



GLOBAL MARCH

Against Child Labour
Contra el Trabajo Infantil
Contre le Travail des Enfants

Toolkit for Legal Action & Legislative Advocacy

**For reducing child domestic labour
and gender based violence in India,
Bangladesh and Pakistan**



**Commonwealth
Foundation**

Supported by the Commonwealth Foundation

TABLE OF CONTENT

	Preface	iii
	Abbreviations	iv
Chapter-1	Introduction	1-3
	1.1 Background	1
	1.2 Objectives	2
	1.3 Methodology & Sources	2
	1.4 Scope & Limitations	2
	1.5 Terminology	3
	1.6 Structure	3
Chapter-2	Situation Analysis in India, Pakistan & Bangladesh	4-12
	2.1 India	4
	2.2 Pakistan	7
	2.3 Bangladesh	9
Chapter-3	International Legal Framework	13-15
	3.1 United Nations Convention on The Rights of The Children, 1989	13
	3.2 International Labour Organisation Conventions	13
Chapter-4	Domestic Legal Framework in India, Pakistan & Bangladesh	16-21
	4.1 Bangladesh	16

	4.2 India	18
	4.3 Pakistan	20
Chapter-5	Legislative Advocacy: Practice & Methods, Challenges, Opportunities, and Case Studies	22-35
	5.1 Institutional Capacity of Civil Society Organisations	26
	5.2 Data Collection, Documentation & Research	28
	5.3 Identification & Relationship Building with Target Groups	29
	5.4 Approach (Generating interest/political mileage/working with media)	33
Chapter-6	Law, Courts & Legal Action: Practice & Methods, Challenges, Opportunities, and Case Studies	36-44
Chapter-7	Ethics of Working with Communities, Groups and Organizations etc.	45-47
	7.1 Why ethics are important?	45
	7.2 Dos & Don'ts of working together	46
	7.3 Addressing Dissent or Disagreement	46
	7.4 Confidentiality, Disclosure, Reporting, Consent, Conflict of Interest & Competence: Legal Consequences	47

PREFACE

This Toolkit has been prepared and presented in an endeavour to put forth before readers nuances of legal action and legislative advocacy. Readers are encouraged to go through various cases mentioned here and to learn more about how these cases and interventions were carried out.

It is said that work is the greatest source of learning and this toolkit should be taken that way only. It only prompts readers to think and explore more, while also informing readers about basic concepts.

While this toolkit will prompt readers to think more objectively, actual learning about legal action and legislative advocacy will grow only when readers engage themselves with the processes.

India, Pakistan and Bangladesh are countries of shared complications, successes and peoples' movement and it is in this sense that this toolkit combines experiences of these three countries together and presents them before readers to invoke their curiosity in this area.

No work is ever complete or exhaustive, definitely not a work of this volume and it is in this sense that this toolkit will definitely throw more and more questions and queries, to which readers will have to strive to find solutions and answers.

It is our humble hope that this work will find favour from its readers and will serve a useful purpose for strengthening our struggle against child domestic labour and gender based violence therein.

Thanks are due to all those who contributed in the making of this toolkit.

Dedicated to the children of India, Pakistan and Bangladesh!

ABBREVIATIONS

BBS	Bangladesh Bureau of Statistics
BSAF	Bangladesh Shishu Adhikar Forum
CRC	Child Rights Convention
CDW	Child Domestic Work
CLPRA	Child Labour Prohibition and Regulation Act
CSO	Civil Society Organisation
GNP	Gross National Product
ICPS	Integrated Child Protection Scheme
ILO	International Labour Organisation
NIPCCD	National Institute of Public Cooperation and Child Development
NCP	National Children Policy
NCLEP	National Child Labour Elimination Policy
NPA	National Plan of Action
NGO	Non Governmental Organisation
PIL	Public Interest Litigation
POCSO	Protection of Children from Sexual Offences
SPARC	Society for the protection of the Rights of the Child
UNICEF	United Nations' Children's Emergency Fund
UNCRC	United Nations' Convention on the Rights of the Child

Introduction

1.1 Background

Social, economic, legal and political landscape of India, Pakistan and Bangladesh is similar in several ways. All three countries share their history, economy, politics and borders. Social structures, practices, religious beliefs, norms/customs and traditions do not differ much amongst the population inhabiting these countries and therefore challenges faced by these societies are also not much different.



Among several other issues, child domestic labour and associated gender based violence is one of the common realities that these three countries strive to find a suitable response to.

This social evil is pervasive across the South Asian region, which alone, according to conservative estimates¹, records existence of 16.7 million child labourers in the age group of 5 to 17 years, highest in India (5.8 million), followed by Bangladesh (5.0 million), Pakistan (3.4 million). Due to the hidden nature of child domestic labour, no official or unofficial data captures the actual magnitude and nature of injustice associated with child domestic labourers, yet its details, as available, present a horrific scene.

The governments of all these three countries are supported by vibrant civil society organisations/movement, public interest lawyers, social workers, academicians and active citizens in the endeavors to address this problem.

1.2 Objectives

The toolkit is designed to be used by child rights organisations, trade unions, teachers associations as well as other civil society organisations and groups working on the issues of child labour, child protection and gender based violence. It is aimed to assist and guide Global March Against Child Labour (hereinafter referred to as Global March) partners and other civil society actors in understanding legal action and legislative advocacy as a skill for child protection, reducing child domestic labour and promoting gender rights and to support them in influencing and/or developing specific legal action and legislative advocacy asks and strategies in their countries for child protection.

1.3 Methodology and Sources

The toolkit is based on the information available in public domain. Input assistance has also been taken from key informants from India, Pakistan and Bangladesh.

1.4 Scope and Limitations

The toolkit includes examples of successful advocacy efforts and court cases as well. These examples may have worked well at a given time and in a given country, however it may be the case that they may not replicate themselves.

¹ *Measuring Children's Work in South Asia: Perspectives from national household surveys* (ILO and UCW, 2014)

Court interventions are unpredictable for a variety of reasons and that is why it has to be kept in mind that these examples have been used to only demonstrate that they worked, not necessarily that they will always work in a similar fashion.

1.5 Terminology

Minimum legal and technical terminology has been used in order to make this toolkit simple and useful even for those who are not familiar with legal terms. However, technical terms have been used at certain places, where it was not possible to explain clearly by using any other term. Illustrations, graphics and pictorial depictions have also been used amply to make the content less text-heavy and comprehensible by lay persons.

1.6 Structure

The toolkit contains a basic introduction to the situation as it exists in India, Pakistan and Bangladesh vis a vis child domestic labour and gender based violence in these countries. It gives a brief account of international laws as well as domestic laws ratified and/ or adopted in the three countries. However greater focus has been placed on explaining details of nuances of advocacy and how to use courts for bringing law reforms or to fill in legislative gaps. Case studies have also been suitably included to give examples.

