

Working Paper No.6

Action Research on Women's Labour Migration in India

(December 2017–July 2018)

The Journey towards getting the law for placement agencies

Aparna Bhat

ILO's Work in Freedom Project RAS 13/55/UKM



CENTRE FOR WOMEN'S DEVELOPMENT STUDIES

An autonomous research institute supported by the Indian Council of Social Science Research

25, Bhai Vir Singh Marg (Gole Market), New Delhi - 110 001.

THE JOURNEY TOWARDS GETTING THE LAW FOR PLACEMENT AGENCIES

Aparna Bhat

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. The mother was herself a domestic worker and had reached out to “Sunita didi” who it transpired was operating a placement services agency for domestic help¹. Since “Sunita didi” had also placed her daughter 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 Butterflies², an NGO working with street and working children. Since the girl was missing for quite a few days by then, Butterflies helped her file a complaint under the Juvenile Justice Act before the Juvenile Welfare Board (as Child Welfare Committee was then called) where a comprehensive complaint was filed about the manner in which the girl got placed with an employer by the placement agency without consulting the mother. Despite repeated summons neither the employer nor the placement agency appeared before the Board which compelled the board to direct 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 corpus³ was filed in the High Court of Delhi on May 23, 2002. This is the genesis of the petition which ultimately lead to passing of the regulations for management of placement agencies in Delhi.⁴

¹ Sunita Sen was running Sahyog Placement Services

² Butterflies is an organization working for street and working children. They are registered in Delhi and have a few programmes outside Delhi.

³ Habeas corpus petition is a petition filed

⁴ During the course of hearing which went on for many years, two other organisations also filed petitions on the same issue and all three were heard together. However the main arguments in the case was addressed by the lawyer engaged by Butterflies as is evident from the judgement. Bachpan Bachao Andolan, who had filed one of the petitions, followed up on the implementation of the judgement.

The initial hearings of the case was focused on finding the child⁵ and the High Court passed many orders to locate “Kauls” in whose house the girl was employed as well as their staff members some of whom were supposedly friendly with the girl. The police also filed affidavits stating that in their investigation they came to know that the girl was actually distressed since her mother had a boy friend who used to molest her and presumably had gone away. However, the High Court continued to direct the police to find the girl.

Around this time, it was noticed that there were other cases where young girls were getting placed in various homes for domestic help and their families were having various problems in accessing them. There were also many instances when wages used to be withheld and it later transpired that the agreements that employers and the placement agencies had would make it obligatory for the employer to pay the agency instead of the person hired. This arrangement would completely take away any autonomy or agency the domestic worker would have had on herself since she was completely controlled by the placement agency. There were many instances, largely anecdotal, that came to light which brought out many other issues, quite a few of them bordering on cognizable offences like kidnapping, sexual assault, criminal intimidation etc involving the placement agencies. These instances led to a discussion which ultimately resulted in a desk-survey that Butterflies undertook to find out how many placement agencies are functioning in Delhi. At the same time, a detailed research on the laws that would be applicable to them was also undertaken.

The research threw up some shocking facts. This desk survey revealed over 125 agencies functioning in Delhi.

- a. There were no regulations governing placement agencies;
- b. Almost all these agencies were functioning by virtue of an un-registered partnership deed or as sole proprietorship entities;
- c. They were conducting their recruitment process arbitrarily and in a complete un-verified system where even basic details about the parents were not taken from the girl;

⁵ The child was not found at all. The judgement records that she was found. An oral mention was made to get this corrected. However, since Kalpana Pandit, the mother who had filed the petition is out of touch with Butterflies or the lawyer, the application for correction could not be filed.

- d. Most of the girls came from Bengal, Jharkhand, Assam and on many occasions, their families were not aware that they were being placed for domestic work;
- e. Many of the agencies used to retain the salaries and hand over the same to the girls when they went on annual leave. There were instances when the complete salary was not handed over to the girl. Since most of the girls did not know their salaries, they would accept what was given to them despite feeling shortpaid.
- f. The State or any of its agencies took no steps to regulate these agencies;
- g. Child labour and abuse was rampant both at the hands of the agency as well as employer;
- h. Girls who were placed through the agencies eventually became agents of the placement agencies and would start bringing in other young girls;

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 and the court in October 2004, passed this order which changed the course of the case:

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 respondents submit 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 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 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 for the exercise of that power has virtually rendered the said provision negatory. 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 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 objections 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 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 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.

