

national workshop
on
children & law
for lawyers

YUVA Centre , Mumbai 29, 30 june 2002



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Campaign Against Child Labour (CACL)
Central Secretariat, C/o RLHP, Mysore
in collaboration with

Human Rights Law Network (HRLN), Delhi, India Centre for Human Rights and Law (ICHRL), Mumbai and CACL Maharashtra.

NATIONAL WORKSHOP ON CHILD LAWS FOR LAWYERS

Organized by :

Campaign Against Child Labour (CACL), Central Secretariat, Mysore
&
India Centre for Human Rights and Law (ICHRL), Mumbai,

In co-ordination with

Campaign Against Child Labour (CACL), Maharashtra.

At :

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Foreword

In India, there is a plethora of laws to protect the rights of the children, but implementation is found to be sorely lacking. Campaign Against Child Labour (CACL), since its inception has been strong in its work at the grassroots level and the media campaigns. But, time and again we have faced difficulties in our legal interventions. Awareness regarding legal measures among the activists is minimal. We found that the legal advice in some cases was inadequate and the conviction in cases was almost nil. Although there were dedicated and committed lawyers to help us in our legal interventions in the states, they were not specialized in child rights.

A spate of discussions among CACL activists followed and it was decided to organize a two-day workshop on child rights and child laws. We also discussed these issues with Mr. Colin Gonsalves and his team at Human Rights Law Network (HRLN, Delhi). HRLN responded enthusiastically and collaborated with us in organizing the workshop by inviting legal experts to handle various child related legal issues.

Lawyers closely associated with CACL and activists numbering about 65 from all over India participated in the workshop on child and law. The workshop was hugely successful due to the lively discussion of the participants.

Our heartfelt thanks to all those who made this endeavour a success.

CACL-CS Team

INAUGURAL SESSION

"No law can stand on its own and for every law to be successful it needs backing of public opinion. The same holds true in case of the law on total abolition of child labour also", said Hon. Justice C. S Dharmadhikari, Advisory board member of CACL inaugurating the two-day workshop on child laws for lawyers at the YUVA Centre, Kharghar, Mumbai on 29th July 2002.

He also stated that there is need for more interaction between the activists and lawyers. The activists can tell the lawyers what the law should be. The child rights organisations should work along with the trade unions. The trade unions are more organised. He also brought out a fact to everybody's notice that some of the trade organisations are opposed to abolition of child labour. The trade unions have to be taken along in this movement. There should be a separate workshop organised for the awareness of the trade unions.

There is need for the women's organisations also to be involved in this movement. The lawyers have to be told about the law and also the loopholes. It's always difficult to get the birth certificates of the children, which makes



Mr Joy Maliekal welcoming the guests and participants for the workshop on children and law for lawyers.

tackling the problem of child labour more difficult. There is need for greater co-ordination between NGO's and the issue of child labour should not be limited to child labour only but it starts from the registration of the birth of the child. There should be more thrust on awareness than on individual cases.

The Government is not honest enough to create an environment for the child to go to school. There is lack of will power to implement compulsory education. There is no uniformity in education and there should be demand for uniformity and equality in education. Every stage of child's life has to be taken care of, he stated.



Justice C.S. Dharmadhikari (third from right), former Judge of Mumbai High Court and CACL Advisory Board Member delivering the inaugural address.

In the agricultural sector it is not feasible for the parents to send the child to the school, as the child has to take care of its younger ones. There should be legislation towards compulsory education. He also stressed the point that there should be separate workshops for the people who implement the laws.

There is nothing decided about the children below 6 years. There is need for uniformity between laws. In workshops cross-section of society should be involved. In this age of globalization, multinational Companies are coming to In-

dia as they find cheap labour over here. "There are lots of minor girls employed in the brothels. There is no willingness for abolition of prostitution," he concluded.

Mr Joy Maliekal, National convenor of ,CACL welcomed the gathering and introduced the activities and challenges of the campaign. Mr. Colin Gonsalvez of Human Rights law Network (HRLN) was present in the session.

SESSION I

Public Interest Litigation - Introduction and Requirements.
Colin Gonsalves, Advocate, Supreme Court.