Situation Analysis in India, Pakistan and Bangladesh

India, Pakistan and Bangladesh account for the highest number of child labourers in the South Asia region. Cultural acceptability of child labour is common in all these countries and when it comes to child domestic labourers, girls are usually preferred over boys. The common factors that contribute to child labour in the South Asia region are family poverty, illiteracy, lack of awareness, social and economic circumstances, unemployment, gender inequality, lack of access to information and alternative means of livelihood. Another common thread that runs in the region is the prevalent practice of child trafficking both internally and across borders. Due to the contributing socio-economic factors, girl child become the most vulnerable victim of child trafficking as they are exposed to sexual and labour exploitation. Girls are commonly preferred as domestic help which leads to their labour exploitation and sexual abuse and therefore making it a gender based issue.

2.1 India

According to UNICEF in India around 150 million children aged 5-14 years or nearly 1 in 6 children in this age group, are involved in child labour. According to the ILO, 7.4 million children in the same age group are engaged in domestic work, which is disproportionately carried out by girls. It is estimated that 74 percent of child domestic workers in India are between the age of 12-16 years. According to the ILO (2004), more girl children under the age of 16 years are in domestic service than in any other category of child labour. The UNCRC also highlights the effect that traditional socio-cultural beliefs have on discrimination against the girl child, which devalues their role in the family and reinforces gender biases. Poverty, social exclusion, and social tolerance as well as the lack of an institutional response, quality education and family support, together interact to produce situations wherein children are forced into this work (ILO, 2005). Apart from socio-economic factors and gender discrimination, the inflexibility of the formal education system acts as an obstacle to continuing their education, as is the poor teaching quality in some schools and the difficulty in affording school books, equipment, uniform, and in paying school fees. Many child domestic workers also end up dropping-out during

the school year because of these problems, and are discouraged from returning to formal education due to the need to earn money for their families².

In India, child domestic work is socially and culturally accepted especially for girls as it enforces the traditional roles and responsibilities of women in the household. Child domestic work is often trans-generational, as adult female domestic workers induct their daughters into their occupation. Moreover, the poor health conditions of adult women domestic workers becomes an entry point for young girls who serve as replacements for the older women when a contingency arises in the supplier households. Young girls are often preferred by employer households seeking to hire the services of domestic help for childcare. This is because of the ostensible control that employers can exercise over younger domestic workers. Further, low levels of awareness about their rights and consequently less likelihood of assertion of these rights among the younger workers, account for the preference of employers for these workers over the older ones³. Since most of the times it is considered that the employment is due to the benevolence of the employer, the wages are inflexible and only at the discretion of the employer.

Child domestic work makes children susceptible to exploitation and abuse. In a 2006 study of 500 child domestic workers in West Bengal, for example, it was found that 68 per cent had faced physical abuse, with almost half suffering severe abuse that had led to injuries and 86 per cent of child domestic workers had experienced emotional abuse. The study also found that nearly a third of families had no idea where their children, mostly daughters, were working, and 27 per cent admitted they knew that they were being beaten and harassed. The study further indicated that a third of child domestic workers had their genitals touched by members of their employing family. Twenty per cent had been forced to have sexual intercourse.⁴ Due to the vulnerability and isolation of the child domestic workers, the risk of abuse and harassment is greatest amongst those children who live in the employer's household all the time.

The constitutional provisions and legislations like the Child Labour (Prohibition and Regulation) Act 1986 and Juvenile Justice Act 2000 failed to be effective for containing the exploitation of the domestic child labourers. India has been consistently upgrading its response to child domestic labour, though at a rather slow pace. However, interestingly Indian Courts (Supreme Court and various High

² Blagbrough, J.: "Child domestic labour: a global concern", in *Child Slavery Now: A contemporary reader*, Craig, G. (ed.) (Bristol: The Policy Press, 2010).

³ "Focus on child and adolescent domestic workers in Delhi and Ranchi, India / International Labour Organization, ILO International Programme on the Elimination of Child Labour (IPEC); ILO India, 2013)

⁴ Save the Children UK: *Abuse Among Child Domestic Workers*, A research study in West Bengal (West Bengal, Save the Children UK, 2006) referred in "Ending child labour in domestic work and protecting young workers from abusive working conditions": ILO-IPEC, 2013

Courts) have played significant roles by consistently keeping exploitative child labour issues in focus in response to various public interest litigations. Remarkable is the collaborative approach of judiciary, governments and civil society in addressing issues pertaining to domestic child labourers. Through series of judicial orders, a concrete action for rescue, recovery and rehabilitation of child domestic labourers and prosecutions of employers and traffickers, and illegal placement agencies has been initiated in India. India follows a multi pronged strategy for elimination of child labour like legislative measures, development programmes for benefit of families of child labourers and project based action plans for areas of high concentration of child labour.

In 1996, the Supreme Court in *M.C. Mehta versus the State of Tamil Nadu and others* (decided on December 10, 1996) gave directions for guiding the withdrawal of children from hazardous industries, rehabilitating them, ensuring their education, providing employment to their family members, offering them financial assistance, and regulating their working conditions in non-hazardous work. The Child Labour (Prohibition and Regulation) Act (CLPRA), 1986 was introduced in October 2006 and domestic work was added to the list of prohibited occupations (Part A of the Schedule). Another landmark change towards the curtailment and prevention of child labour was by incorporation of Section 374 in the Indian Penal Code in 2013 by way of which trafficking and exploitation of children is being prohibited with stringent punishments. However, despite the existence of these laws, the implementation of laws is fraught with challenges due to the hidden nature of this work and the tacit acceptance by society of this kind of work, particularly for girls.

India has ratified various international conventions on child rights and child labour and trafficking and associated gender based violence. However, India has not ratified ILO Minimum Age Convention, 1973 (No. 138); ILO Worst Forms of Child Labour Convention, 1999 (No. 182), and ILO Domestic Workers Convention, 2011 (No. 189) which are essential for protection of the child domestic workers.

The Government of India has made various policies to safeguard the rights of the children. Several provisions and guidelines for rehabilitation and overall development of the children have been formulated. For instance, in context of child domestic workers, an Executive Order was passed on 25.09.2014 for regulation of private placement agencies in Delhi for registration, license for running private placement agency, issuance of passbook to domestic workers, written work agreement, penalty for non-compliance, duties of the Delhi Commission for Women and the child welfare committee, etc.

Integrated Child Protection Scheme (ICPS) was launched by the Government of India in 2009 and implemented by Ministry of Women and Child Development with an aim to bring improvement in the well-being of children in difficult circumstances as well as to reduce vulnerabilities to situations and actions that lead to abuse, neglect exploitation, abandonment and separation of children. The other institutional

mechanisms devised by the government are: Anti-Human Trafficking Units, Child Welfare Committee, Central Social Welfare Board, National Commission for Women, Child Line services, District Child Protection Units, National Institute of Public Cooperation and Child Development (NIPCCD), National Human Rights Commission, and Commission for Protection of Child Rights (CPCR).

