

## **SUBMISSION BEFORE THE CHILD WELFARE COMMITTEE ON 16<sup>TH</sup> FEBRUARY 2010 REGARDING 'RESCUE' OF 15 GIRLS ON 9<sup>TH</sup> FEBRUARY 2010**

### **I. CHRONOLOGY OF EVENTS:**

**This chronology is based on the statements of the girls and young women made to the Concerned for Working Children (CWC) during our meeting with them on 12<sup>th</sup>, 13<sup>th</sup> and 15<sup>th</sup> February at the State Home for Girls and the State Reception Centre for Women; and our background checks of the families, situation in Kavati Mandal, the training centre Velagu in Srikakulam District and the factory.**

- Divya 21 years old, working at Nuvo Craft for a year, went home to Bayrpuram Panchayat, Kavatai Mandal, Srikakulam District for a holiday in Jan-Feb 2010. Chompa, 18 years old also working at the same factory for three months also went home to Salalpura Panchayat, Kavatai Mandal, Srikakulam District.
- Chompa received a call for Mr. Srinivas Naidu Manager of *NUVOCRAFT APPARELS INDIA PVT. LTD* asking her to enrol more girls for the factory. Mr. Srinivas Naidu also comes to her village and talks to girls and their families.
- Divya, Chompa and 12 other girls are provided train tickets by Mr. Srinivas Naidu on the Prashanthi Express.
- The children boarded the train from **Palasa:** (*Palasa is located towards the north of the district - close to Orissa*).
- On 8<sup>th</sup> February 2010 Mr. Srinivas Naidu travels with the girls and young women up to Vizag where he disembarked saying that he has some work.
- The girls and young women arrived at the Bangalore Railway Station 9<sup>th</sup> February at around 12 noon. Though Mr. Lakshminarayan - the warden of the Hostel attached to *NUVOCRAFT APPARELS INDIA PVT. LTD* was there to meet them, but before they could disembark, the police boarded the train on the basis of a tip-off by the Ticket Collector and took the girls and young women into custody at the Railway Police Station.
- After they were apprehended by the Railway Police they were taken to the Railway Police Station. There were interrogated for half an hour regarding their origins and how they got to Bangalore. The young women claim that their photographs were taken at the Railway Police Station.
- BOSCO was called by the police and staff from BOSCO Mane came to the station and carried out an enquiry until 1.30. Two women then took the girls to a BOSCO centre where the inquiry continued. They were given lunch at 3.30 and their photographs were taken again

several times. The TV channels and print media, including Enadu were called and the press and TV crews were briefed about the 'rescue' operation.

- This appeared in all the dailies in Bangalore with photographs on the 9<sup>th</sup>/10<sup>th</sup> Feb 2010. It also appeared in the Telegu newspapers on the same days causing anxiety and concern of the families of the girls and young women and a flurry of rumours in the girl's villages.
- The police and BOSCO personnel told the girls and young women that 'we are taking you in for your safety and we will let you go' and then brought them to the State Reception Centre.
- The girls and young women were then separated supposedly according to age by the Doctor at the State Home (though as far as we know the medical reports were not available at this time); 6 young women (supposedly above the age of 18years) were remanded to the State Reception Centre for Women and the remaining 9 girls (supposedly below the age of 18 years) were remanded to the State Home for Girls.
- The girls and young women were then produced before the Child Welfare Committee. The girls, who were supposedly below 18 years, were sent for medical check ups and age proof. This included a physical examination of the girls. The medical reports were not available for us to see.
- Lakshminarayan of the Garment Factory had come to the Station to receive the girls and had also come to the Reception Centre. But they were not allowed to meet or talk to him. The young women claim that Mr. Lakshminarayan tried to explain the situation, but they were not in the mood to listen. Mr. Lakshminarayan is said to have followed the girls up to the State Home, pleading for their release, but was not heeded.
- Divya's cell phone was confiscated and the young women were not allowed to call home or anywhere else.
- Champa said that police from here had contacted the Kabadi police station of halaputtuga village. She said that the police there went to her home and found out if the family had given the consent for her to go to Bangalore for work and the family had said yes. So she wanted to know why even after that she had been kept back at the Reception Centre.
- According to the girls Nuvocraft had paid salary of Rs. 3,600 in full salary each month on the 10<sup>th</sup>. They said that the food and arrangements at the hostel were good.
- The Velugu Center at Kavati provides a training of one month and 10 days. They enable many women from Andhra to work here. There is a Velugu Center in Echerla in Srikakulam District. About 100 women from that area have come to work here in Bangalore. However, this was not corroborated by the Official from Velagu.