This was a preliminary session to introduce the participants to the basic necessities of Public Interest Litigation. Adv. Colin expressed his view that it was the legal profession that had really failed the movement the most.

ther that we need a Ph.D thesis. Facts should be well researched and their truth should be verified properly and adequately. They must be properly laid out. PILs do not have to be taken up only in the High Courts or the Supreme Court. We must look towards PIL in the lower courts and the Juvenile Justice Board too.

If CACL intends to file a PIL as the petition, it must lay out its history and it's involvement in the campaign and campaign issues. The affidavit of a person is good evidence where other evidence is lacking, he concluded.



Mr Collin Gonsalves of HRLN (second from right) making a presentation on Public Interest Litigation (PIL). Prof. B.B.Pande of Delhi University (right), Prof. Ravivarmakumar, Advocate of Bangalore High Court and Mr Mathews Philip of CACL Karnataka (extreme left) are on the dias.



A partial view of the participants

He suggested that PILs should never be based only on newspaper clippings. This however does not mean ei-

SESSION II

CHILD LABOUR

The Law on Child Labour

Prof. B. B. Pandey, Faculty of Law,
Delhi university.

Ms. Alpa Vora, a founding member of CACL, who chaired the session, introduced the resource persons and gave a brief introduction on all the laws relating to child labour. She also suggested that during this session one should look at legal strategies, remedies or alternatives in dealing with the issue of child labour.

Prof. B.B. Pandey, Law Faculty, University of Delhi, while

speaking on the law on child labour, stated that law is only one of the solutions, ways or means of solving social problems. It is not the best way. He spoke more about the norms of child labour. He stated that there should be an interface between the norm and reality. Prof. Pandey went on to speak more about the Supreme Court judgment in *M.C. Mehta v. State of Tamilnadu* [1996]. This judgment was a turning point for the issue of child labour for several reasons. Prof. Pandey had discussed this judgment with Justice Ansaria who had told him that a law that existed 10 years ago is not applicable now. The law for far too long had taken a very passive role in this respect. Prof. Pande believed that in order to make the campaign against child labour successful, one has to abolish child labour in priority industries.



Prof. B.B. Pande of Delhi University (extreme right) presenting his point of view on 'The Law on Child Labour'.

The ILO Convention [1999] has prescribed worst forms of child labour must first be eliminated. Sensitization courses should be held in management institutes. Prof. Pandey himself has held various sensitization programmes in

institutes at Lucknow. In the beginning, the labour officers were not taking the issue seriously but once they were informed by Prof. Pandey that they would be held in contempt of court if they did not comply with the conditions laid down by the judgment, they started treating the issue with respect. When Justice Ansaria started to talk about penal as well as civil liability the industrial lobby was taken aback. In Uttar Pradesh itself around 3.9 crores, was collected for default in child labour cases. But the M.C. Mehta euphoria did not last for very long. 250 labour inspectors received non- bailable warrants by magistrates who were influenced by the industrial lobby. Labour inspectors were unable to be present in the court because they were busy conducting surveys as ordered by the Supreme Court. Prof. Pandey suggested that even the lower courts be involved in the campaign against child labour. Sensitivity has got to be created in respect of the whole issue. Manipulation of age certificates was being done by employers of child labour which made the issue of penal and civil liability more complex. Writ Petitions were moved in the High Court mainly on

1. Employers were not given any opportunities by Labour Officers in recovery areas.
2. Natural justice rules were not being followed because the recovery orders were being passed by the Labour Commissioner.

3. Surveys were not being conducted in compliance with Supreme Court directions. The December 18th order was not published in any journal, which was basically a sequel to the December 16th order, where a fine upto Rs.50,000/- could be imposed on the employer of a child labourer. This order deals with the schemes to be implemented on hazardous and non- hazardous employment. In hazardous occupations the civil liability was Rs.50,000/- and in non- hazardous occupations the civil liability was Rs.20,000/- If the owner himself runs a small place then he is liable to pay Rs.2000/- The civil liability part of the December 16th order is incomplete without the December 18th order passed by the Supreme Court. Because of the lack of awareness of the December 18th order by lots of people including NGOs the beneficial aspect of the Supreme Court order has been lost. Law is a neutral instrument and how we use the law is really what matters. The 18th December order should be printed in a small booklet, in the local language and given to grass roots activists. It is a judicial legislation of a very significant kind, Prof. Pandey concluded.