2.2 Pakistan

According to a rough estimate of a national child labour survey in Pakistan taken, almost 9 % of the total population of children are working as child labour in the country⁵. Another estimate shows that almost 2,64,000 children in Pakistan work in 'personal and social services' as domestic labourers in households⁶. Out of the total population of 40 million children in Pakistan between 5-14 years, about 3.3 million are working children out of which 0.9 million are girls (27 per cent)⁷. ILO (2012) estimates number of child labourers in Pakistan at 12 million. Media reports reveal that there are an estimated 8.5 million domestic workers out of which majority are women and young girls. The Pakistan Bureau of Statistics (2012) states that of the 74 percent of the labour force engaged in the informal sector, a majority are employed in domestic work; this includes men and children. Girls are at particular risk of gender based violence as they work behind closed doors beyond the reach of law enforcement agencies.

The socio-economic factors such as poverty, lack of education, lack of basic amenities, unemployment, lack of political will etc., contribute towards the growing number of child domestic labourers. Exercise of ostensible control by employer over child domestic workers in terms of lower wages, longer working hours, and complete monitoring makes demand of child domestic workers higher. Additionally, the rate of poverty has steadily been increasing, resulting in growing number of child labourers. Lesser number of children, particularly girls are going to school, despite several foreign funded programs to improve the education sector.

As per SPARC 2004 study on child domestic workers, children engaged in domestic work is an acceptable norm in Pakistan and more so the girl-child are preferred as domestic workers compared to the boys due to cultural and traditional beliefs that females are better care-takers as compared to boys.

⁵ Federal Bureau of Statistics: *National child labour survey in Pakistan* (Islamabad, 1996), survey undertaken with the support of the ILO.

⁶ UNICEF: *Child domestic workers in south Asia* (Kathmandu, 2001).

⁷ Federal Bureau of Statistics: *National child labour survey in Pakistan* (Islamabad, 1996), survey undertaken with the support of the ILO. This figure does not include children engaged in economic activity occasionally or on a part-time basis.

CITIES	HOUSEHOLD VISITED	NO. OF CHILDREN			PREVALENCE RATE (%)		
		BOYS	GIRLS	TOTAL	BOYS	GIRLS	TOTAL
Karachi	530	29	137	166	5.5	25.8	31.3
Lahore	446	32	95	127	7.2	21.3	28.4
ISB/ RWP	475	51	74	125	10.7	15.6	26.3
Quetta	572	76	50	126	13.3	8.7	22.0
Peshawar	496	58	44	102	12.3	9.4	21.7
Total	2495	246	400	646	9.9	16.1	26

SOURCE: SPARC. (2004). RAPID ASSESSMENT ON CHILD DOMESTIC LABOUR IN SELECTED LOCALITIES OF PAKISTAN

Traditionally, young girls are considered more suitable for domestic work. Therefore, most of the girls entering the domestic households start to work at around 7 years of age. These young girls are prone to physical and sexual abuse at the hands of adult male members of the household. Trafficking is also a prime factor for child domestic work in Pakistan. Victims of trafficking end up in various forms of exploitation i.e. sexual and labour, including domestic work. In Pakistan, about 100,000 women and children⁸ were trafficked internally whereas in cross-border trafficking about 200,000 women and children trafficked from Bangladesh to Pakistan between 1990 and 2000 and more than 19,000 boys aged 2-11 years have been trafficked as camel jockeys from Pakistan to the Middle East⁹.

Lack of education in Pakistan is also a contributing factor leading to growth of child domestic workers. As per Education for All Global Monitoring Report (2012) Pakistan has some of the worst education indicators globally. Pakistan has the world's second highest number of children out of school, reaching 5.1 million in 2010. This is equivalent to 1 in 12 of the world's out-of-school children. Two-thirds of Pakistan's out of school children are girls, amounting to over 3 million girls out of school. From 1999 to 2010, the primary net enrolment ratio rose from 58% to 74%. But the ratio for girls is still 14 percentage points behind the ratio for boys, leaving only eight girls to every ten boys in primary school. The lack of political will is a contributing factor for stunted educational development. Pakistan has reduced spending on education from 2.6% of gross national product (GNP) in 1999 to 2.3% of GNP in 2010. In 2010, the country allocated only 10% of government spending on education. Pakistan spends around 7 times more on the military than on primary education.

The self-employed children, child domestic workers, and all the child labourers in the rural sector where 65% of the Pakistani population live, remain outside the purview of all child labour related legislations. In Pakistan, there are no new developments that have taken place in the field of child domestic labour after the 18th Constitutional Amendment. Data and figures related to child domestic labour are not available in Pakistan. Neither any governmental department nor any civil society organization has realistic or factual figures related to number of children involved in domestic labour. The lack of credential data/ statistics on child domestic labour results in gaps in policy and legislative framework for systematically addressing this issue from the perspective of protection of children, prohibition of the crime, prosecution and conviction of offenders and most importantly the socio- economic rehabilitation of child domestic labourers¹⁰.

⁸ Estimation by an NGO, Lawyers for Human Rights and Legal Aids (LHRLA) (2002).

⁹ LHRLA.

¹⁰ Need Gap Analysis of Child Domestic Labour in Pakistan

The child domestic labourers do not fall even under the ambit of trade unions and hence, they face more exploitation in various forms. As such there are no monitoring systems about the minimum wage rate. Even after several deaths of children working as domestic labourers in Pakistan and particularly, in the province of Punjab, there is no legislation which bans or even regulates the working of children in domestic setting.

As per United States Department of Labour (2013) report Pakistan's laws are not completely consistent with international standards regarding child labour. The lack of a national minimum age for employment may increase the likelihood that very young children engage in activities that jeopardize their health and safety. Domestic service, a sector in which many child labourers work is not covered by the list of prohibited hazardous occupations or processes. The law also excludes workplaces with less than 10 persons employed. As a result, children in the informal sector do not benefit from the same protections as those working in larger establishments.

There is no existing law which examines the issue of gender based violence in the context of child labour or child domestic labour. In the need to prohibit child labour in the country, Pakistan ratified the Worst Forms of Child Labor Convention (No. 182) in January 2001, and the Minimum Age Convention (No 138), effective July 2007. In December 2005, the Government of Pakistan modified the schedule to the Employment of Children Act 1991 by prohibiting 4 occupations, and 34 processes.

2.3 Bangladesh

In Bangladesh, child labour as a problem did not grow directly with the growth of factories engaged in the business of surplus production. Rather it seems to be related with on the one hand, the economic hardship caused by a too large population and meagre means of subsistence and, on the other, the growth of modern urban centres drawing in a large number of rural families¹¹.

