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National Commission for Scheduled Tribes

Proceeding of the Sitting held on 04.10.2013 and 10.10.2013 with Commissioner of Police concerning the News Report in the Times of India captioned "Savagely scarred maid rescued from VK flat".

The list of the participants is annexed.

2. NCST took suo motu notice of a news report dated 01.10.2013 in the Times of India, New Delhi which noted:

"A young maidservant from Jharkhand, probably a minor, was rescued from a Vasant Kunj ground floor flat this evening after a four hour battle of wits between her employers and volunteers of NGO Shakti Vahini and Delhi Commission for Women. She was rushed to Safdarjung Hospital in a condition that left the rescuers, cops and hospital staff shaken. TOI is with holding her photograph, which is deeply disturbing.

The colony residents apparently had raised an alarm when the shrieks from the house became unbearable. The volunteers then mounted a rescue operation which pitted them against the occupants of the house- an old woman in her forties and a pack of five dogs.

When they finally got to the girl after four hours, the team members reeled with horror. Rishikant of Shakti Vahini said the girl's face and body bore deep gashes and several injuries. Her ears were swollen and there were injuries on the head. The occupants of the house, the NGO said, denied any wrongdoing and claimed she had injured herself when she fell in the bathroom and they were getting her treated by a doctor. The maid is, however, learnt to have complained of being attacked with a sharp knife-like object over days".

3. NCST noted the incident with seriousness, particularly because the victim hailed from the State of Jharkhand and telephonically asked the Delhi Police on 01.10.2013 and 03.10.2013 to confirm whether the girl was a ST from Jharkhand and if so the Delhi Police may invoke relevant sections under the SCs & STs Prevention of Atrocities (PoA) Act, 1989 to the file. NCST also sent a letter by fax to this effect on 03.10.2013 to the Commissioner of Police, Delhi, the concerned Deputy Commissioner of Police, South Delhi and also to the SHO, Vasant Kunj, Police Station. Notwithstanding this, the Commission has noted with great concern that till late 3rd October, 2013 evening, the SHO could not confirm whether the victim belonged to the ST category or not. Attempts were also made to reach the Delhi Police Commissioner's office but these have not evidently been taken seriously by Delhi Police.

4. Considering the grave nature of the case and the delay on the part of the concerned police officials to apply the relevant provisions of the SCs and STs (PoA) Act, 1989, the Commission convened a meeting with the Commissioner of

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Police and other concerned authorities for ascertaining the factual position and for finalizing an actionable policy to monitor and check engagement of domestic maids from the tribal areas and their exploitation. The meeting with the Commissioner of Police, Delhi was scheduled on 04.10.2013 to discuss the matter.

5. In response, the Deputy Commissioner of Police, South District along with the Additional Deputy Commissioner of Police and SHO, Vasant Kunj appeared on 04.10.2013 hrs before the Commission but without any authorization letter from the Commissioner of Police or intimation for his absence.

6. The Commission observed during the meeting that large number of cases of unregulated or unsupervised levels of migration of STs, particularly women and minor girls to Delhi and their reported exploitation by middlemen and placement agencies had been brought to the notice of the Commission in the past also. The Commission also recalled a case of alleged exploitation and sexual harassment of an ST girl who had accompanied/stayed with a senior Govt. official posted on a foreign assignment and in which, the Commission had found inadequate action by the police with no effective results or deterrent effects

7. It was also observed that a large number of cases of exploitation of tribal minors and women who had been trafficked from the tribal areas and were engaged as domestic workers had come to the limelight through media, through representations made to this Commission, and through various Parliament Questions. The Commission observed that an actionable policy for safeguarding tribals engaged as domestic workers was needed to be formulated urgently to prevent exploitation by employers as well as by the placement agencies.

8. Chairperson, NCST enquired if the relevant sections of SCs and STs (POA) Act, 1989 had been invoked in the instant case. The DCP, South Delhi informed that an FIR No. 401/13 dated 30.09.13 U/323/324/326/342/370/307/120B IPC, r/w section of 16 Bonded Labour System (Abolition) Act, Sec 3 (1) VI of SCs & STs (POA) Act 1989 and Sec 23/26 of JJ Act had been filed in the case against the accused Vandana Dhir d/o P.C Dhir R/o 1178, Sector A, Pocket B&C, Vasant Kunj (N). At this time, although S.370 IPC was included, its implications and strong application was not highlighted by the police officials.