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:

- a. What is a placement agency?

- b. 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?
- c. If (b) is in the affirmative, then under what laws can they be regulated?
- d. What are the institutions that can be brought in to ensure that these are regulated?
- e. What are the penalties that can be imposed?
- f. What are the avenues to ensure that the employers are also protected?
- g. How does one ensure that there is safe migration and no trafficking?

Domestic workers form a significant portion of the workforce in the informal sector. According to the National Domestic Workers Movement, there are about 4.2 million domestic workers in India and the website goes on to say that unofficial estimates are that there are more than 50 million domestic workers.⁶ An earlier ILO survey indicates that a majority of the domestic workers are found in the urban areas. There is also a significant population of them who are children.⁷

According to the Domestic Workers Convention, 2011 (No. 189), “domestic workers” is defined as (see box)

- (a) the term “domestic work” means work performed in or for a household or households;
- (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.⁸

⁶ See however the ILO report, *Domestic Workers Across the world, Global and regional statistics and the extent of legal protection*.

⁷ From the time the petition was filed and decided and to the date of the paper, there have been significant changes in the law about the status of “child domestic workers”.

⁸ Article 1 of the Convention

The Domestic Workers' Convention, 2011

The Convention intends to concretize the effort in bringing those engaged in domestic work, at the forefront of the legal discourse on labour regulations. The preamble to the Convention notes that domestic workers are often girls and women who often belong to disadvantaged minority groups, who are susceptible to discrimination and harassment with respect to conditions of employment. The Convention seeks to provide decent conditions of employment to domestic workers.

25 member States have ratified the Convention as of 2018.

Applicability of the Convention:

- The Convention defines 'domestic work' to include any work done for or in a household(s). 'Domestic Workers' includes only those engaged in performing domestic work as a part of an employment relationship. **(Article 1)** People engaged in performing domestic work occasionally or sporadically are excluded from the ambit of the Convention.
- The Convention applies to every domestic worker unless the ratifying States:
 - a. Have existing regulatory standards which afford protection analogous to this Convention to a category of workers or
 - b. If certain limited category of workers require a substantially nature of legal framework,

in which case the applicability of this convention on those workers can be exempted. **(Article 2)**

Obligations on Member States:

- The Convention presses upon the States to take steps to promote and protect human rights of domestic workers **(Article 3)**. With specific regard to domestic workers, it calls upon the nations to adhere to fundamental principles and rights at work, namely:
 - a. freedom of association and the effective recognition of the right to collective bargaining;
 - b. the elimination of all forms of forced or compulsory labour;
 - c. the effective abolition of child labour; and
 - d. the elimination of discrimination in respect of employment and occupation.

- In furtherance of the right to association, **Article 3** encourages member states to recognize the rights of domestic workers to establish and join organizations, federations of their choice.
- **Article 4** emphasizes on setting a minimum age for domestic workers and also notes that if domestic workers are below the age of 18 and above the minimum age of employment, then the member States shall ensure that they are not deprived of compulsory education, or interfere with opportunities to participate in further education or vocational training.
- **Articles 5 and 6** cast an obligation on the States to protect domestic workers from harassment, abuse at employment and to take steps to ensure they enjoy fair and decent terms of employment.
- **Article 7** encourages laying down of terms and conditions of employment for the perusal of the domestic workers in accordance with domestic laws. The Convention provides a list of particulars which may be specified in agreements/contracts expressing such employment:
 - (a) the name and address of the employer and of the worker;
 - (b) the address of the usual workplace or workplaces;
 - (c) the starting date and, where the contract is for a specified period of time, its duration;
 - (d) the type of work to be performed;
 - (e) the remuneration, method of calculation and periodicity of payments;
 - (f) the normal hours of work;
 - (g) paid annual leave, and daily and weekly rest periods;
 - (h) the provision of food and accommodation, if applicable;
 - (i) the period of probation or trial period, if applicable;
 - (j) the terms of repatriation, if applicable; and
 - (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.
- The member states shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers. It shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations. (Article 17)

Laws Relating to Domestic Workers In India

At the time the petition was filed and over the years the petition remained pending, there were no laws dealing with domestic workers. 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, 1986⁹.