Bangladesh has an extremely organised and proactive movement seeking an end to child domestic work. Traditionally most of the child domestic workers in Bangladesh are girls who are trafficked or inducted by their families into this kind of work. The child domestic workers become the most vulnerable form of child labour as not only the children involved are of very young age but also due to the nature of the work which goes unidentified and hidden as it is most of the times closed door and under total control of the employer. This nature of hidden labour makes the child domestic workers more susceptible to exploitation, violence and abuse. The risk of the exploitation is intensified in employment of girl child domestic workers and therefore making it a gender based issue.

¹¹ Protecting Child Labour in Bangladesh: Domestic Laws versus International Instruments, Sharmin Aktar and Abu Syead Muhammed Abdullah, Bangladesh e-Journal of Sociology. Volume 10 Number 1, January 2013, P.No. 153

Approximately Bangladesh has 3.45 million population of working children in the age group of 5 to 17 years¹². A survey by Bangladesh Bureau of Statistics (BBS) in 2002-2003 estimated that 125,000 (1.7%) out of a total of 7.4 million working children were domestic workers. Another baseline survey by ILO in 2006 estimates that there are approximately 4,21,000 child domestic workers between the age of 6-17 years in Bangladesh, of which around 132,000 are in Dhaka City alone. This total estimate makes child domestic workers the single largest sector of child labourers in Bangladesh out of which 78 percent is girls.

The socio-economic factors that lead to forcing the children in domestic work are poverty, illiteracy of the children and parents, poor educational background (higher dropout rate), gender discrimination, lack of economic opportunities, social, cultural and traditional norms and divides, large families, natural disasters, early deaths of parents etc. The girl child domestic labourers are more susceptible to be forced into the child labour due to traditional and cultural gender biases. As has been reported by UNICEF in 2004, almost 50 per cent of the parents interviewed in a Dhaka-Bangladesh study said that the most important consideration for sending girls to domestic work was the cost of marriage, especially the dowry. Parents sent girls to work in order to save towards their dowry. Other gender based factors include perception of social insecurity for the girl child at her village. In the rural areas, where many families experience extreme food scarcity, women and girls do work outside the home out of necessity. But, for unmarried adolescent girls this is not socially respectable. Therefore, some parents send their girls in urban middle class homes as they think that their girls will be protected from societal victimisation.

Child domestic workers are often victim of torture, violence, physical, sexual and mental abuse at the hands of their employers that makes this form of labour more volatile and precarious. This concern becomes more alarming for girl child domestic workers. CRC Alternative Report 2013 from Bangladesh highlighted that out of 23 incidents, 22 depicted severe torture on domestic workers. The analysis of the report showed that the child workers were tortured for very inconsequential reasons such as not performing a duty properly, delay in work, or simply breaking a glass. The severity of torture ranged from beatings, hitting the head on the wall, burning by cigarette or any other metal things, non-payment of salary and some even suffered rape at the hands of the owner of the house which sometimes also leads to suicides by these children. It is also common to see domestic workers being sexually harassed by their employers. Child domestic workers, especially girls are victims of sexual abuse by the male members of the households.

An annual study of *Bangladesh Shishu Adhikar* Forum (BSAF) titled “State of Children in Bangladesh-2014” confirms a total of 30 incidents of violence against child domestic worker that have been recorded from January 1 to December 31,

¹² National Child Labour Survey 2013

compared to 13 incidents recorded in 2013. Seven CDWs were killed, three girl CDWs were raped and 20 CDWs were physically beaten. 71% of the CDWs were physically tortured and abused were within the age group of 7-12 years and 29% were 13-18 years. In most cases torture on child domestic workers remain unpublished unless they were beaten and injured severely and admitted to hospitals.

Article 28 of the Bangladesh Constitution empowers the State to make special provisions for the benefit of children. Despite various laws enacted by the State for promotion and protection of child rights in Bangladesh, the child domestic workers were still not protected. As per the Bangladesh Labour Law amended in 2013, the child domestic workers were not even included in the list of 'hazardous work'. The Bangladesh Labour Act, 2006 regulates child labour. It prohibits engagement in work of children aged less than 14 years and in hazardous work of children less than 18 years. The Act however allows children aged 12-14 years in 'light work' (non-hazardous) that does not impede education. The National Child Labour Elimination Policy (NCLEP), 2010 provides a framework to eradicate all forms of child labour by 2015. The Sixth Five Year Plan (2011-15) under the section titled "Children's Advancement and Rights" includes the elimination of child labor as a government priority and recognised the NCLEP 2010. The plan articulated effective measures to reduce child labor, and eliminate worst forms of child labor with a particular focus on child domestic workers, migrants, refugees and other vulnerable groups. It also made provision to recover and remove children from abusive and exploitative circumstances. However, formulation of the National Child Policy (NCP), 2011, was in contradiction to NCLEP 2010. Although the major principles of NCP are: non-discrimination, best interest of children, respecting children's opinions and ensuring children's participation and ensuring transparency and accountability of all individuals and institutions responsible for realizing child rights. However, the policy defines the age of child as less than 18 years and allows employers to employ children for domestic work (non-hazardous) despite it is evident that child domestic work is hazardous. Only in year 2015 on 21st December Cabinet of Bangladesh Government approved "The Domestic Workers' Protection and Welfare Policy". This was result of almost a decade of constant advocacy by groups and national trade unions. Formulation of this policy was greatly inspired and aided by a 2010 Judgment of High Court, which had stressed upon restrictions on employment of child domestic workers. This policy set the minimum age for employment at 14 years.

Bangladesh has ratified the following ILO and UN conventions pertaining to child rights:-

UN Convention on the Rights of the Child 1989

ILO Convention on the Worst Forms of Child Labour 1999 (No. 182)

ILO Night Work of Young Persons (Industry) Convention, 1919 (No. 6)

ILO Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)

ILO Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)

ILO Minimum Age (Industry) Convention (Revised), 1937 (No. 59)

ILO Forced Labour Convention, 1930 (No. 29)

ILO Abolition of Forced Labour Convention, 1957 (No. 105)

However, Bangladesh has not ratified ILO Minimum Age Convention, 1973 (No. 138); and ILO Domestic Workers Convention, 2011 (No. 189) which are essential for protection of the child domestic workers.

International Legal Framework

International law has developed to guarantee and protect the best interests of the children. The following are some of the most important international treaties and conventions that have been formulated for the welfare of child labourers in general and also child domestic workers in particular.

I. United Nations Convention on The Rights of The Children, 1989

Article 32 of UNCRC puts emphasis on protection of children from economic exploitation and from performing work which is detrimental to the physical and mental development of the child. Article 32 also stresses that any work which interferes with the education of the child should not be allowed. It states that the minimum age for admission to employment should be set by the state, working hours and conditions of employment should be regulated by state and appropriate penalties and other sanctions should be in place for its effective enforcement.

