. 23092514

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**MOST IMMEDIATE**

**No. 14051/14/2011-F.VI**

**Government of India  
Ministry of Home Affairs  
(Foreigners Division)**

Dated 1st May, 2012

**OFFICE MEMORANDUM**

**Sub: Advisory on preventing and combating human trafficking in India - dealing with foreign nationals.**

The undersigned is directed to refer to this Ministry's Office Memorandum No. 15011/6/2009-ATC (Advisory) dated 09.09.2009 on the above mentioned subject (copy enclosed). It has come to the notice of this Ministry that foreign nationals are associated in some instances of human trafficking among women and children.

2. Further to the detailed procedure outlined in the above mentioned Office Memorandum, it has been decided with the approval of the competent authority that in cases of foreign nationals who are apprehended in connection with human trafficking, the State Governments / UT Administrations may follow the following procedure : -
- (i) Immediately after a foreign national is apprehended on charges of human trafficking, a detailed interrogation/investigation should be carried out to ascertain whether the person concerned is a victim or a trafficker.
  - (ii) The victims and the persons actually involved in human trafficking should be treated differently by the police authorities. This is in line with the SAARC Convention which advocates a victim-centric approach.
  - (iii) Missions/Posts in India may be informed of the arrest/detention of the foreign national by the concerned state or other authorities through CPV division in the Ministry of External Affairs(MEA) or the concerned territorial Division in MEA.
  - (iv) It is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. *If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the chargesheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned.* Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that



the person concerned is repatriated to the country of her origin through diplomatic channels.

- (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children's home, or "Ujjawala" home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.
  - (vi) If the investigation reveals that the person is actually a trafficker, he/she may be charge-sheeted under the Immoral Trafficking Prevention Act and the Foreigners Act and due process of law should be followed in such cases.
  - (vii) In order to ensure better conviction rates of perpetrators of the crime of trafficking, prosecution should be based on documentary, forensic and material evidence. State Governments are advised to encourage the law enforcement agencies to investigate the cases in a manner that they are able to build fool proof cases against the traffickers, so that convictions can be guaranteed. Use of fasttrack courts and video conferencing to the extent possible also need to be ensured. Please refer to para 7 of the enclosed Advisory dated 9.9.2009.
3. All other instructions contained in this Ministry's Advisory dated 09.09.2009 including reporting to the Anti Human Trafficking Nodal Cell in MHA will be applicable in the case of foreign nationals associated with human trafficking, whether they are women or children(children means both boys and girls upto 18 years of age).
4. You are requested to issue suitable directions to all concerned under intimation to this Ministry.
5. The receipt of this Office Memorandum may kindly be acknowledged.

(G.V.V. Sarma)

Joint Secretary to the Govt. of India

To

The Chief Secretaries/Principal Secretaries/ Secretary (Home) of all State Governments and Union Territory Administrations.

Copy for information and necessary action to:-

- (i) The DGs / IGs (In-charge of Prisons) /- All State Governments/UTs
- (ii) Sri Sandeep Goel, Joint Commissioner(Crime), 3rd Floor, Police Station Kamla Market, Delhi.
- (iii) Ministry of Women and Child Development(Smt. Aditi Ray, Senior Economic Advisor), Shastri Bhavan, New Delhi.
- (iv) Secretary, Ministry of Labour, Shram Shakti Bhavan, New Delhi
- (v) Secretary, Ministry of Social Justice & Empowerment, Shastri Bhavan, New Delhi.
- (vi) Secretary, Ministry of Overseas Indian Affairs, Akbar Bhavan, New Delhi.
- (vii) Ministry of External Affairs:



- (a) Addl. Secretary(PV) (b) JS(Consular) (c) JS(BSM)
- (viii) Chairperson, National Commission for Women, 4, Deen Dayal Upadhyaya Marg, New Delhi.
- (ix) Chairperson, National Commission for Protection of Child Rights, 5th Floor, Chandralok Building, Janpath, New Delhi.
- (x) Chairperson, National Human Rights Commission, Copernicus Marg, New Delhi.
- (xi) Director General, NCRB, R.K.Puram, New Delhi.
- (xii) Director General, BPR&D, New Delhi.
- (xiii) Director General, Border Security Force, New Delhi.
- (xiv) Director, CBI, New Delhi..
- (xv) AS(CS) / JS(CS) / JS(UT) / JS(NE) / JS(K), MHA, North Block, New Delhi.