Child Labour : The present scenario

India has got the dubious distinction of employing the largest number of children in the world. According to the NSS survey (NSSO 55th Round) results there are around 10.23 million child labourers in India. CACL does not consider this figure to be accurate due to definitional problems like the exclusion of children's work in the age group below five and between fifteen and eighteen. It might have also not adequately enumerated the work children are engaged in their own houses.

About 80% of the 393 million workers in India are in rural areas and more than 65% engages in agriculture and related activities. It is an established fact that the structure of production is indeed a good indicator of child labour; the greater the weight of traditional agriculture in the economy, the higher the incidence of child labour. This structural characteristic is overwhelmingly true for child workers because in the organized manufacturing enterprises child labour does not exist.

The context is observed in agriculture and related activities, household work, construction, beedi making, mining and quarrying, brick kilns etc. This constitutes the largest chunk.

Sharing of state level experiences of CACL Activists

1. **Arun Das, Convenor, CACL Bihar**- Even after the M.C. Mehta judgment became effective, industries started doing their work at home. Out of pity and poverty the labour officers did not file cases because children may suffer due to it. The nature of law is such that in the current situation it cannot be implemented properly. There are only two solutions for this - a foolproof case and a new law that does not differentiate between hazardous and non-hazardous occupations.

2. **Vinod Kumar, Convenor, CACL Jharkhand**-Spoke about the Bandva Mukti Morcha case of 1984 where recovery was made from the carpet industrialists but till now no



A partial view of participants

fall into the hazardous category. In a lot of cases the parents themselves become the employers of their children. He also gave a case study of a domestic servant who had been rescued and 42 human bite marks were found on her body.

4. Hemant Bhamre-Convenor, CACL Maharashtra- A survey was conducted and 2000 child labourers have been identified. A lot of these children were actually migrant workers.

5. Ranjan Mohanty-Convenor, CACL Orissa- Identifying child labourers in Orissa is very difficult. There are many legal problems affecting the implementation of the abolition of child labour. CACL Orissa is planning to do a public interest litigation declaring domestic child labour as hazardous.

6. Advocate Shanti- Interim Convenor, CACL Goa- Hotels and industries do not maintain registers of children working in their place. Also a major problem is the pledging of children in order to repay their parents debts. The specific problem in Goa is that since most of the child labourers are migrant workers, the local people do not really care about them. She also stressed that domestic labour should be declared hazardous. Child labour and therefore no action can be taken against these industries. Children who work in hotels have no recourse at all as the Labour Inspectors claim that hotels do not

money has been given to the children who were rescued from their employment. One also sees that the middle-men who recruit the children are usually the relatives of these children. He showed the labour inspector 24 child labourers but none of these cases worked in court and a punishment of one month of imprisonment was imposed on the employer. The Government keeps making promises to rehabilitate and educate the children but so far their efforts have been extremely feeble and futile. NCLP is set up only in very few districts. Jharkhand district has a lot of people below the poverty line but the government does not provide the adults with alternate employment.

3. Vishwasagar, Convenor, CACL Karnataka- In Karnataka Rs. 5 lakhs has been collected from employers but the money has still not reached the rescued children. The State government is very soon going to declare that there is absolutely no child labour in their state. The government figures keep decreasing but the reality is very different. There has also been a drastic increase in the deaths of domestic girl servants. Letters have been sent to the Chief Minister but have not resulted in any reply so far. Beedi and Agarbatti industries are now home based and therefore no action can be taken against these industries. Children who work in hotels have no recourse at all as the Labour Inspectors claim that hotels do not

Possible Legal Solutions

Prof. Ravi Varma Kumar, Advocate,
Karnataka High Court

Prof. Adv. Ravi Varma Kumar gave us his insights in this session. He posed the important question- Who can help the victim best? Answer is 'the victim himself'. He suggested a few legal solutions to the problems faced by activists and lawyers in child labour cases:

- Under section 200 of the Criminal Procedure Code*, a complaint need

not be written, a prosecution can be directly launched by any person.

