

# The Journey towards a law for placement agencies in Delhi



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## The case of Jharna Pandit

In 1999, a young 12 year old girl, Jharna Pandit went missing from a house where she was employed as a domestic help. The last information about her was a conversation she had over the phone with her mother, Kalpana Pandit. Kalpana was herself a domestic worker and had reached out to 'Sunita didi' who it transpired was operating a placement services agency for domestic help. Sunita didi had placed her daughter (Jharna) and had sent her to Noida to an employer who the mother did not know. She confronted the lady and demanded that her daughter be called back. Since she did not get any positive response from the lady, she went to the local police to file a complaint about her missing daughter. The police refused to act on her complaint and she then reached out to Butterflies, an NGO working with street and working children. Butterflies helped her file a complaint under the Juvenile Justice Act before the Juvenile Welfare Board. Despite repeated summons neither the employer nor the placement agency appeared before the Board. The board then directed the police to register a complaint. However, these actions did not get any results and even the police did not take any action. Butterflies then reached out to a lawyer and a petition for habeas corpus was filed by Kalpana Pandit in the High Court of Delhi on May 23, 2002.

- This case became the genesis of the petition which led the court to deliver the judgement for the management of placement agencies in Delhi.
- Around this time, there were many other instances where young girls were placed in various homes as domestic helps and their families were facing serious problems in accessing them. There were also instances of wages being withheld.
- There were also other issues, some of them bordering on cognizable offences like kidnapping, sexual assault, criminal intimidation, all of which involved the placement agencies. These instances resulted in a desk-survey that Butterflies undertook to find out how many placement agencies were functioning in Delhi. The survey revealed that there were 125 placement agencies functioning in Delhi under unregulated conditions.

- Following the research, an application was made to the Court to broaden the scope of the petition to include the larger issue of the placement agencies. A court order was passed in October 2004 which changed the course of the case. Two distinct issues emerged for consideration in the writ petition:
- Firstly, the tracing and production of the missing minor girl named Jharna Pandit. Ms. Mukta Gupta, counsel for the respondents, submitted that efforts to trace the missing minor will continue and that as and when she is recovered, she will be produced in the Court for appropriate orders. It was noted that the investigating agency shall take effective steps in the matter and report the progress to the Court from time to time. Jharna Pandit was ultimately traced out and her custody was handed over to the petitioner.
- The second question related to the functioning of different placement agencies working in the NCT of Delhi. Ms. Aparna Bhatt pointed out that there were as many as 123 such agencies functioning in Delhi. There was no statutory control over the functioning of these agencies. The result was that children who were either picked up from the streets or brought from various other States to Delhi were first placed as domestic helps, and later shifted to other more hazardous work including 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. Ms. Bhatt 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 proved that children have been subjected to various kinds of indignities and harassment including sexual abuse.
- Ms. Mukta Gupta submitted 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 rules under Section 68 of the Act.
- 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 case was, thereafter, heard in this backdrop and in the course of these hearings various legal propositions were raised.

The broad issues that came to be raised during the course of the long drawn legal battle were:

1. What is a placement agency?
2. Given the fact that they are dealing with the poor and vulnerable persons, placing them in homes to be employed in a completely un-regulated area, away from the protection of any law, is it not necessary to regulate them?
3. If (2) is in the affirmative, then under what laws can they be regulated?
4. What are the institutions that can be brought in to ensure that these are regulated?
5. What are the penalties that can be imposed?
6. What are the avenues to ensure that the employers are also protected?
7. How does one ensure that there is safe migration and no trafficking?

## **Legal interventions with respect to domestic workers in India**

### **Child domestic workers**

- At the time the petition was filed and over the years the petition remained pending, there were no laws dealing with domestic workers. However, in 2006, a notification was brought in by the Government of India wherein “domestic work” was included as a “hazardous industry” under the Child Labour (Prohibition and Regulation) Act, 1986.
- While this would have protected children to some extent, enforcement mechanisms were complicated and consequently difficult to enforce.
- The overall framework of child protection is statutorily enforced through the Juvenile Justice (care and protection) of Children Act, 2015. Under the Act, it is an offence to engage a child and keep the child in bondage for the purpose of employment or withhold the child’s earnings.
- Similarly under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, there are labour inspectors who are authorized to conduct inspection of any premises where they have information about child labour being engaged. In 2016 extensive amendments were carried out in the Child Labour Act which is now In 2013, the Penal Code was amended to include a section on trafficking as an offence.
- Cases of children trafficked for labour got covered in this section and attracted stringent punishments.

### **Adult domestic workers**

- Considering that a large population of adult persons engaged as domestic workers were barely literate, belonged to extremely vulnerable social and economic classes, there was

no protection available to them.

- There were many instances where women were coerced into work spaces that they were not willing to be in and for wages far below minimum wages paid to an unskilled worker. This was in addition to exposure to serious forms of abuse and violence. Most of the women who had migrated to Delhi were either living with their employers or living at the office of the placement agency.
- The recommendations before the court was to regulate the placement agencies while protecting the rights of the workers within an existing legal framework. An amendment to the Shops and Establishments Act was suggested by the Delhi government to include placement agencies as one of the establishment under the Act.
- The process was extremely limiting as the framework of the act merely recorded the employees and the penalty for violation was extremely low. Meanwhile, the Government came out with another proposition that they introduced, the Unorganised Workers Social Security Act, 2008. The Act however was primarily administrative with no remedial measures given to any beneficiary.

## **Legal Framework with respect to Private Placement Agencies**

### **At the Central level**

- No legislation has been proposed so far with regards to domestic workers, but the Labour Ministry directed the States to collect and maintain data of private placement agencies and referred it to the National employment Policy which has been prepared by the Ministry.
- The ministry press release in 2018 notes that domestic workers have been included by several states under the Minimum Wages Act. With respect to placement agencies it notes that “registration of the placement agencies is a state subject. An advisory has been issued to all the state governments requesting them to take steps for formulation of a policy at their own level for regulating these placement agencies.”

### **Delhi**

- Delhi Private Placement Agencies (Regulation) Bill, 2012 sought to deal exclusively with only those placement agencies which dealt with domestic workers, but despite being tabled in the Parliament, it has not been passed till date. In 2014, the Delhi High Court by an order directed the Government of NCT of Delhi to issue executive directions for the regulation of private placement agencies in order to prevent exploitation of domestic workers employed by such agencies.
- Chhattisgarh and Jharkhand are the two states in India which have promulgated laws in 2013 and 2016 respectively to regulate private placement agencies to contain trafficking.