(G.V.V. Sarma)  
Joint Secretary to the Govt. of India

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*“When you are treated as less than important, you are still a human. When you are treated as less than worthy, you are still a human. When you are treated less than your title, you are still a human. But when you are treated less than the very thing you are born to be, you perish.”*

*- Dr. Andre Lampkin*



**F.No.15011/20/2012-ATC (CF-145675)**

**GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA  
CENTRE STATE DIVISION**

New Delhi, 12<sup>th</sup> August 2013

**SUBJECT : Standard Operating Procedure to handle Trafficking of Children for Child labour - measures to be taken for rescue of trafficked child labourers' and action against the traffickers/employers**

1. The trafficking of children for economic exploitation, bonded labour, forced labour, physical/sexual abuse and misuse is a heinous crime. The trafficking of children are vulnerable and need care and protection. After they are rescued they also need to be rehabilitated. It is, therefore, necessary that effective steps be taken for investigating of cases relating to trafficking of children for child labour and/or forced labour.
2. Please refer to our MHA Advisory on trafficking and combating human trafficking in India F.No.15011/6/2009-ATC(Advisory) dated 9th September, 2009 to all States and UTs.
3. The following paragraphs supplements the previous advisory :-
  - i) The Article 23 of the Indian Constitution prohibits trafficking in human beings and forced labour and other forms of forced labour.
  - ii) As per Section 2 (K) of the Juvenile Justice (Care and Protection of Children) Act, 2000(hereinafter referred to as JJ Act) juvenile or child means a person who has not completed 18 years of age. Section 2 (D) of the JJ Act defines "a child in need of care and protection" in detail.
  - iii) The trafficked child could suffer from any or all the handicaps stated in Section 2 (D) of the JJ Act and is clearly in need of care and protection. Sections 23, 24, 25, 26 of the JJ Act which deals with various forms of exploitation of the child are declared to be a cognizable offence under the JJ Act.
  - iv) The Criminal Law Amendment Act, 2013 has amended the Indian Penal Code on the specific offence of trafficking. Section 370 defines trafficking in detail. It is to be noted that the consent of victim is immaterial in determination of the offence of trafficking and the offence as already stated are cognizable.
  - v) The Supreme Court in PUDR Vs Supreme Court in 1982 3SCC235 has elaborated on the issue of forced labour. Therefore, service without wages or with paltry wages; denial of choice of alternative avocations, denial of right of movement are all to be considered as forced labour. The trafficked children from the any one of these conditions are not only to be retrieved but the offender has to be charged as having-committed a cognizable offence.
  - vi) The trafficked children are often those children who have gone missing. Wherever there are more than one case relating to trafficked



children or forced labour; Section 155 (4) of CrPC makes it very clear that the case shall be deemed to be cognizable notwithstanding that the other offences charged are non-cognizable.

4. As regards missing children, the Supreme Court in the case of Bachpan Bachao Andolan Vs. Union of India and Others dated 10.05.2013, defined missing child in detail. It also stated that the child missing shall be treated within the meaning of JJ Act in need of care and protection as per the JJ Act. The Supreme Court has also stated that all cases of missing child will be prima facie treated as cognizable act (until proved otherwise) and a FIR filed accordingly. The registration of FIR should be stressed not only with reference to JJ Act but all Acts wherever children are the victims. Trafficked child upon recovery should be counseled by a social worker and proper investigation launched against the offenders/traffickers.
5. The AHTU shall take all necessary steps to investigate all the cases relating to trafficked persons with special emphasis on investigating crimes relating to trafficked children and women and treat the same as being part of organized crime and target the economics of crime syndicates. This may be done through cancellation of licences of establishments/factories, sealing, attachment and confiscation of property etc. During and after the rescue of the child, the SOP for investigating the crime relating to crime on trafficking for forced labour; developed by UNODC-MHA may be effectively utilized. The protocol for prevention, rescue, repatriation and rehabilitation issued by the Ministry of Labour and Employment in 2008 may be followed.
6. The rescue team should be multi-disciplinary and should comprise representative of Police or Labour, SDM or his representative, NGO/complainant, lady police/volunteer, and member of child welfare committee. Under no circumstance should any interaction between the child and the employer/trafficker be allowed. The children rescued must be sent immediately to child welfare committee and action taken under the JJ Act 2000. The Labour Department should be held responsible for filing of FIR and to initiate other necessary proceedings against the offender. The repatriation of the child should be a prime objective in the investigation to ensure that the child goes back to safety. The police shall take all necessary precaution for the safety of the child and/or other witnesses wherever cases of organized trafficking is investigated. The statement of victim should be recorded under Section 164 of CrPC and charge sheet be filed soon after investigation. There should also be an inquiry for home verification under the JJ Act before repatriation and child welfare committee in the home district shall be responsible for the wellbeing of the child. Before the repatriation of the child, efforts should be made by the Police to obtain as much information from the child about his/her traffickers as possible. This information must be uploaded to the district/state database on trafficked children and traffickers/employers. The Labour Department should initiate proceeding for immediate recovery of the fine of Rs.20,000 to be recovered from the employer under the Supreme Court guidelines of M.C. Mehta Vs. State of Tamil Nadu 1996 (6 sec 756). After recovery, the said amount shall go to the Rehabilitation Cum Welfare Society of