- Under section 16 of the Child Labour Prohibition and Regulation Act**, magistrates have the power to record cases and pass orders accordingly.



Prof. Ravivarmakumar (centre) presenting his point of view on 'legal solutions' as Ms. Monica Sakrani, Advocate of Mumbai High Court (right) and Ms. Prathibha of ICHRL look on.

- Once someone is aware of his/her rights, the harassment automatically stops. Study camps should therefore be launched to make people aware of their rights. Both children and activists should be trained on how to fight against child labour.

- Relevant documents should be taken care of and used to tackle the problem.

- Labour authorities need to be sensitized on the issue of child labour.

- Strong public opinion is necessary and it should be built up to a great extent.

- The National Human Rights Commission has banned domestic child labour in Central government officials' houses.

- One can also try the Juvenile Welfare Board

as a legal recourse against employers.

- Anyone who threatens activists trying to rescue child labourers or prosecute employers can be made abettors of the offence.

- Art.23 of the Constitution of India prohibits all forms of

forced labour since a child cannot consent and therefore is not able to contract. Since every employment is a contract, therefore this contract is void ab initio, meaning the contract is void.

- The Royal Constitution of Labour [1929] states that any contract of labour of a child is a bond and that this bond is void.

- Habeus Corpus petitions can be filed to rescue the child labourers.

Prof. Ravivarma Kumar ended the session by stating that though victims may at some point turn hostile, we should be prepared for this eventuality. At no time should we take law into our own hands, the State is ultimately responsible for the welfare of children.

SESSION III

CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Convention of the Rights of the Child (CRC)

Justice Zac Yacoob, sitting judge,
Constitutional Court of South Africa.

Justice Zac Yacoob, Sitting Judge of the Constitutional Court of South Africa stated that the Convention on the



Justice Zac Yacoob, Sitting Judge of South Africa making a presentation on Convention on the Rights of the Child (CRC). Ms Alpa Vora, founder member of ACL who chaired the session and Mr Ryan of ICHRL sharing the dias.

Rights of the child (CRC) is a recognition of the world opinion on children. It has come from a process of evolution of thought, in which the child gradually came to be regarded as a human being, an individual and as someone who needs to be cared for. When the convention talks of the rights of the child, it means that it deals with the duties of the others to care for the child and its needs.

The issue is the Constitution's duty to children and preservation and protection of their rights. When we talk of a constitutional and democratic society with no discrimination we talk of the absence of discrimination against children too.

The rights of a child cannot be studied in isolation. They are interconnected with a number of aspects of society and have to be studied in connection with these aspects.

Justice Zac pointed out the causes for denial of children's rights such as 1) inequalities in society: In a situation where some persons are not treated equally in society, for example women, we can not expect children to be treated as human beings. By empowering women we work towards the empowerment of children; and 2) we cannot have well fed, educated children where a majority of the people are poor. Child rights are also connected to

socio-economic rights. It is for this reason that the fight against globalisation has relevance in the child rights scenario too.

To avoid the exploitation of children there must be strong trade unions. Child labour is a cheap form of labour and a cheap alternative to adult labour. When adults fear losing their jobs to children they would oppose child labour. Strong trade unions thus play an important role in the elimination of child labour, he said.

The CRC and the Law by themselves cannot achieve a solution. A strong movement for trade unions, socio-economic equality is essential. Laws that criminalize child labour will fail if the system is not good, Justice Zac stated.

Parents have to realize the importance of education and differentiate between the long-term interests and the short term ones. Instead of punishing parents, parent and child should be united against the employer, he said.

He suggested that Special courts should be created in the country to deal with the violations of the rights of the child. You cannot have child justice in a country where there is no adult justice. Therefore the whole question is

connected to the existence of a just legal order. Our notion of crime and justice has more to do with retribution than with justice. He suggested a restorative justice system. In South Africa, connection with offences like assault and theft are fined up to a 1000 Rands and where there is no excessive violence the issue of whether the plea is one of guilt or not is dealt with first. Where the plea is one of guilt, and it appears to be voluntary and is supported by evidence, proceedings stop and there is no conviction. Procedure is diverted to a restorative process as per the procedure in the act.