While this would have protected children to some extent, there was no law relating to adult domestic workers. Even with respect to children, despite the notification, enforcement mechanisms for ensuring their protection and safety were complicated and consequently difficult to enforce.

Cases of Children:

The overall framework of child protection is statutorily enforced through the Juvenile Justice (care and protection) of Children Act, 2015.¹⁰ As per the Act, a child is a person upto the age of 18 years and a child who is employed will be treated as a “child in need of care and protection”.¹¹ Under Section 79 of the Act, it is an offence to engage a child and keeping the child in bondage for the purpose of employment or withholds the child’s earnings and persons found guilty of this offence can be imprisoned upto a term of five years and also liable to a fine which may go upto Rs.one lakh. There is an exclusive statutory authority under the Act with quasi-judicial powers set up under section 27 of the Act which hears the cases of children who are abused including child labour.¹²

Similarly under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, there are labour inspectors who are authorized to conduct inspection under the Act who can also raid any premises where they have information about child labour being engaged.

⁹ The Act has undergone considerable amendments in 2016 and now it is titled Child and Adolescent (Prohibition and Regulation) Act, 1986.

¹⁰ This act has replaced the earlier Juvenile Justice (care and protection) of Children Act, 2000 which was in force during the pendency of the case.

¹¹ Section 2 of the Juvenile Justice Act.

¹² Child Welfare Committee (CWC) are statutory authorities who govern all children who are in need of care and protection. They function as a bench of Magistrates.

The remedial measures however are before the Child Welfare Committee who have a holistic redressal process for children in need of care and protection. There is a detailed procedure laid out both under the Act and the rules wherein the procedure with respect to production of the children before the Committee and their rehabilitation processes are detailed.

A child in need of care and protection may also be produced before an individual member for being placed in *children's home* or in the hands of a *fit person*. [Section 28(3)].

- At least one member of the Committee shall always be available or accessible to take cognizance of any matter of emergency and issue necessary directions to the Special Juvenile Police Unit or local police of the district. For this purpose the Chairperson of the Committee shall draw up a monthly duty roster of the Committee members who shall be available and accessible every day, including on Sundays and holidays. The roster shall be circulated in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Board, the District Child Protection Unit and the Special Juvenile Police Unit. [**Rule 16(6), Model Rules, 2016**]
- The opinion of majority of members of the Committee shall prevail in event of any difference of opinion and in case there is no majority, then the opinion of the Chairperson shall prevail. [**Section 28(4)**].
- No order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding. However, at the time of final disposal of the case at hand, at least three members should be present. [Section 28(5)].
- Section 29 lays down that a Child Welfare Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children in need of care and protection as well as to provide for their basic needs and protection.

The Committee shall have the *power to deal exclusively with all proceedings* under the Act unless the Act explicitly and categorically provides otherwise, in relation to children in need of care and protection.

- **Functions and Responsibilities bestowed on the Committee** are provided under **Section 30** of the Act. The list of responsibilities is inclusive and more functions may be added as prescribed:

(i) taking cognizance of and receiving the children produced before it;

- (ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;
- (iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organizations to conduct social investigation and submit a report before the Committee;
- (iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;
- (v) directing placement of a child in foster care;
- (vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;
- (x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;
- (xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;
- (xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;
- (xvii) Accessing appropriate legal services for children; **(Additional functions are prescribed under Rule 17, Model Rules, 2016)**

In view of the above, though not very effective, there is a process of rescue, rehabilitation and redressal under the Juvenile Justice Act for a child rescued from child labour. However, there are large areas which remain unaddressed inasmuch as the remedial measures with respect to regulating children working in homes, the nature of work they are engaged in, safe migration, ensuring that their right under the Right to Education Act is not compromised are absent. There is also complete absence of the aspect of prevention of getting children engaged with domestic workers.