Child Labour in the native district of the child for his/her socio-economic and educational rehabilitation. The Department of Labour shall also initiate proceeding for the recovery of the back wages of the child as per the Minimum Wage Act, 1948.

7. The various provisions of law applicable at various stages of trafficking of child labourers' are in the table attached as Annexure-A.
8. The aforementioned measures are only indicative and the States/UTs may consider any additional measures for dealing with the crime of human trafficking and child labour. This Ministry may also be kept apprised of any special measures/mechanisms introduced in their respective jurisdictions so that the same could be circulated to other State Governments and UT Administrations for consideration/adoption. States/UTs may consider translating this SOP into regional languages for dissemination.

The receipt of the SOP may be acknowledged.

Sd/-

**(S.Suresh KUMAR)**

Joint Secretary to Govt. of India,  
Ministry of Home Affairs,  
Tel. No. 23438100

To

The Chief Secretaries &  
The Principal Secretary/Secretary (Home)  
All State Governments and Union Territories

Copy also for information and necessary action to:

- i. The DGs of all State Governments/UTs.
- ii. National Commission for Protection of Child Rights
- iii. Director General BPR&D
- iv. Director NCRB
- v. Director CBI
- vi. Director,18
- vii. Director General BSF
- viii. Director General ITBP
- ix. Director General SSB
- x. Ministry of Women and Child Development
- xi. Ministry of Labour
- xii. Ministry of Social Justice and Empowerment
- xiii. Nodal officers Human Trafficking

**(S. Suresh KUMAR) Joint Secretary to Govt. of India**



## ANNEXURE A

### LEGAL PROVISIONS IN CHILD LABOUR TRAFFICKING

Sl. No.	Situation of the child	Statute	Offence (Provision)	Section	Classification	Punishment
1.	Children are lied to and enticed to be brought for work	Indian Penal Code (IPC) 1860	a) Cheating	Section 417 and related	Bailable and non cognizable	Up to 1 year or fine
			b) Abduction :			
			i) Abduction for wrongful confinement	Section 365, 367 and related	Non bailable and cognizable	Up to 7 years and fine
			ii) Abduction for slaver	Section 367	Non bailable and cognizable	Upto 10 years or fine
			c) Kidnapping through enticement	Section 363	Cognizable and Bailable (Non-Bailable in Delhi)	Upto 7 years and fine
		JJ Act 2000	Procurement of a child hazardous employment	Section 26	Cognizable and Bailable (Non-Bailable in Delhi)	Upto 3 years and fine
2.	By paying some money to the parents consideration or as advance	a) Indian Penal Code, 1860	Buying of a person as a slave	Section 370	Bailable and non-Cognizable	Upto 7 years and fine
		b) The Bonded Labour System (Abolition) Act, 1976	Punishment for advancement for bonded labour	Section 17	Bailable and non-Cognizable	Upto 3 years and fine