9. The Commission was informed by the police authorities as mentioned below:

(i) On 30.09.2013 a PCR call vide DD No. 31A was received at PS Vasant Kunj North which was entrusted to SI Neeraj Kumar. SI Neeraj Kumar along with staff reached at flat No. 1178, Sec-A, Pocket B&C, Vasant Kunj, New Delhi where Woman SI Poonam along with Police Staff, Ms. Palavi Ghosh from NGO Shakti Vahini, DCW help line Counselor Ms. Nisha, Ms. Sujata and Mr. Bhagwati Prasad, Project Director of Sai Sewa Kripa Samiti were found present. On inquiry, it was revealed that accused, Ms. Vandana Dhir had confined her maid under lockin a room and injuries on her body indicated that she was also severely beaten. SI Neeraj along with staff made efforts to enter the said flat but none opened the door. After a few hours, the resident of the said flat, Ms. Vandana Dhir arrived and opened the door of

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her flat. One maid servant, namely Ms. Fullin D/o Furlley R/o VPO Bartula, PS Ranga, Distt. Sahibganj, Jharkhand who was having injuries on her body was found present inside the above said flat. The maid servant, Ms. Fullin was immediately shifted to Safdarjung Hospital for treatment.

(ii) There were marks of brutal injuries on her person inflicted by sharp/blunt objects. She had 14 injuries. Her head, face and ears were also severely injured. She was admitted into the Hospital vide MLC No. 210077 and was declared fit for statement by the doctor. Her statement was recorded. She had stated that she was 18 years of age and was a permanent resident of Jharkhand. Her father expired long time back and about one year back her aunt brought her to Delhi where she was employed as maid servant in the House of Ms. Vandana. Ms. Vandana used to scold and beat her with broom stick, wooden stick, knife and hands due to which she had sustained injuries on her body. It was further alleged that whenever she requested Ms. Vandana to let her go home, Ms. Vandana used to confine her and lock her in a room. Ms. Vandana never paid any salary/wages to her. On her statement, the above cited case was registered and investigation taken up.

(iii) During the course of investigation the statement of the witnesses were recorded. On 01.10.2013, the accused Ms. Vandana d/o P.C. Dhir r/o Flat No. 1178, Sec. A, Pocket B&C Vasant Kunj, New Delhi was arrested in the case. On interrogation, the accused disclosed that the victim Ms. Fullin was employed as maid servant at her house through one placement agency namely "Dorothy Group", four months back. Further investigation in this regard was being conducted. On 01.10.2013 the accused Ms. Vandana was produced before the Court of Ms. Gomati Manocha, MM Patiala House Court, New Delhi and one-day Police remand of accused was obtained for further investigation of the case and to apprehend the co-accused persons i.e. owner of "Dorothy Group".

(iv) Women Police Staff had been deputed at Safdarjung Hospital round the clock for care and protection of the victim, Ms. Fullin. The family members of the victim at Jharkhand had already been informed.

(v) The victim was still under treatment in the S.J. Hospital. The Police authorities mentioned that the victim had informed that she was 18 years old but no documentary proof in respect of her age was available. Therefore, an order for conducting an Ossification Test was obtained from the concerned court on 01.10.2013 and the test had been conducted on 03.10.2013 at S.J. Hospital. The report was awaited. On 03.10.2013 co-accused Ms. Dorothy w/o Lakhi Ram r/o H17 Subhash Market, Bapu Park, Kotla Mubarakpur, New Delhi was also arrested. As the accused had allegedly caused injuries all over the body of the victim including her head, the bail request of the accused was strongly opposed by the Police Authorities.

10. Chairperson, NCST desired to know details and present status of the past cases involving atrocities against ST maids, and the relief granted in such cases. DCP assured the Commission that the requisite details would be forwarded to the Commission within a fortnight. He further informed that in the instant case, the ACP has been appointed as Investigating Officer as per the PoA rules. The Deputy Commissioner of Police further stated that action of the accused was

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non-bailable under the PoA Act and the accused lady had also reportedly been removed from the job by her employer, Messrs Alstom. Secretary NCST emphasized that in regard to the exact relationship between the employer (Messrs Alstom) of the accused and the maid servant through the medium of the accused (Ms.Dhir) was also required to be discussed. The Commission desired that the police officials should investigate the pay and reimbursement (cash/cheque) details of the accused to verify if the maid's employment was borne, in any way, by the company employing the accused. In such an event, the police should also make out a case against the company since criminal and civil liability would apply vicariously.