In 2016 extensive amendments were carried out in the Child Labour Act which is now renamed as Child and Adolescent (prohibition and regulation) Act, 1986. The Act introduces the concept of adolescent who is a person between 14 and 18 years of age. Domestic work is

still retained as a hazardous industry and hence children and adolescents cannot be employed for the same. The positive feature of the act is also the creation of Child and Adolescent Rehabilitation Fund under section 14B of the Act.

In case of first offence of employing any child or adolescent in contravention of the Act, penalty would be imprisonment for a term not less than six months but which may extend to two years or with fine not less than Rs.20,000/-, but which may extend to Rs.50,000/- or with both. Earlier penalty for employing any child in contravention of the Act, was imprisonment for term not less than three months but which may extend to one year, or with fine not less than Rs.10,000/-, but which may extend to Rs. 20,000/- or with both.

b) In case of a second or subsequent offence of employing any child or adolescent in contravention of the Act, the minimum imprisonment would be one year which may extend to three years. Earlier penalty for

second or subsequent offence of employing any child in contravention of the Act, was imprisonment for a minimum term of six months which may extend to two years.

4. Offence of employing any child or adolescent in contravention of the Act by an employer has been made cognizable.

In 2013, the Penal Code was also amended to include a comprehensive section on trafficking as an offence. Cases of children trafficked for labour hence get covered in this section and attracts a stringent punishment.¹³

¹³ Section 370. Buying or disposing of any person as a slave. – Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

370A OF IPC

Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

Adult Domestic Workers:

There was a very severe challenge in making out a case for adult domestic workers. To begin with, since the persons are adults, there is an assumption of her agency to exercise her autonomy for the nature of employment she seeks. Despite evidence showing to the contrary, considering that a large population of persons engaged as domestic workers are barely literate, belong to extremely vulnerable social and economic classes, there is no protection available to them. This encourages all those persons who take their services to exploit them in every conceivable way. It was documented during the hearing that 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. Since the case at hand pertained to employment through placement agencies, most of the women had migrated to Delhi and were either living with their employers or living at the office of the placement agency. The argument before the court was to regulate the placement agencies while protecting the rights of the workers within an existing legal framework. The Delhi Government came up with a suggestion that there would be an amendment to the Shops and Establishments Act and include placement agencies as one of the establishments under the Act. This process was extremely limiting inasmuch as the framework of the act merely recorded the employees and the penalty for violation was extremely low. In the hearings that followed, the Government came out with another proposition that they have introduced the Unorganised Workers Social Security Act, 2008. The Act however is primarily administrative with no remedial measures given to any beneficiary. (see box)

UNORGANISED WORKERS SOCIAL SECURITY ACT, 2008

- The Act aims to provide comprehensive schemes for the unorganized sector relating to health and maternity benefits, life and disability cover, old age protection. Schemes for provident fund, housing, skill upgradation, employment injury benefit, funeral assistance, educational schemes for children are under the domain of the State government.
- The Act contemplates initiating schemes with the aid of different implementing agencies to protect the interest of the following different type workers and plans to

regulate the employment relationship between employer and workers of unorganized sectors.

- It contemplates an “employer” to include a person or an association of persons, who has engaged or employed an unorganised worker either directly or for remuneration.
- Unorganised worker has been broadly defined to include home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector.
- The Act also provides for home-based workers which refer to persons engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration.
- The Act also includes Wage workers who is a person employed for remuneration in the unorganised sector, irrespective of place of work, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, including domestic workers, with a monthly wage.
- A person to be registered as an unorganized worker should be above the age of 14 years and a self-declaration should be given. Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration.
- The National social security board and the state social security board will advise, monitor, review and keep a record of the social welfare schemes.’

It was very clear that the above structure was totally inadequate to deal with the massive and complex problems faced by the domestic workers in the hands of the placement agencies. The responsibility to suggest a legal process to address this issue was then transferred to the lawyer and after much research these propositions were developed.

In 1979 a central Act (see box) was introduced to regulate the rights of workers who migrate from one state to another to ensure that their rights are not compromised merely because of their migration. Since almost all the domestic workers migrate from their homes to their place of employment, it was argued before the Court to use this statute as the basis and develop guidelines under them. It was further argued that as far as the adult women were concerned, they should be able to seek redressal through the State Commission for Women.

THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

- The Act envisages the following actors who are a part of the system:
 - a. **the workman**
 - b. **the principal employer** (the head of the office or department if it is a government establishment; the owner/occupier of a factory; person in supervision and control of any other establishment)
 - c. **“contractor”**, (a person who undertakes (whether as an independent contractor, agent, employee or otherwise) to produce a certain result by the employment of workmen or to supply workmen to the establishment, The Act applies to every establishment in which five or more inter-State migrant workmen are employed or who were employed on any day of the preceding twelve months.
- It also applies to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.
- “Inter-State migrant workman” includes anyone who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.
- The Act mandates the registration of establishment with a **registered officer** by the principal employer (government appointed authority) (**Section 4**): Only on issuance of certificate of registration will an establishment be allowed to employ an interstate migrant workman.
- In order to regulate the system, section 8 of the Act mandates the licensing of contractors. In the absence of a license from the licenseship officer, no contractor can appoint workmen.
- The Act casts obligations on the contractors and the principal employer with respect to disclosure of terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect of the inter-State migrant workmen etc. Aside from these, the Act mandates maintenance of records/register, payment of wages.
- It seeks to secure the economic and social interest of the workmen by mandating the contractor employing the workmen to fix the of wages as per the Minimum Wages Act, providing displacement allowance, journey allowance and other facilities such as residential accommodation during the period of employment etc. The contractor is responsible for payment of wages.
- Acting in contravention of the Act is an offence and the Act prescribes a stringent punishment for any person or company violating the provisions of the Act.

be afforded to the children and women, and the checks and balances that can be created to monitor the placement agencies. **(Paras 24 to 32)**

The judgment reflects on the reasons why offences of trafficking and those concurrent to trafficking continue to persist. It refers to a MWCD report which notes failings of policies to address economic and social hardships of different sections of the society, derailed coordination in terms of ensuring effective implementation of laws and rules, wide service gaps, shabby infrastructure, inadequate human resources etc. **(Para 34)**

Directions issued by the Court

1. The Court issued directions under Article 226:

- i. **Vesting the SDM's with control over placement agencies in the area:** The Court acknowledged the lack of a comprehensive legislation and the vacuum in terms of regulating employment of children and adult women and at the same time regulating placement agencies. In this light, the Court directed that guidelines vesting the SDM with power to monitor the placement agencies should be carved out by the State.
- ii. **Direction to prepare and issue guidelines for smooth and effective coordination of various enforcement agencies** under different statutes. The Court noted that it would be ideal and in the best interest if only a single window enforcement agency is created.
- iii. **For effective implementation of the Juvenile Justice Act and the Delhi Commission for Women Act**, the Court issued the following directions:
 - a. Registration of all placement agencies by the Labour Department within a limited time and a corresponding penal sanction in case of failure to do so;
 - b. The registration with the labour department is not limited to placement agencies in Delhi but also extends to those placement agencies which have assigned women/children as domestic help to homes in Delhi;
 - c. The registration should reflect pertinent information (number of persons who are engaged by the agency, salaries stipulated for each of them, period of employment, nature of work)
 - d. The information should be shared with the Child welfare Committee and the Delhi Commission for Women till such time the information is uploaded on the website.
- iv. **Duties of the Child Welfare Committee (Para 38):**