We must not look at the problems of children in isolation. They are inter connected and cannot exist where there is inequality, injustice, unfair trials, etc, he concluded.

Functioning of the CRC and NGO representation during the session

Ms. Alpa Vora, Founder member, CACL

While presenting her point of view on CRC, Ms. Alpa Vora, founder member of CACL and child rights activist based in Mumbai said that in relation to the Convention on the Rights of the Child (CRC), there has been a lot of change in the

understanding. It is treaty body of the United Nations.

In the recent past a lot of organizations have talked about four rights:

1. To be born, live, survive
2. Protection from abuse and exploitation
3. Right to develop
4. Participation - right to express views.

The definition of the child rests on 4 basic principles:

1. Best interest- all action to give primary consideration to the best interest of the child,
2. Protection from discrimination,
3. Right to life and survival,
4. Right to express views and opinion.

There is a procedure followed by the Committee on the Rights of the Child, the monitoring body of the CRC. It meets twice a year at Geneva. Every member country has to submit a report.

Pressure is built to achieve compliance where there is non-compliance. The committee tries to uphold good practices of a country to other countries as examples. The committee also tries to evaluate the obstacles to imple-

mentation and makes its recommendations. The committee wants the legal community to work and to push and create pressure to implement the CRC or parallel implementation. Pre-session meetings are also held to discuss NGO report. Representatives of NGOs and UN bodies are invited. Our Government has been grilled on the difference between the Government's report and the alternate (NGO) reports.

The value of this exercise was the document called the concluding observation. A lot of emphasis is placed on legal framework. Most importantly it talks about involving civil society in the issue.

Concluding her presentation, Ms. Alpa said that we could use the CRC to broaden the field of child rights. Children need to be involved in the movement.



Ms Aparna Bhat, Advocate of Supreme Court making a presentation on Juvenile Justice Act. Mr Arun Das, Convenor of CACL Bihar (right) who chaired the session and Mr. Ramesh of ICHRL look on.

SESSION IV JUVENILE JUSTICE ACT

Juvenile Justice (Care and Protection of Children) Act, 2000.

Ms. Aparna Bhat, Advocate, Supreme Court

Ms. Aparna Bhat, Advocate in the Supreme Court, while presenting the topic on Juvenile Justice (Care and Protection of Children) Act, 2000, said that the act was enacted mainly because of the initiative taken by the then social justice minister Ms. Maneka Gandhi. She outlined

the salient features of the new Act such as:

- Except a few provisions the act is the replica of the previous Act, The Juvenile Justice Act, 1986.
- This Act though new has not done any radical change but it still can be used for the welfare of the children
- The Act differentiates between children in conflict with law (juveniles) and child in need of care and protection.
- There is a new uniform adoption policy in the new Act.
- Very few states have implemented the new Juvenile Justice Act.
- In cases where child is being exploited, complaint can be made to the child welfare committee.
- In cases of domestic labour, the child welfare committee can award compensation.
- In case the magistrate is not passing the orders, we can approach the High Court and ask for the orders to be passed.

Concluding her presentation, Ms. Aparna Bhat called upon the group to file a Public Interest Litigation in the Supreme Court for the implementation of the JJ Act in all the states.

Mr. Arun Das, Convenor of CACL Bihar presided over the session.

IIDAY

SESSION VI

CHILD SEXUAL ABUSE

Child sexual abuse, laws and its inadequacy

Ms. Maharukh Adenwala, Advocate, Mumbai.

Ms. Maharukh Adenwala, Advocate and activist based in Mumbai was particularly critical of the Juvenile justice Act, 2000, which in fact had no provision for the children who have been sexually assaulted. Child sexual abuse can come only under the ambit of general law on rape contained in the Indian Penal Code (IPC), i.e. under section 375 and 376. She pointed out the technical impediments of this section covering cases of child sexual abuse. The position of a boy being sexually abused can only be put under the provision of Section 377, I.P.C., which deals with unnatural sexual offence. But the irony is that this section is now being recommended by the Law Commission to be deleted from the code after various gay rights groups had lobbied for its removal.