II. International Labour Organization Conventions

International labour standards, that is, ILO Conventions and Recommendations, play an important role in the design of labour laws for domestic workers. These instruments provide authoritative guidance on laws and policies regarding domestic workers. Where Conventions have been ratified they also entail international law obligations for the countries concerned.

1. Minimum Age Convention, 1973 (No. 138)

Article 2 of the Convention directs each ratifying state to specify minimum age for admission to employment or work which should not be less than age of completion of compulsory schooling and in any case shall not be less than 15 years. Relaxation of 1 year is given to countries with insufficient economic condition and educational developments and countries can specify an initial minimum age of 14 years. Article 3 sets 18 years as the legal age for hazardous work.

2. Worst Forms of Child Labour Convention, 1999 (No. 182)

The ILO Convention No. 182 on the worst forms of child labour and its accompanying Recommendation No. 190 define a range of child labour situations requiring immediate action and which aptly describe the situation of some child domestic workers.

Article 3 defines worst form of child labour as:-

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Recommendation No. 190: In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

2. Domestic Workers Convention, 2011 (No. 189)

This landmark Convention resolves the key concern relating to domestic work in that it is often perceived to be something other than employment. The paternalistic notions that frequently accompany this kind of work – that domestic workers are “like one of the family” – serve to conceal the existence of an employment relationship concerning decent work for domestic workers.

Article 1 of the Convention defines:

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

Article 3(1) of Domestic Workers Convention, 2011 (No. 189) ensures effective promotion and protection of human rights of all domestic workers.

Article 3(2) (c) talks about effective abolition of child labour in domestic settings.

Article 4 directs to set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

3. Abolition of Forced Labour Convention, 1957 (No. 105)

Article 1 of Abolition of Forced Labour Convention puts restriction on the use of any form of forced labour. The Convention does not directly apply to cases of child domestic labour but since children are not responsible for earning for their families and cannot be allowed to work, under certain age, any labour by children is usually associated with forced labour.

4. Recommendation No. 201

(1) Taking into account the provisions of the Worst Forms of Child Labour Convention, 1999 (No. 182), and Recommendation (No. 190), Members should identify types of domestic work that, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, and should also prohibit and eliminate such child labour.

(2) When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by:

- (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts;
- (b) prohibiting night work;
- (c) placing restrictions on work that is excessively demanding, whether physically or psychologically; and
- (d) establishing or strengthening mechanisms to monitor their working and living conditions

Domestic Legal Framework in India, Pakistan and Bangladesh

4.1 Bangladesh

4.1.1 Constitutional Provisions on Child Rights

- The Constitution of Bangladesh guarantees realizing the rights of all children. To translate the constitutional spirit into reality the country has taken a number of legislative and policy actions towards national adoption of the global commitments including the Children Policy 2011. In recent years, the government also adopted National Plan for Action (NPA) to National Child Labour Elimination Policy (NCLEP), Human Trafficking Deterrence and Prevention Act and most laudably, the Children Act 2013.
- Article-27 (4): Nothing in this article shall prevent the State from making special provision in favour of women and children or for the advancement of any backward of citizens.
- Article-32: No person shall be deprived of the protection of right to life and Personal liberty.
- The Constitution of Bangladesh mandates the establishment of a society based on the rule of law, justice, and the respect for human dignity and worth of all persons. The Constitution bans forced and bonded labour (Article 34) , and imposes a duty on the State to prevent and suppress prostitution and guarantees a number of fundamental human rights. The Constitution provides an obligation for the State to prevent violation of human rights in any form, including human trafficking. There are also a number of statutes and policies which provide for the legal regime against human trafficking.

Labour Act (amended) 2013: Bangladesh has enacted a unified and updated Labour Act in 2006 and that is amended in 2013. The Labour Act has fixed the minimum age for admission to work at 14 years and for hazardous work it has been fixed at 18. *But this law does not apply to domestic workers as the labour law does not include the informal sector such as domestic work.* Labour law further defined light work of children between the ages of 12-14 years as non- hazardous work which does not impede education of the children. *Although, the law is in place, but there is so far no indication that the law is implemented in this regard.* Based on the act, a gazette notification has been published in March 2013 wherein the government categorized a number of hazardous works. *But this list does not include child domestic work in this category.*

The National Children Policy 2011 has mentioned a number of steps to mitigate child labour. Following are the relevant steps that have been mentioned in the policy. The policy mentions that there must be some provisions for education and recreation for the child worker (article 9.2), the owner must arrange education, food and lodging for the full time child domestic worker and ensure that the child does not engage in any risky activity (9.5). The policy also mentions that the domestic child worker will get the chance to meet their parents at least once a month (article 9.4). *The initiatives that have been mentioned in the policy is undoubtedly positive but it needs to be accompanied by proper implementation and monitoring plan.*

The National Child Labour Elimination Policy 2010: The key objective of the policy is to withdraw working children from different forms of hazardous work and the worst forms of child labour by 2015. In accordance with the ILO Convention 182 on the elimination of worst form of child labour, the National Child Labour Elimination Policy 2010 broadens the scope to defining hazardous work for the children under the section on working environment for the working children. This section generally provides the definition of hazardous and non-hazardous working environments for the children. This section, divided into 7 parts, describes most of the relevant matter for the working children. This includes non-hazardous work considering the children's capacity, condition of employment, working environment, education and recreation, health services, meeting with family members and future security provisions etc. This can be seen as a first ever policy which has high relevance for explaining the matter of domestic child work. The policy is also accompanied by a strategic plan indicating the specific time frame and coordinating body for the implementation. *But this strategic part of the implementation has ignored the informal sector like the child domestic labour sector. It is also important to be noted that there is a contradiction between policy and its implementation strategy. According to the policy, Bangladesh Government is planning and implementing different short, medium and long term strategies and programmes to eliminate various forms of child labour by 2015 but there is no emphasis on the elimination of the child domestic work.*

The recent order of the Writ Petition no. 3598 of 2010 is one step forward in regard to dealing with the issue of child domestic workers. It emphasises the implementation of the draft policy of Domestic Worker Protection and Welfare Policy 2010. It also ordered the government to monitor and prosecute the perpetrator in case of violence against domestic worker and the order mentioned that it is government's duty to prosecute the perpetrators as the victims come from marginalized sections of the society.

It is important to mention that the country does not have any legal provision at the moment to protect child domestic workers from all forms of abuse and exploitations. It was very unfortunate that the Ministry of Labour and Employment did not include child domestic work in the recently approved list of hazardous work for children despite a popular demand made by the civil society organizations. Therefore, children engaged in domestic work will have to live on the mercy of their employers and will be often be subjected to severe forms of violence.