- At the factory, the work involves stitching jackets, coats, trousers and also embroidery work. In the hostel, there are only girls from Andhra, at the work place there are also girls from Karnataka
- They had been informed by the Warden that some of their parents are going to be in Bangalore on Tuesday 16<sup>th</sup> February.
- The Warden of the State Home for Girls is supposed to have said that if the parents come and present their documents to the Child Welfare Committee, then the Committee will take a decision to let the girls go. Also if someone from the Factory comes and present a letter, the Committee may release them tomorrow.

## II. BACKGROUND

### a. The Girls and Young Women:

A group of 15 girls and young women were rescued by the railway police on 9<sup>th</sup> February, 2009 from the city railway station and confined in the State Homes through BOSCO. The group of girls consisted of both children and adults.

The girls are from Chalala Puttuga, Bayrpuram and Salalpura Gram Panchayats **in Kavati mandal, Srikakulam** District. *(Srikakulam district is one of the important districts of Andhra Pradesh bordering Orissa on one side and Bay of Bengal on other side. Srikakulam, the northernmost district in the Andhra Pradesh, was a part of Vishakapatnam District till it was bifurcated in 1950. Srikakulam town, the headquarters of the district, is located on the east bank of the River Nagavali. Kavati is located in between two towns, Sompeta and Ichchapuram, towards East. It is 13kms from Ichapuram and Sompeta. There is a post office in Kavati.*

**As per the submission of the girls and the young women and their educational qualifications all the 15 persons rescued by the Railway Police are above 16 years old. Among them 4 are children above 16 and below 18 years old and 11 are young women above the age of 18 years.**

### a. Velagu Project

We were told that Divya, one of the young women, had received training at Velagu for 40 days.

All the young women we met said they received training at Velagu before coming to Bangalore. There is no payment during the training period at Velagu.

Mr. Ramanamurthy from an organisation called SWEEP based in Srikakulam informed us that there is a programme called the Indra

Kranthi Padakam (IKP), earlier called Velugu, which is a part of the District Programme related to providing employment to rural women. That programme provides a three month training programme followed by job placement in garment factories. However, when we contacted Mr. Jagannatha Naidu, Communication Officer of IKP, he said they have not been sending their trainees to Bangalore for the past 2 years. He said they would be happy to provide training for the girls and also find placements for them, provided they are above 18 years of age. Their practice is that the staff accompanies the trainees for placement and also has monthly visits to the factories that are on their programme.

***(Andhra Pradesh District Poverty Initiatives Project (Velugu):***  
*In keeping with the development commitment of the state and as envisaged in 'Vision 2020' policy document, the Andhra Pradesh Government has initiated the 'Rural Poverty Elimination Program' under the project 'Velugu' (literally 'light'). The Society for Elimination of Rural Poverty (SERP) is an independent, autonomous society registered under the Societies Registration Act. The Andhra Pradesh District Poverty Initiatives Project (APDPIP) is being implemented by SERP with the World Bank support in 180 backward mandals in the six backward districts of Adilabad, Mahbubnagar, Anantapur, Chittoor, Srikakulam and Vizianagaram in the state.)*

**b. Factory - Nuvocraft Apparels India Pvt. Ltd.**

Nuvocraft's corporate office is located at No.1, First Floor, Aziz Sait Industrial town, Nayandahalli, Mysore Road, Bangalore - 560039 and the hostel, we were told is located not far away. Mr. Stephen Verghese, a Btech in Textile Technology from IIT, Delhi is the Managing Director, and Mr. Yedla Govindaraju is the Director.