Ms. Maharukh suggested about the need for a separate legislation, which particularly deals with child sexual offences. This, she said, ought to have been included in the

Juvenile Justice Act, 2000. On the procedural part of the law, there is a complete lack of recognition of the care to be taken of a sexually abused child. She also spoke about adopting in-camera trials for children who have been sexually abused.

Ms. Maharukh emphasized the need of specific legislation on child being abused.

Ms. Aloka Mitra, Core Committee member of CACL, West Bengal chaired the session.



Ms maharook Adenwala (centre) Advocate of Mumbai High Court speaking on 'Child Sexual Abuse and related laws'. Ms Aloka Mitra of CACL West Bengal (left) and Ms Albertina of Bailancho Saad, Goa look on.

The sexual assault bill and its flaws

Ms. Albertina,
Bailancho Saad, Panaji.

Ms. Albertina of Bailancho Saad, while presenting her talk on the sexual assault and its flaws, listed out the recommendations by the Law Commission on Sexual Assault Law reforms.

“ Substitution of definition of rape by definition of sexual assault and the substitution of existing section 375 of the I.P.C.

The modification of section 376 of IPC has also been

suggested to include near relatives, who are sometimes the major offenders.

The modification of 376A to the extent of including rape by the spouse.

Section 376 E has been recommended for insertion, which would cover unlawful sexual contact, bringing into its ambit the abuse of a boy child.

On the procedural aspect, there is a recommendation for making women police officers deal with such crimes.

“ Substitution of proviso to sub-section (I) of section 160

Cr. P.C. to bar the requirement of persons under 16 years to answer the summons to appear as witness unless a social worker or a person with whom the witness is comfortable is allowed to be present.

The recommendation for the insertion of section 53A, which would cover the discrepancies and flaws in the medical examination of victims.

Recommendation on the modification of section 114A of the Evidence Act as to the presumption of absence of consent in prosecution for sexual assault.

The recommendation of inserting clause (4) in section 146 of the Evidence Act so as to put a bar on putting a question on the morality of the victim.

She also pointed out that though we have some provisions on the protection of sexual harassment at the workplace but there is nothing as regards to harassment at domestic or other places.

SESSION VIII CHILD TRAFFICKING

The Immoral Trafficking Prevention Act

Ms. Priti Patkar, Prerana, Mumbai

Ms. Priti Patkar of Prerana, a women's organization based at Mumbai while presenting her point of view on the Immoral Trafficking Prevention Act, said that an estimated 5 lakhs of women and children are trafficked every year. This is with an annual increase of 10% of which 20 - 30 % are below 13 years of age. 100% of the victims are minors when trafficked into the trade. However, the minors are hidden, not visible. When girls are rescued, they say that they have already been in a brothel for 6 months.

Describing her experiences, Ms. Patkar said that the red-light area was concentrated in Kamathipura, but it has now spread to several areas in Bombay, and diversified into beer-bars, beauty parlors, massage parlors, etc. There are dancing schools, tamasha classes in Sholar. Girls are lured in there under the pretext of teaching them how to dance. There are girls from West Bengal, Andhra Pradesh, Nepal and the North East. Sex-tourism is not confined to Goa, Mumbai, the Ajanta & Ellora and other



Ms. Priti Patkar of Prerana, Mumbai presenting her point of view on 'Prevention of Immoral Trafficking Act and its Implications' Sitting to her left are Ms Caroline Colaco, Advocate of Goa High Court and Mr Praveen Patkar of Mumbai.

areas which are frequented by internal tourists or foreign tourists. There is definitely a relation between Commercial Sexual Exploitation and Trafficking, she said.

She pointed out that no one is looking at the issue of boys who are castrated and used as eunuchs by men. They are also being trafficked.

There is no integration between rescue and social reintegration. Economic rehabilitation is totally absent from PITA. There is no State Government plan of action on the issue of rehabilitation. An attempt is made to send them back to their home states.