The Ministry of Labour and Employment claimed that considering the sensitivity of the issue, they have decided to adopt a separate policy to protect the rights of the child domestic workers. This policy (Domestic Workers' Protection and Welfare Policy) was drafted in 2010, which is yet to be finalised and approved. On the other hand, the provisions proposed in the draft policy also contradict with the National Child Labour Elimination Policy 2010 and revised Labour Act. Because the draft policy said children under 14 years of age should not be recruited for domestic work, whereas the two other policies clearly stated that children under 18 years should not be employed for any hazardous work. And this is beyond debate that child domestic work is one of the most hazardous work considering the working environment and conditions of children involved in domestic work.

4.2 India

4.2.1 Constitutional Provisions and National Laws

There are various constitutional provisions for protection and safeguarding the rights of the children of the country by assuring them equal status.

- Article 14: of the Constitution of India states that everybody is equal before the law and qualify for equal protection of the laws within the Indian Territory.
- Article 15: prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. The Article empowers the States to make any special provision for women and children.
- Article 21: protects life and personal liberty except for the procedure established by the law.
- Article 21A: provides for free and compulsory education for all children aged between 6-14 years.
- Article 23: prohibits trafficking in human beings, beggar and other similar forms of forced labour and any contravention of this provision shall be an offence punishable in accordance with the law.
- Article 24: prohibits employment of any child below the age of fourteen years in any factory or mine or engagement in any other hazardous employment.
- Article 39(e): directs the States to have policy towards securing health and strength of workers, men and women and the tender age of children are not abused and that they are not forced by economic necessity to enter vocations unsuited to their age and strength.
- Article 39(f): directs the States to provide children opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth shall be protected against moral and material abandonment.

4.2.3 Provisions in Indian Laws

The Indian laws aim towards the protection of children against child labour, various Acts under the laws have provisions for favorable working conditions for all

- The Child Labour (Prohibition and Regulation) Act, 1986 prohibits child labour and provides for punishments and penalties for employing children below the age of 14 years in various hazardous occupations and processes.
- The Bonded Labour System (abolition) Act, 1976 (act no. 19 of 1976) defines and prohibits bonded labour in any form. It also penalizes the offenders and has provisions for rehabilitation of the freed bonded labourers.
- Criminal Law Amendment Act 2013 lays down provisions of punishment for exploitation of a trafficked minor/child
- Juvenile Justice (Care and Protection of Children) Act 2015 ensures care and protection of children. The law provides for measures for the repatriation and rehabilitation of the children.
- Minimum Wages Act, 1940 ensures payment of minimum wage and overtime to the workers employed as per the State rule.
- The Indian Penal Code 1860 punishes trafficking, kidnapping, procurement of minors, buying and selling of minors for immoral purposes and penalizes the offenders.
- The Contract Labour (Regulation and Abolition) Act 1970 abolishes contract employment in some situation and regulates the conditions of workers of contract labour.
- Protection of Children against Sexual Offences (POCSO) Act, 2012 punishes any sexual offences against children and also penalises its abetment.
- Domestic Workers Welfare and Social Security Act 2010 states that no child shall be employed as a domestic worker or for any such incidental or ancillary work which is prohibited under any law for the time being in force. (Section 18)
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 provides institutional machinery for safe migration opportunity for labour and ensures safe conditions of service and for matters connected therewith.
- Maharashtra Control of Organised Crimes, 1999 provides for punishment of persons indulging in organized crimes related to prostitution.

- The Goa Children's Act, 2003 and Rules, 2004. Though it is a state legislation, the Act gives holistic care and protection of children especially from sexual abuse and sex tourism.

4.3 Pakistan

Constitution of Pakistan has several articles, related to labour and employment:

Article 11 of constitution of Pakistan prohibits all forms of slavery, forced labor, human trafficking, employment of children younger than 14 years and working of children in hazardous places.

Article 37(e) provides for securing just and humane conditions of work and ensures that children and women are not employed in vocations unsuited to their age or sex.

Article 25 states that all citizens are entitled to equal protection of law and empowers states to make special provision for protection of women and children.

Article 25-A mentions that state shall provide free and compulsory education to all children of the age of five to sixteen years meaning that minimum age of employment should be at least 16 years.

Article 35 provides that the state shall protect the family and the child.

It is evident that constitutionally, Pakistan is empowered to establish a strong protective regime of Laws and institutions to protect and safeguard rights of child domestic workers.

Employment of Children Act, 1991 has been enacted to prohibit the employment of children in certain occupations and to regulate the conditions of work of children. However, the law is silent on the issue of domestic work and does not prohibit or regulate child domestic labour. The Section 2(iii) defines child as person who has not completed his fourteenth year of age. This is the lowest age limit provided under Article 2(4) of Minimum Age Convention, 1973 (No. 138). The definition of the word 'establishment' under section 2(v) does not include domestic work setting. This leaves this legislation far removed from addressing problems of child domestic workers in Pakistan.

The Juvenile Justice System Ordinance, 2000 treats anyone below the age of 18 years as a child. This ordinance focuses only treatment of children who are involved in commission of offences and thus has extremely limited impact on realisation of rights of children who are children in need of care and protection.

The Punjab Prohibition of Child Labour at Brick Kilns Ordinance 2016. Punjab Government enacted this law in January 2016 and defines any person below the age of 14 years to be a child for the purpose of this law and in Section 5, prohibits any

owner of a brick kiln from employing, engaging or permitting a child to work there. The Law however is weak and does not create any effective deterrent against violation as it does not ensure punishment to the brick kiln owner in case of a violation.

Mentioned below are some other laws of Pakistan, which can be used to curb child domestic labour in Pakistan at the federal and provincial levels.

- Children (Pledging of Labor) Act, 1933
- Sindh Children Act, 1955
- Bonded Labor System (Abolition) Act, 1992 And Punjab Amendment, 2012
- Prevention And Control Of Human Trafficking Ordinance, 2002
- Punjab Destitute & Neglected Children's Amendment Act, 2007
- Khyber Pakhtunkhwa Child Protection And Welfare Act, 2010
- Protection Against Harassment Of Women At The Workplace Act, 2010
- Islamabad Right To Free And Compulsory Education Act, 2012
- Sindh Right Of Children To Free And Compulsory Education Act, 2013
- Punjab Free And Compulsory Education Act, 2014
- Balochistan Compulsory Education Act, 2014

In nutshell, Pakistan legislative history on matters related to child domestic workers and violence against women is that of various drafts and bills pending before legislature. This accords a great opportunity for the child rights movement in Pakistan to fortify and upscale their advocacy efforts at all levels in this regard.

Legislative Advocacy

(Practice & Methods, Challenges, Opportunities and Case Studies)

Law and policy reforms play a transformative role in improving and changing the lives of citizens. While it is important to reach out to individuals who need help, such a “reach out” has to also impact law and policy. This important outcome can be achieved through “Advocacy”.