The factory is located on the main road, surrounded by a tall compound. It covers a floor area of about four times that our CWC office. It appears spacious, with adequate ventilation. The office and the store are on the ground floor and the garment work takes place on the first floor. From outside the building, the girls working inside in the first floor were visible through the big windows that were open.

There are girls from the vicinity and Bangalore who are working at the factory as well. The working hours are from 9am - 5.30pm

Initially the girls are taken on training at the factory at Bangalore and given a stipend of Rs: 3000/- per month with hostel accommodation.

The employees are paid full salary of Rs. 3000 to 3600 per month by the 10<sup>th</sup> of the following month. On completion of the training, they are also provided a production incentive that can range from Rs: 200/- to

Rs: 600/-. At the factory, the work involves stitching jackets, coats, trousers and also embroidery work.

### c. **Girls' Hostel**

The hostel is located quite close to the factory. At the hostel, there are only girls from Andhra Pradesh – Srikakulam at the hostel. They claim that the food is good, vegetarian with an egg on Sundays. They can make hot water if required. Breakfast and dinner are provided at the hostel, cooked by a cook hired for the purpose and they get a packed lunch of rice and saru that they pack themselves. The warden is a Mr. Lakshmi Narayan whose phone number is: +91 9341229288

## III. **VIOLATIONS OF THE LAW:**

### 1. **Constitution of India**

According to **Article 19.** of the Indian Constitution (1) All citizens shall have the right (a) to ***freedom of speech and expression***; (d) to ***move freely throughout the territory of India***; (e) to reside and settle in any part of the territory of India; 1[and] (g) ***to practise any profession, or to carry on any occupation, trade or business.***

**Article 22.** states that (1) No person who is arrested ***shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice***; and (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

In the above mentioned case both Articles were violated. The young women and girls were victimised for carrying ***on an occupation*** and were not ***informed, as soon as may be, of the grounds for such arrest*** and were ***denied the right to consult, and to be defended by, a legal practitioner of their choice.***

### 2. **The Juvenile Justice Act:**

As for the JJ Act, if the victim is below 18 and the child is in need of ***care and protection*** - the Child Welfare Committee has jurisdiction to hear the case and keep child until released to lawful guardian or fit institution. However, 11 of these young persons were above the age of 18 years and had a job and hostel to go to and the manager of the Hostel was there to receive them. The fact that the manager was a male and lived on the premises was another matter

and should have been investigated through a visit to the spot and suitable safeguards should have been implemented.

The JJ Act also states that if the victim is below 18 and is allegedly accused of trafficking charges [child in conflict with the law] – the JJB has the jurisdiction to hear the case and not the Child Welfare Committee and that the child should be produced before the JJB.

However, if the victim is above 18 and not accused – then s/he has to be released, as the Child Welfare Committee no jurisdiction to detain victim

If the victim is above 18 years and accused [**and an FIR must be filed**] – s/he has to be produced before the jurisdictional magistrate.

If below 18 and not accused and kept in reception centre – then girls have to be transferred to the custody of CWC only if it is believed that they are in need to care and protection, and the same is provided. However the girls though below 18 years of age were above 16 years of age, legally permitted to work as per law and had a job and hostel to go to and the manager of the Hostel was there to receive them. The fact that the manager was a male and lived on the premises was another matter and should have been investigated through a visit to the spot and suitable safeguards should have been implemented.

The Committee on however, appears to fall back on the Principle of Restoration under Section 39 of JJ Act that states that *the Committee shall have the powers to restore any child in need of care and protection to is parent, guardian, fit institution, as the case my be, and give them suitable directions;* and Section 50 of the JJA that states that *in the case of a juvenile or child, whose ordinary place or residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the juvenile or the child back to a relative or other person who is fit and willing to receive him at his ordinary place of resident and exercise proper care and control over him, notwithstanding that such place of resident is outside the jurisdiction of the competent authority....* for all cases perhaps as this is seen as a safe measure for the Committee and the risk of taking a decision *in the best interest of the child* is avoided.

In this case parents/relatives for very impoverished families were made to travel from Kavati Panchayat at great expense and

hardship bearing proof of relationship in the form of ration cards in order to secure the release of the young women and girls.