Ms. Patkar said that the management of rescue homes is appalling, in terms of the food, sanitation, health facilities, attitude of the staff, etc. The victim has a right to be rescued and to have a rehabilitation policy, as well as a right to participation under the CRC. When rescued, all the victims state that they are over 18 years of age, that they wanted to be in the flesh trade voluntarily, and that they had not been forced.

She listed out the directives issued by the High Court such as

- Monitoring and guidance committee in the home - comprising of NGOs working in the red-light area
- The committee meets regularly

A lot of changes have come about - clean toilets, clothes, sanitation, food.

Unless a proper home study is done, the child is not given away. The suitability of the parent is also looked into in detail.

PITA does not define "trafficking". The word "raid" and "rescue" are not defined. either PITA talks about pimping, illegally procuring a person for the purpose of prostitution, seducing a person in custody, soliciting in a public place, soliciting for the purpose of prostitution, etc.

The UN Optional Protocol related to the Convention against Transnational Organised Crime defines "trafficking" exhaustively.

Ms Patkar suggested that there is a need for legal intervention in this area. She also suggested formulating viable options or alternatives for rehabilitation of sexually trafficked victims.

Adult victims should also be given time to think about whether they want to go back into the flesh trade. She stated that there is not a single case where a girl was rescued and a case was then registered under PITA. PITA has not really been used. The brothel keeper picked up by the police is not the brothel keeper in most cases, she concluded.

Mr. Praveen Patkar, development consultant was also present in the session.

Prosecution and child trafficking

Ms. Caroline Colaco, Advocate, Panaji

Presenting the topic on Prosecution and Child trafficking, Ms. Caroline Colaco, Advocate of Panaji High Court, emphasized that prosecution in child-trafficking is very necessary. It is necessary to punish the child traffickers, otherwise the whole thing becomes a vicious circle.

She suggested that there is a need to be rescue-centered and prosecution-centered. Where bail is granted to traffickers, there is a need to intervene, speak to the Public Prosecutor and oppose bail. Make it difficult for the Magistrate to grant bail to traffickers. Use information about earlier cases. Show that the person will commit the offence again if let out. Therefore, bail should not be granted.

Ms. Caroline suggested not to concentrate only on rescue and rehabilitation. The First Information Report (FIR) should have certain details on trafficking. Then there is a need of follow-up with the police. We have to see that the chargesheet is filed properly. One should know the basic Code of Criminal Procedure (Cr.P.C.) and Evidence Act. She strongly recommended providing legal training on basic Cr.P.C. & Evidence Act to social workers and NGOs etc. She also suggested programmes to be conducted to

sensitise the police, Public Prosecutors, Special Trafficking Police.

Studies have been done on the various trafficking routes all over the country. There is a need to keep watch at these points. This would greatly reduce trafficking.

We need to assist the police in conducting the investigation - sperm tests, and medical evidence. Unfortunately, such facilities are inadequate in India. We need some very basic facilities as far as forensics are concerned. It is very important that we need to assist the prosecution as watching advocates, she concluded.

SESSION ON STRATEGIES

Mr Colin Gonsalves facilitated the session on strategy. A few strategies evolved during the workshop were listed out and some groups have taken responsibility on each strategy.

There was a consensus that NGOs or individuals should directly file cases without waiting for Labour Commission. There are different provisions in CLPRA and Cr.P.C. under which cases can be filed.

Section 16 of Child Labour (Prohibition & Regulation) Act, 1986**

Procedure relating to offences

- 1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.
- 2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.
- 3) No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

Section 97 Code of Criminal Procedure (Cr.P.C.)*

Search for persons wrongfully confined - If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Section 200 Cr.P.C. read with section 2(d) - Direct complaint to Magistrate

Examination of complainant - A magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate :

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint ; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 :

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

Section 2(d) "complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking

action under this Code, that some person, whether known or unknown, has committed and offence, but does not include a police report.

Prof. Ravivarma Kumar, senior advocate, Bangalore High Court has taken responsibility of looking into this matter. He can be contacted at 080-3468887 or ravivarma@yahoo.com; ravivarmak@hotmail.com His address is No.37, 2nd Main, Vyalikaval, Bangalore- 560 003.