11. The Commission also reiterated its previous deliberations and emphasized that Delhi Police should conduct a survey, list out the placement agencies and maintain their proper record/registration. DCP informed the Commission that Delhi Govt had already taken steps for formulation of regulations on engagement of domestic servants. The Officials of the Delhi Govt. informed that actual status on formulating the regulation will be reported to the Commission shortly.

12. Since not much progress on investigation into the case had been made, the Chairperson, NCST decided that Chief Secretary of NCT of Delhi, Commissioner of Delhi Police, Secretary Law Department, Labour Department, Secretary Social Welfare Department may also be called for further discussion in the matter at 11:30 AM on 10th October, 2013.

13. The Govt. of NCT, however, informed on 09.10.2013 that, Chief Secretary will not be in a position to attend the meeting due to pre-occupation. In his absence, Principal Secretary (Home Department), Secretary (SCs and STs) and other officers of the Delhi Government were asked to attend the meeting. The Commission noted that there was no official information from Commissioner of Police Delhi Police as the Jt. Commissioner of Police (Crime) appeared on behalf of the Commissioner of Police.

14. Chairperson, NCST drew the attention of the officers of Delhi Police and Delhi Government towards the incident and also pointed out the salient aspects of the judgment of the Hon'ble High Court of Delhi in WP(Crl.)No.82/2009, WP(Crl.)No.619/2002, and WP(Crl.)No.879/2007 delivered on 24.12.2010, which highlights the submissions made by the Government and also the directions to the Delhi Govt. as under:

- a. Child welfare committee in Delhi shall, before the next date of hearing submit a detailed report regarding complaints received by them about child abuse.
- b. The Secretary Social Welfare Department, Govt. of Delhi shall remain present and indicate whether any rules have been framed or can be framed in particular to regulate the functioning of placement agencies.
- c. Chairman of Welfare Committee submitted that they are handicapped in dealing with complaints because of lack of particulars of placement agencies and employers.
- e. This petition has proceeded to tackle the issues to regulate the functioning of the placement agencies dealing with domestic child/labour /help.

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- f. The most common states for human trafficking are the States of Bihar, Jharkhand, Odisha, West Bengal, Chhattisgarh, and Nepal from where mostly girls are kidnapped and trafficked.
 - g. They (parents/ relatives of trafficked victims) complained that placement agencies were not paying and not ensuring payment to the persons as promised. No accounts were kept. Details of whereabouts of persons including minors were not being provided. They have received the complaints of beating and sexual abuse and they had witnesses as well. Agents also complained that some children were missing.
 - h. Issues are forced child labour and regulation of placement agencies.
 - i. In this order our focus has to be on the issues as to how to have proper control of administration over placement agencies.
 - j. We hereby direct that the Govt of NCT as well as Gol to take steps in the manner suggested above treating the same as directions of this court given in this order.
 - k. In its affidavit, the State Govt. contended that it was not possible to frame guidelines for monitoring the placement agencies. Instead it was suggested that steps would be taken for making registration under the Delhi Shops & Establishment Act mandatory, whereby placement agencies could be regulated. The necessary amendment in aforesaid Act has since been made.

15. In addition, the High Court observed as under:

"There is no comprehensive legislation to take care of the problem. Therefore, there is need to study this aspect viz. feasibility of having a legislation to regulate employment of children and adult women who are working as domestic help. Emphasis should be laid on the regulation of placement agencies who provide such help. We are making these observations also for the reason that the existing laws do not provide an effective speedy remedy which could ensure that women and children are able to:-

- a) Seek recovery and wages;
- b) Ensure freedom of movement; and
- c) Access shelter option in case of abuse before being able to go home.
- (d) Feasibility of having control of SDMs. of the areas on these placement agencies should also be worked out.

16. The Court has also issued following directions for more effective implementation of JJ Act 2000:

- a. Labour Department will register all placement agencies. The registration process will be within a finite period of time. Failure to register within that prescribed time should provide penal action which can be prescribed by this court.

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- b. The registration process should not only be for agencies located in Delhi but also for all the agencies which are placing women and children but are not located in Delhi.
- c. The registration information should require details of agencies.
- d. Various suggestions given by the Petitioner in W P 619/2009 and to take remedial steps, we also direct the respondent to consider the following suggestions:
- e. Committee and Commission will have the duty to go through the records provided by Labour Department, entertain complaints made by the domestic worker herself/ guardians, decide complaints within 30 days, summon placement agencies.