Section 21 of JJ Act provides for the ***prohibition of publication of name, etc. of juvenile in conflict with law or child in need to care and protection involved in any proceeding under the Act***, and the ***person who contravenes the provision shall be liable to a penalty which may extend to twenty-five thousand rupees***. These sections were blatantly violated and no action has been taken against the NGO who called the media or against the media that aired/published the information.

**JJ Act - Section 26** states, *“Procuring a child for hazardous employment, keeping him/her in bondage and withholding/using those earnings is punishable.”* Children’s pursuit to be employed at Nuvo Craft was also not violative of the JJ Act, as the work they had chosen was not a ‘hazardous employment’ which is prohibited under the above section.

### **3. The Child Labour Act, the Factories Act and the Karnataka Shops and Establishments Act 1961:**

There has been no violation of the Child Labour Act 1986, The Factories Act (date) or the Karnataka Shops and Establishment Act 1961 as all the girls are ostensibly above the age of 15 years.

Child Labour as defined under the Factories Act is as follows:

*s. 2. (c) . "child" means a person who has not completed his fifteenth year of age;*

*s.2 (b) "adolescent" means a person who has completed his fifteen year of age but has not completed his eighteenth year;*

*s.2 (d) "young person" means a person who is either a child or an adolescent;*

*(m) "factory" means any premises including the precincts thereof -  
(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or*

*(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place;*

The Factories Act makes references to three categories, namely ‘child’, ‘adolescent’ and ‘young person’. The difference between

these categories based on age lies in the number of hours of work that a person is permitted to do. For instance, while a person below the age of 15 can only work for 4.5 hours, a person who has completed 15 years and is below 18 shall be treated as an adult [fitness certificate required - s. 69] and is permitted to do a full day's work.

A person between the ages of 14-18 years requires a fitness certificate to carry out work. (Refer to S. 69 for procedure) A fitness certificate further distinguishes the nature of work that can be carried out -

Please see s.70 (2) - An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause (b) shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

Also, please see s.70 (1A) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.

A female child is only permitted to work between 8AM to 7PM.

There is no specific reference made to particular types of work that is permissible by the act - Work can be undertaken in any factory as defined under the Factories Act.

So in this case all the girls being above 15 had the right to work in a factory or other occupations of their choice within the above framework.

#### **4. The IPC:**

***IPC Section 339 - Wrongful restraint:*** *Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed, is said wrongfully to restrain that person.*

*Exception: - The obstruction of a private way over land or water which a person in good faith believes himself to have lawful right to obstruct, is not an offence within the meaning of this section.*

***IPC Section 340 - Wrongful confinement:*** *Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.*



**IPC Section 342. Punishment for wrongful Confinement**

*Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

**IPC Section 343. Wrongful confinement for three or more days**

*Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

Among the 15 girls, 11 of them were adults, aged 18 years or above, who were lodged under lock and key at the State's Reception Centre were 'wrongfully confined' by CWC. If any of them were suspected of trafficking children, as alleged by the CWC members, they should have been handed over to the police and an FIR filed against them. In any case CWC did not have any jurisdiction over them as they were adults. The CWC may find protection claiming that they were not sure of the age of young people. Then on what basis did the doctor segregate the girls and send them to Girl Children's Home (meant for girl children below 18) and to the Women's Reception Centre (institution meant for young women 18 years or above). However, in the meantime the CWC had a medical examination done of the girls at NIMHANS and they medically verified aged proofs!

It may be also noted that the CWC chairperson mentioned that FIRs have been filed against the young adults suspected of trafficking. However, we had no evidence of such FIRs filed. If at all, such FIRs were filed, CWC should have handed over the case to appropriate judicial authority and the CWC would have been in no position to just close their files and release them!

Besides, even if the CWC is excused for confining the young persons, they should have been produced before appropriate judicial magistrate, within 24 hours of their confinement and due course of law followed (Const. article 22.2). Section 343 of IPC necessitates an imprisonment which may extend upto 2 years, or with fine, or with both for wrongfully confining a person for 3 days or more.