SUPREME COURT/HIGH COURT ORDERS

Some orders by different High Courts and Juvenile Boards can be tools for our fight for justice to children. The participants pointed out the recent major orders upholding children's rights.

1. Jharkhand High Court order, June 2002 : In response to a Public Interest Litigation filed by CACL, Jharkhand chapter, the High Court directed the state government to provide basic amenities in all the schools as early as possible. The court has made it clear in its order that toilets should be build separately for boys and girls. Handpumps should be arranged in the schools where drinking water is not available. .

2. Delhi Juvenile Welfare Board order : The Board observed that child domestic workers per se, are neglected juveniles and ordered Rs. 1 lakh compensation for the child. A doctor of East Delhi was fined Rs.1 lakh by the Board for employing the child for 8 years without wages.

3. West Bengal Juvenile Welfare order: The Juvenile Welfare Board put a stay order (18th July 2001) on demolishing a slum in Kolkata city as a school is run there for the children of the slum.

Public Interest Litigations

Some of the areas identified by the participants where Public Interest Litigations can be filed in the High Courts or Supreme Court, are listed below.

P.I.L.	Person/Organisation Responsible
1. Money collected on Supreme Court order, but not disbursed No Rehabilitation Scheme	CACL Secretariat
2. Survey not properly done	Each CACL Unit
3. Manipulation of Age Certificates	CACL Jharkhand

4. NHRC guidelines on press and abuse cases: NHRC has given some guidelines to the media (both print and visual) on abuse cases where the names and photograph of the victims should not be publicized.

5. Bombay High Court order: The Order interpreted Article 45 regarding fundamental right to education as a right to get free books, pencils, uniforms etc for children.

4. Deaths of child domestic workers by "suicide"	CACL Karnataka
5. Child Marriages	CACL Karnataka
6. To force the government to file C.R.C. report and to make the report public	Ms. Archana Srivastav, YUVA
7. To force setting up of Juvenile Courts	CACL Bihar & Jharkhand
8. To improve conditions of homes	CACL Goa
9. Juveniles not getting bail - Legal Aid	CACL Karnataka
10. Problem of "fit institutions"	CACL Maharashtra
11. Change in procedural law on sexual abuse	Ms. Maharukh Adenwala
12. Child domestic workers	CACL Orissa
13. 93rd Amendment	Ms. Aparna Bhat
14. To put hotels in hazardous categories	Prof. Ravivarma Kumar

Ms. Aparna Bhat, Advocate has agreed to coordinate all the PILs on the abovesaid issues. She can be contacted at No. 65, Masjid Road, Jangpura, New Delhi-110014. Tel: 011-4324501/ 4319854/ 4319855
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The Group felt that we should be able to provide training for different sections of bureaucrats in the best interest of children. Some of the areas identified by the participants are given below.



A section of the participants keenly listening to the presentations.

TRAINING	
Topic	Person Responsible
1. Work out a comprehensive training programme for the judiciary and Labour Commissioners throughout the country	ICHRL
2. Participate in framing rules of the J.J.Act	Each CACL State Unit
3. Draft - Changes in the J.J. Act and other laws that are required	Maharukh

Mr. Colin informed that a Public Interest Litigation on domestic workers has already been prepared by him on the request of National Domestic Workers Movement (NDWM). It will be shortly filed in the Supreme Court. Ms. Aparna Bhat has agreed to provide all support if there are complaints or petitions to be filed to the National Human Rights Commission at Delhi.

The concluding session was chaired by Mr Joy Maliekal of CACL. Ms. Aparna Bhat of HRLN thanked the participants for their contributions. Mr Arun Das, Convenor CACL Bihar proposed a formal vote of thanks for the major contribution of HRLN and ICHRL in terms of identifying and organizing the resource persons for the workshop. He lauded the role of YUVA centre also which provided the venue and accommodation to the participants.



Mr. Arun Das, Convenor of CACL Bihar proposing a Vote of thanks to the participants. Sitting on the right are Mr. Joy Maliekal and Ms. Apama Bhat.

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