Advocacy in general terms means supporting a cause. Legislative advocacy means supporting or advancing a cause by impacting or influencing law and its various processes. Engaging in legislative advocacy therefore requires an understanding of

what is law, process of law making, who makes laws and how to engage directly and indirectly with such processes and entities.

In democratic societies like India, Bangladesh and Pakistan, law making is quite transparent, accessible and a public affair, allowing citizens, experts and special interest groups to play a role in shaping of laws.

What is Law and how does it function?

The Constitution itself is Law and is also a source of law. All the laws in a country must conform to the Constitution. In India, Pakistan and Bangladesh, the Constitution is supreme. A Parliament can pass laws only in accordance with the Constitution.

It is through laws that procedures are laid down and rights are recognised and created. Laws also include, from an advocacy point of view, policies, schemes, rules, orders and court judgments. An advocacy initiative must therefore keep in mind such broad spectrum of law.

Superior Courts can strike down a law as being unconstitutional. Constitutional provisions are interpreted by Superior Courts and many a times such courts enlarge the scope of constitutional provisions, either keeping in view International Laws or domestic situations. For example, in India, “Right to Life” as enshrined in Article 21 of the Indian Constitution has been interpreted by the Supreme Court of India in several judgments bringing in its ambit “payment of minimum wages¹³”, “protection against sexual harassment¹⁴” and “Right of an accused for speedy trial”¹⁵ along with several other rights. Similarly Supreme Court of Pakistan held¹⁶ that Right to Life guaranteed in Article 9 of Constitution of Pakistan includes “all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally”.

Who influences Law Making Process?

Laws are of course made by elected representatives (Parliament) but there is always a great degree of public participation involved in law making. In India, Pakistan and Bangladesh there is an increased trend of Governments seeking popular public

¹³ Peoples Union for Democratic Rights Versus Union of India, 1982 AIR 1473

¹⁴ Vishakha v. State of Rajasthan, AIR 1997 SC 3011

¹⁵ A.R. Antulay v. R.S. Nayak, AIR 1992 SC 170

¹⁶ Shehla Zia and Others Versus WAPDA, PLD 1994 SC 693

support to their legislative measures and thereby seeking more public participation in the processes. Generally speaking, Laws are made keeping in view the following:

1. Constitutional Mandate
2. International Obligation
3. Domestic Needs and Interests
4. Public Opinion
5. Opinion of Experts and Special Interest Groups

In April 2013, the unfortunate incident of collapse of Rana Plaza in Dhaka, Bangladesh resulted into the death of 1129 workers. This incident generated tremendous public outcry for improvement of working conditions for Bangladesh's 4 million garment industry worker population. The intensity of public anger on this incident was such that USA suspended Bangladesh's trade preferences on the ground that labour rights and safety violations were far too prevalent in factories in Bangladesh. This was followed by European Union's inclination to revoke Bangladesh's trade privileges. These factors, primarily originating from massive public dissatisfaction on the issue of safety of workers led to the Bangladesh Government to amend its Labour Law in July 2013¹⁷.

India also witnessed an intense public anger on women safety when on 16th December 2012, a gang rape incident took place in Delhi. It became a household agitation and soon spread across the country. This incident led to Government of India setting up the Justice Verma Commission which was to recommend amendments in India's criminal law for increasing safety of women. The Commission's report led to Criminal Law (Amendment) Act 2013 which amended Indian Penal Code, Criminal Procedure Code and Indian Evidence Act. However the public movement which was the primary reason behind formation of the Justice Verma Commission also sought amendment in India's Juvenile Justice Act. Sustained public opinion, collaborated with an intensive media campaign led to repeal of Juvenile Justice (Care and Protection of Children) Act 2000 and enactment of Juvenile Justice (Care and Protection of Children) Act 2015 which permitted for the first time in India adult trial and sentencing of juveniles above 16 years accused of committing heinous offences.

¹⁷ "Under Pressure, Bangladesh Adopts New Labor Law" Steven Greenhouse, NewYork Times, 17th July 2013, Page 6

Law is an organic mechanism which grows and develops, moulding itself to changing society, new challenges and it attempts to correspond to developing needs of its subjects. There may be a law which is good but may not be implemented and yet there may be a law which is implemented well but is old and outdated and does not serve any substantial purpose.

How do Laws Succeed?

The success of a law depends on the following factors¹⁸:

Government Commitment

- Compliance with international standards with the object of protecting the rights of children in a specific situation.
- A coordinated response to - an issue for eg: child domestic labour through recognition of the role of the relevant agencies, NGO's other professions and the law enforcement.

Legislation and enforcement

- Maximum protection in cases ranging from physical and sexual to psychological abuse.
- A clause providing for civil and criminal law to be complementary and used in conjunction with relief.
- Clarity and simplicity of court and other tribunal procedures.
- Judges and quasi judicial officers trained to be sensitive to the issues, eg: child domestic labour and gender violence prevalent in the society.
- Broad ability of law enforcement officers to assist child victims/ exploited children like child workers, enforce the law effectively, and prevent further incidents of abuse.

Capacity of Families and Communities

- Development of a greater understanding within target communities and greater community participation on the issue like elimination of child domestic labour.

¹⁸ Legislative Reform on Child Domestic Labour: A Gender Analysis, UNICEF, January 2007

Monitoring and Reporting

- Monitoring of the law.
- Appointment of state and national rapporteurs with the power to report annually on trends being observed w.r.t a particular issue for eg: child labour and conduct studies on the functioning of the law.

Essential Services, including prevention, recovery and reintegration

- Relief and remedies available to the child who is a victim of the violation of the laws
- Infrastructure available to victims making a wide range of flexible and speedy remedies accessible and thereby discouraging violation of laws like child domestic labour laws.
- The roles and duties of the service providers, protection officers and other officials, as prescribed in relevant laws, rules and schemes, etc.
- Trained counsellors supporting police and judges in rehabilitating child workers.
- Programmes to assist the prevention and elimination of child domestic labour, for instance easily accessible complaint and reporting mechanism, outreach & rescue mechanism etc.
- Programmes, services, protocols and duties, including but not limited to education, rehabilitation and counselling programs and job training programs

5.1 Institutional capacity of Civil Society Organizations

Advocacy is a logical outcome of any CSO' work. More than human and financial resources, attitude is required for engaging in advocacy. It is often seen that organisations and activists who are more engaged with grass root work and individual cases, tend to perceive advocacy as something which is beyond their capacity. This may not be the case always.

An organization or group of people can easily engage in advocacy if it maintains proper record of its work, documents its interventions and has a strategy in its case interventions.

Depending on the nature of work and its mandate, a CSO can prioritize or decide its method and scope of advocacy.