17. The High Court had also asked the DCP, Head Quarters to issue circular to:

- a. regulate the functioning of placement agencies.
- b. ensure proper screening of Domestic worker being recruited by placement agencies by maintaining the register of all such agencies.
- c. ensure that the agencies enrol applicants on the basis of formal application containing full details including the photographs contact address etc.
- d. verify domestic workers by the Police.

18. The DCP filed a response stating that the circular cannot be implemented as Delhi Police is over burdened. In the context of the above observations/directions of the High Court, the Chairperson, NCST observed with concern that necessary and prompt action to formulate a regulation for domestic maids had not been taken by the State Govt. expeditiously. Joint Secretary, NCST emphasized that it should be ensured that the proposed regulation does not provide legal sanctity to placement agencies, with complete control on the domestic worker and their trafficking from the source area.

19. The Secretary, Labour and Employment Department, Govt. of NCT of Delhi informed that in the instant case, a notice had been sent to the placement agency and the inspectors had also visited the place for further action. It was informed that the registration of placement agencies was also available for online access and so far, 655 agencies had been registered.

20. The Chairperson, NCST observed that a proper system with check points should be separately established to curb such incidents. Secretary, NCST emphasized the need for effective measures that will have preventive and considerably punitive effect since the condition of these persons amounted to slavery which was abhorrent not only under the Indian Constitution but also much debated internationally and India was a major black spot in the globe. In that respect, the national capital should be a role model for the country. He referred, in this regard, to the Criminal Law (Amendment) Act 2013 which modifies S.370 IPC and defines trafficking in a holistic manner and prescribes

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harsh punishment for the traffickers which includes the immediate employer and even the company, if found liable. Training programmes were needed to not only sensitize the local police at the police station level but they needed a check list to ensure that all aspects of the PoA Act and this Act were properly considered before filing the FIR. This would also apply to their superior officers and those whom they consult before finalizing the FIR. He also mentioned in this regard, the news report that the judge had spoken of the mental instability of the accused Ms Dhir and inquired as to how the prosecutor appearing for the police had failed to contest this as it may lead to reducing the punishment on pleas of insanity, etc. He suggested that the work of the prosecutor could be investigated so that the case is not compromised. In this regard, the relevant provisions of the recent Act amending Section 370 of the IPC were referred as below:

- 370.A. (i) Whoever, knowingly or having reason to believe that a minor has been trafficked, engage such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment of a term which shall no be less than three years, but which may extend to five years, and shall also be liable to fine.
- (ii) 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.

21. The Commission also observed with concern that the police authorities could not confirm/ provide details of their investigation against Ms. Dhir's employer (Messrs Alstom) towards their liability in the instant case despite promising action during the previous meeting one week earlier.

22. The Principal Secretary (Home Department) informed the Commission that the Govt. of Delhi would shortly introduce a Bill on the regulation of placement agencies for domestic maids. Chairperson, NCST advised that the final Bill should be sent to the Commission for consultation as mandated under Article 338A(9) of the Constitution and as per the instructions dated 16/02/2012 issued by the Cabinet Secretariat for consultation with the NCST in all policy matters and legal issues and incorporated in the Handbook of Instructions of the Cabinet Secretariat. He further advised that:-

- a. The Labour and Employment Department should immediately issue advertisement for registration of placement agencies. The list of placement agencies should be hosted on website for general public.
- b. The Delhi Police should sensitize the officials at the level of thanas about the provisions under the SCs and STs (PoA) Act 1989 and the PoA Rules and impart training to the officials on the issues relating to forced labour slavery and for adequately enforcing the law. The curriculum should include all relevant laws/regulations, particularly relating to the Criminal Law (Amendment Act), 2013 which became effective from the 3rd February, 2013 and replaced the existing provisions of section 370 of the IPC by a detailed and clear definition of trafficking;

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c. The Social Welfare Department, Govt of NCT will take immediate action for relief and rehabilitation action in the instant case in accordance with the provisions of the SCs and STs (PoA) Act, 1989.

d. Delhi Police should take action accordance with the above discussions and keep the Commission informed of the progress of the case on a monthly basis beginning 1/11/2013..

e. Govt. of NCT should urgently finalize the draft Delhi Private Placement Agencies (Regulation Bill).

23. After detailed discussion, the Commission desired that the Govt. of NCT and the Delhi Police should communicate the action taken on the above within a fortnight.

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