**5. The CRPC:**

**CrPC - 167. Procedure when investigation cannot be completed in twenty-four hours.**

*(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period*

*of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.*

*(2) The Magistrate to whom all accused person is forwarded under this section may, whether he has or not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:*

*Provided that-*

<sup>1</sup>*[(a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-*  
*(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;*

*(ii) Sixty days, where the investigation relates to any other offence, And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;]*

*(b) No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;*

*(c) No Magistrate of the second class, not specially empowered in this behalf by the high Court, shall authorize detention in the custody of the police.*

<sup>2</sup>*[Explanation I. For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in Custody so long as he does not furnish bail.]*

<sup>3</sup>*[Explanation II].If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the*

*production of the accused person may be proved by his signature on the order authorizing detention.*

<sup>2</sup>*[(2A) Notwithstanding, anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorize the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and on the expiry of the period of detention so authorized, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):*

*Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.]*

*(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.*

*(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.*

*(5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.*

*(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.*

## **6. The Children' Rights Convention (CRC):**

### **Article 13**

*1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*

*2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others; or*

*(b) For the protection of national security or of public order, or of public health or morals.*

In our discussion with children, it was very clear that children and young women had no information about the reasons for their custody. They were not aware of any procedures that would ensue. The only information that they were given is that they 'may be released on Tuesday' (16<sup>th</sup> February). In addition, there were no means of communication between children and young women who were segregated. The only means of communication, a cell phone with one of the young women, was confiscated by the Reception Centre.

### **Article 12**

*1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative*

*proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The hearing at CWC to release the girls took place not only without consulting them or taking their opinion into consideration, the decision was taken while they were lodged in the respective homes. The parents who were asked to come to Bangalore were called in one by one, their identity and records, such as voter ids, ration cards, family photos etc. verified, and were made to sign on papers contents of which were foreign to them. When CWC was enquired why they were making parents for releasing adults, it was told that they were following the formalities for closing the case. The rescued girls were in no way consulted or their opinion considered for arriving at a decision to release them!

### **Article 16**

*1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.*

*2. The child has the right to the protection of the law against such interference or attacks.*

Article 16 of the CRC was blatantly violated in this case both by the child protection agencies as well as the media. Privacy of the children and their families was awfully intruded. The girls alleged that their photos were taken at the railway station by the Railway Police and at the NGO. Further, media was called, their photos taken and their story was published with photographs either at the invitation of the NGO, or as alleged by one the CWC members, on request by one of the members of State Child Rights Commission, in most English and other regional dailies, and by a few TV channels. The media intrusion took place at the premises of the NGO. In addition news about the girls was carried also in the local media in the native district. This has exposed and violated the rights of not only the girls, but also their families.

### **Article 37**

States Parties shall ensure that:

*(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor*

*life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

*(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

*(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

*(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

The CWC's acts amounted to depriving the girls of their liberty unlawfully. All the girls (all of them being 16 or above) had the right to move freely and engage in a profession of their choice, as stated early, within the appropriate legal framework. The young people thus deprived of their liberty, was deprived of any legal support, to either present their cases through a legal representative or personally. Though the girls resisted their detention, they were neither informed of the ground for their detention, nor were allowed to go free, at least when there was enough clarity to indicate that they were no wrong doers or victims.

## **7. OUR RECOMMENDATION/PLEA**

### **1. The Role of the Police:**

- The vigilance exhibited by the police in boarding the train on a tip off is commendable because it indicates that they are alert to the possibilities of trafficking and that they were proactive in their response.
- A preliminary investigation **must** be carried out before further action is taken, if not this vigilance can lead to harassment of innocent citizens and children, and in the process violation of many of their rights with the 'good intention of protecting their rights'.

- Even in situations where the police care or apprehension is required, codes must be developed for the Police to ensure that the children are not traumatised and their rights are not violated.