3.	Giving away the procured (Trafficked child) to the employer for monetary consideration for the purpose of employment.	a) Indian Penal Code 1860	Selling a minor for the purposes of Prostitution	Section 372	Non Bailable and Cognizable	Upto 10 years and fine
4.	Employing the child	a) Child Labour (Prohibition and Regulation Act, 1986	Employing the child in prohibited occupations and processes	Section 3/14	Non-Cognizable and Bailable	Upto 1 year. Repeat offence upto 2 years and fine upto 20,000 (Min. 10,000 and max. 20,000 as per Supreme Court Guidelines.
		b) JJ Act, 2000	Procuring child/ juvenile for hazardous employment	Section 26	Cognizable and Bailable (Non-Bailable in Delhi)	Upto 3 years and fine
5.	a) Not allowing the child to move freely, return home as per his/ her will	Indian Penal Code, 1860	Wrongful confinement of a kidnapped or abducted person/ child	Section 368	Cognizable and non Bailable	Upto 10 years and fine



	b) Not paying wages for paying less than the minimum wage	a) The Bonded Labour System (Abolition) Act, 1860	Enforcing forced or bonded labour	Section 16	Bailable and Cognizable	Upto 3 years and fine
		b) Indian Penal Code		Section 373	Bailable and cognizable	Upto 10 years and fine
				Section 374	Bailable and Cognizable	Upto max. 1 year and fine

In all of the above Situations it may also be noted that Section 370 of the Indian Penal Code shall be applied in situations where an Act, Means and End (i.e., a form of exploitation) exists as elaborated below:

Statute	Section	Act	Means	End (Exploitation)
Indian Penal Code	370 Whoever for the purpose of exploitation	Recruits	Using threat	Physical Exploitation
		Transports	Using force or any other form of coercion	Sexual Exploitation
		Harbours	Abduction	Slavery
		Transfers	Practicing fraud, or deception	Practices similar to slavery
		Receives	Abuse of power	Servitude
			Inducement	Forced Removal of Organs

Statute	Section	Act	Purpose	End (Exploitation)
Indian Penal Code	370 A Whoever knowingly or having reason to believe that a minor has been trafficked	Engages	For the purpose of sexual exploitation	Sexual Exploitation

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**झारखण्ड राज्य के ANTI HUMAN TRAFFICKING UNIT प्रभारियों  
का नाम एवं संपर्क नम्बर**

क्रमांक	जिला का नाम	AHTU P.S.	थाना प्रभारी का नाम	सम्पर्क नम्बर
1	गुमला	गुमला नगर थाना	पु0नि0 रामप्रवेश चौधरी	9431706203
2	खूँटी	खूँटी नगर थाना	पु0अ0नि0 अराधना सिंह	9431381691 9304775514
3	सिमडेगा	सिमडेगा नगर थाना	पु0अ0नि0 अरूण कुमार महता	9431706231
4	दुमका	दुमका नगर थाना	पु0नि0 इकुड़ डुंगडुंग	9470591005
5	राँची	राँची कोतवाली थाना	पु0नि0 अरविन्द कुमार सिन्हा	9431706158
6	लोहरदगा	लोहरदगा सदर थाना	पु0नि0 नरेन्द्र मोहन सिन्हा	9431706220
7	पलामू	पलामू नगर थाना	पु0अ0नि0 मनोज कुमार ठाकुर	9431706249
8	पश्चिमी सिंहभूम, चाईबासा	चाईबासा सदर थाना	पु0नि0 सुधीर कुमार	9431706456

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## NOTES

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**For any Information, Help and Enquiry relating to Human Trafficking  
Contact the concerned District Legal Services Authority**

**Name & Contact details of the Secretaries, DLSA**

Sl. No.	DLSA	Name of Secretary	Contact No.	Email address
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2	Chaibasa	Sri Rama Shanker Singh	9431337797	dlsachaibasa@gmail.com
3	Chatra	Sri P.N. Upadhyay	9431920783	dlsachatra@gmail.com
4	Deoghar	Sri Martand Pratap Mishra	9431324756	deoghardlsa@gmail.com
5	Dhanbad	Sri Anil Kumar Pandey	9431396328	dlsa.dhanbad@gmail.com
6	Dumka	Sri Radha Krishna	9334011551	dlsadumka@gmail.com
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23	Khunti	Sri Surendra Sharma	9431904647	Sur353@rediffmail.com



**NYAYA SADAN**  
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