- a. The Court vested the responsibility of scrutinizing the records of the Labour Department with respect to the placement agencies on the Child welfare Committee.
 - b. The Committee is tasked with the responsibility of verifying information supplied and could identify agencies that would assist the committee in this regard
 - c. The committee and the commissions shall entertain complaints of domestic workers filed through or on behalf of them through different medium
 - d. The complaints shall be dispensed with by the committee/commission within 30 days on receipt of the complaint
 - e. The nature of complaints which may be entertained was also given by the Court; (non payment of wages, long hours of work, harassment by agency/employer, lack of basic facilities)
- v. **Powers of the Committee/Commission:** The Court placed the following powers on the authority of the committee and the commission:
- a. Power to summon placement agency or employer on the complaint of a domestic worker;
 - b. Direct payment of wages;
 - c. Direct payment of compensation;
 - d. Direct medical care;
 - e. Impose fines;
2. The Court further adopted the recommendations made by the Solicitor General on behalf of the State and issued the same as directions of the Court. The recommendations made by the report pertain to the pointers to be followed by NGO's, standard operating procedure for the Police, adoption guidelines. The report notes:
- i. Every state government must have a set of guidelines for NGO's which want to assist in inquiries/fact finding and rescue operations (to verify information obtained, to go for tracing/following/rescue operations in groups)
 - ii. Guidelines to the police (to deal with the child with kindness, establishing trust, to not keep the child in the police stations)
 - iii. Adoption Guidelines (to keep the best interest of the child as paramount, to confine the option of institutionalization for short term only, to rehabilitate the child in the long term)
3. The Court reiterated the circular issued to the **Delhi Police** which directed it to:

- i. regulate the functioning of placement agencies;
 - ii. to ensure proper screening of domestic workers being recruited by placement agencies by maintaining the register of all such agencies;
 - iii. 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.
 - iv. Verification of domestic workers is to be done by the Police.
4. Through paragraph 38, the Court noted that the recommendations made by the petitioner in W.P. 619 of 2012 should be considered by the State Government (**Para 38**) and due weightage be given to it. The suggestions made by the petitioner include:
- i. **Legal Position of children who work/are working as domestic servants:**
 - Children fall within the ambit of children ‘in need of care and protection’ under the Juvenile Justice Act, 2000 and the mandate of ensuring the protection and rehabilitation of these children fall upon the shoulders of the implementing authorities recognized and established under the Act. (**Para 25**) The Child welfare Committee is rightly and lawfully taking action against individual employers who withhold wages or make children work in exploitative situations.
 - ii. **Legal Protection with respect to Adults:**
 - With respect to adult women who are employed as domestic helps in households:
 - “...the regulating mechanism prescribed under the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 can be adapted.”
 - This legislation mandates compulsory licensing of contractors and the definition of a contractor can be extended to a placement agency thereby, invoking duties of a contractor as envisaged under the Act upon the placement agencies. The duties includes ensuring timely payment of wages.

Legal Framework with respect to Private Placement Agencies

- 1. **At the Central level:**
 - No legislation has been proposed so far with regard to domestic workers but [the MLE notified the States](#) in 2011 via a circular directed the States to collect and maintain data of private placement agencies and referred to the National employment Policy which has been prepared by the MLE.
 - The [press release by the Press Information Bureau dated 07.03.2018](#) notes that domestic workers have been included by several States under the Minimum Wages Act and 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 Government requesting them to take steps for formulation of a policy at their own level for regulating these placement agencies”.

2. Delhi:

i. Delhi Private Placement Agencies (Regulation) Bill, 2012 sought to deal exclusively those placement agencies which deal with domestic workers but despite being tabled in the Parliament, it not been passed till date.

ii. Subsequent to an order by the Delhi High Court directing the State to compulsorily register private placement agencies, [an order was issued by the L.G. in 2014.](#)

iii. The order issued by the L.G. defines a domestic worker as a person who has attained 18 years of age and is engaged to do domestic work (through a placement agency). Key features of the order are:

- Mandatory registration and procurement of license through the Labour Department, failing which private placement agency shall not function in Delhi
- Furnishing of all necessary information to the labour department (contact information of employers, workers, wages stipulated, living condition)
- Every domestic worker shall be issued a passbook and agreement for employment shall be in writing
- In case of non-compliance of the order: Strict penalty of Rs. 50,000 and cancellation of license
- The Delhi Commission for Women and Child Welfare Committee to decide upon the complaints within a period of 30 days
- The complaints may be regarding non-payment of minimum wages and other living/working conditions

3. States which have promulgated laws to regulate private placement agencies: Chhattisgarh, Jharkhand

CONCLUSIONS

Following this judgement, certain states have taken initiatives to bring some amendments to the existing legislation or bring out new legislations to regulate placement agencies. However, these are not yet in force. The fate of the women and their manipulation by placement agencies still continues to remain the same despite the path breaking judgement.