## **2. The Role of the NGO:**

- After the first contact with a child who is either in conflict with law or in need of care and protection, the NGO or the helpline should carry out a thorough investigation before s/he is brought into the JJ system
- The principle of divergence must be applied
- The child's privacy, dignity and confidentiality **MUST** be respected and protected.
- Children should be protected from the media at all costs. (see section related to role of media for more details)
- The NGO sector working with children, especially those running centres providing residential care, need to develop codes of conduct and a self monitoring system that comply with not just the letter of the law, but the spirit of the Convention on the Rights of the Child and based on the principles of equity, justice and fundamental rights.
- In any decision concerning the child, the child should be informed of the grounds for any actions taken and he/she should be enabled to take informed decision or where it is not possible, child's informed views must be considered in decision making.

## **3. The Role of the Legal Bench for Children:**

- An autonomous legal bench of probono lawyers well versed in all the relevant statutes, the rights of children and with knowledge of child psychology needs to be constituted to inform and guide the children and their families and to appear on their behalf at all JJ hearings.
- This body should ensure that the interpretation of the provisions of the JJA is not left to individual members of the benches and committees set up under the JJA, but are clearly laid out.
- This body should work in close collaboration with the High Court Judge who may be nominated by the Chief Justice of the State to oversee the condition and functioning of the observation homes/state homes established under Juvenile Justice (Care and Protection of Children) Act, 2000"<sup>1</sup>

## **4. The Responsibility of the Media:**

- The members of the media should not violate the Section 21 of the JJA which in essence bars the publication of name, etc., of a

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<sup>1</sup> "From the desk of Chief Justice of India" by Chief Justice of India Shri. Y. K. Sabharwal, Dated 3 April 2006

juvenile or child in need of care and protection involved in any proceeding under the Act.

Section 21(1) states that: No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published: Provided that for any reason to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

Section 21(2) states that: Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees”.

- They should respect children’s right to Privacy, Confidentiality and Dignity. They must ensure that children have a right to be represented in ways that do not violate their privacy.<sup>2</sup>
- They should commit themselves to report only those facts on children's rights violations that are not confidential.
- The media should recognise that children's opinions and consent are primary in any media endeavor to cover children's rights violations. They should commit themselves to obscuring the identities of children if they so wish.
- They should recognise that knowledge of children's rights and children's issues is essential to covering children's rights violations.
- They should reveal the identity only if the child/children desire so under certain circumstances like:
- When children initiate contact with the reporter, wanting to exercise their right to freedom of expression and their right to have their opinion heard.
- When children are part of a sustained programme of activism or social mobilisation and want to be so identified.
- They should commit themselves to not leaving any trails or clues about the identity of the child/children who have been violated. They should commit themselves to ensuring that children's stories, images and quotes are not sensationalised.
- They should commit themselves to ensuring that media portrayal of children is positive and humane.

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<sup>2</sup> Excerpts from the ‘Media Code of Conduct to Realise Children’s Rights’, The Concerned for Working Children, 2005



## **5. The Responsibilities of the Child Welfare Committees:**

- The Child Welfare Committees should work within the provisions and fundamental guarantees in our Constitution of India, the Indian Penal Code, the Convention on the Rights of the Child and all the laws that are set out to protect the rights of children and citizens of the country.
- It should verify if the organisation that brings in the children has done sufficient background checks and verifications.
- In case of suspected trafficking the concerned persons should be produced before a jurisdictional magistrate.
- It should not act in areas that are outside its jurisdiction and must ensure that the appropriate bodies and departments are informed for further action, where necessary.
- It should ensure that legal assistance and advice is provided to the children to pursue legal action in their defense.
- It should follow the provisions laid out in the JJA related to assisting children to establish contact with their families.
- It should not conduct any invasive medical examination for those above 18 years of age and for those below 14 years of age, (what should be this point?).
- It must ensure that there is no media coverage of the children after they have come into their care. In case such a media exposure has been carried out prior their taking charge, they must penalize all those responsible for that coverage under Section 21 of the JJA
- It must ensure that children are part of the formal hearings and that they have ample opportunities to present their case, with adequate legal support and information. They should be actively involved, along with their care-givers in the decisions being made with regard to their wellbeing. In case they are not in a position to do so, their guardians should be consulted.
- The children in their care should be provided with appropriate information and support to proceed to safe care and have access to information that will lead them to viable alternatives.
- It should use the powers vested in it in the best interest of the child, with humility, introspection and restraint.