Few activities are being listed here, which can be undertaken as part of direct or indirect advocacy:

1. **Raising awareness about an issue and its remedies:** Often organisations work with and/or in specific communities, picking up specific cases of violations and taking them up with the concerned authorities or in appropriate forums and secure remedy. It may be the case, that even though an organisation has been successful in securing remedies for individuals, there is no awareness in the community on the issue.

For instance, the issue of missing children is a serious concern in Delhi, mostly in slum areas. There are numerous community based organisations that also help affected families in tracing their missing children. Often it was noticed that families did not have any recent photograph or any picture at all of the missing child and the police was unable to make head away in tracing such children due to absence of any photograph of the missing child. Few community based organisations started creating awareness in the families and communities about necessity of having photographs of their children. Such awareness demonstrated good results. In 2011, the Delhi Police took over this initiative as a project called “Pehchan” and succeeded in getting 1,64,756 children residing in slum areas of Delhi photographed. This is a case of indirect advocacy through awareness.

2. **Raising Legal Awareness about an issue and laws/ schemes/ programmes related to such issue:**

Governments are usually a target group for advocacy efforts for bringing out needed law reforms and for enactment of schemes and programmes. While Governments do the needful, it is sometimes seen that beneficiary communities and or individuals are not made aware of such initiatives and thus the desired benefit does not reach the maximum number.

For instance, the example of Victim Compensation Scheme in India. As a result of continuous advocacy efforts with Governments and Courts, the Indian Government launched Victim Compensation Scheme to award adequate compensation to those who are victims of crimes. Now it is important for communities and citizens to be made aware about such scheme and the different operational details of it to effectively use it for the benefit of thousands of victims.

3. **Sharing incidents with Media/ Journalists**

While strictly maintaining the privacy and confidentiality rights of the beneficiary, CSOs sometimes share their case interventions with the media. Highlighting cases of abuse or victimization of child domestic workers in a responsible manner with the media serves the purpose of public awareness. A CSO need not have a separate Media Division or Unit to do this. In most cases, these are the employees/ staff involved with the case who also get journalists to write news reports on the incidents. A better way is to issue a press note to a dedicated email list of media houses and journalists. With emergence of alternative media spaces and social networking websites etc., reporting cases in public domain has become very convenient and easy. However, there are some ethical and safety concerns with using these

alternate channels which must be taken into consideration. For example, an untimely reporting of an ongoing abuse of a girl domestic labourer may place that girl in a situation of higher risk of abuse or violence. Thus due restraint and caution should be applied in interactions with the media.

5.2 Data collection, Documentation and Research

It has to be kept in mind that engaging in advocacy requires some preparation in terms of maintaining proper documentation of work and experiences. While engaging with a policy maker, one must be in a position to substantiate one's claim with the help of some data. Claims that are not backed by reliable data do not inspire confidence. For persuading or convincing policy makers, courts, legislators or government officials for changing any law, policy or scheme or to make a journalist write a news story or for initiating an official investigation or for mobilising public opinion, reliable information is needed.

[This goes in a box, with Highlighted text]

The person advocating a cause or any specific demand may be quite convinced about its correctness and relevance, but in advocacy one needs to make such relevance obvious and understandable for others as well.

For example, in India, the Government agreed to enact a special law for protection of children from Sexual Offences in 2012. This enactment was made possible as a result of collection of reliable data on child sexual abuse made available through an official study. Data and documentation regarding the extent of the problem, patterns and nature etc. is extremely useful and critical for the purpose of advocacy.

After data collection and documentation, research is an advanced stage tool. Once reliable data and sufficient documentation is available, it must be analysed and researched. For example if one needs to ascertain whether use of child domestic labourers has increased or decreased, data of several years need to be put together and be analysed to find out the trend.

Advocacy research is carried out for the purpose of collecting evidence and for building arguments to support a cause or a demand. Research serves multiple purposes. Here is an indicative list of benefits of research:

1. Research adds substance and hard facts to advocacy.
2. Research procures additional information for supporting a cause or demand.
3. Research helps one to know the history/ background of the issue and also enables one to be more educated about past advocacy efforts, if any, and helps to understand why the efforts did not yield desired results. It improves quality of advocacy intervention.

4. Research provides anecdotes and examples to use. Citing anecdotes and examples are often more effective than using raw data. Anecdote makes it easy for people to understand an issue in real life sense. One may find numerous instances in the realm of law reforms where individual instances have influenced thinking and decision making.
5. Research is a verification tool. One may have enough data and evidence to argue in favour of a proposition. Imagine finding an expert saying exactly the same as you are proposing. Research not only helps in confirming and validating claims but also provides support from outside your immediate work and allows you to substantiate your claims by findings of other institutions, organisations and experts etc.
6. Quality Advocacy research helps in establishing your reputation as an expert on the issue/ subject.
7. It helps in providing the basis for media and public awareness work.
8. Through research, one can showcase the extent of public support on the cause/demand/issue.

An effective research must be focused on the exact subject of advocacy initiative, it should examine evidence in a systematic manner, it must relate to the work of the organisation doing advocacy, it should identify workable solutions and most importantly it must be linked with local, national, regional and international aspects.

5.3 Identification & relationship building with target groups

Advocacy is often described as art of relationship building. Though, it might be true to some extent, but it is not limited to relationship building. A high level bureaucrat may be known to you very well and may appreciate the good work you do, but in discharge of his official functions and in the context of you approaching him for consideration of a policy review, one will need a lot more than just relationship. Having said this, forging relationships do play a significant role in advocacy efforts.

For advocacy, one needs to engage with every possible actor, to maximise the degree of success. Broadly speaking, following are various categories of target groups:

1. Community & Citizens
2. Civil Society Organisations & Human Rights Groups
3. Academic Institutions & Experts
4. Media Groups and Journalists
5. Legislature & Political Parties
6. Executive
7. Judiciary
8. International Organisation

There can be no singular or common strategy for engaging with all these target groups because all of them function in very specific ways and have different roles. Some of these target groups have formal mechanisms in place for public

participation in their work. One can easily find out ways of formally engaging with some of the target groups on their websites.

So far Judiciary, because of the very nature of its work is considered inaccessible for apparent advocacy purposes. However cases brought before courts are indeed advocacy tools. Apart from cases, organising judicial colloquiums, inviting judges to conferences etc. are also effective ways of drawing attention of the judiciary towards any issue.

Do not ignore Institutional Mechanisms of Law Reform

A common tendency in advocacy in developing countries is unconscious ignorance or overlooking of existing institutional mechanisms. Such neglect occurs either on account of isolationist attitude of such institutions, inaccessibility to them, public perception of them being ineffective or sheer ignorance about their existence and utility.

India, Pakistan and Bangladesh have continued the British tradition of Law Commission. Law Commissions are a governments' own institutional mechanism for law reform and are extremely potent forums for advocacy.

Country	First Law Commission Set up in	Report submitted so far
Bangladesh	1996	128
India	1955	262
Pakistan	NA	NA

Reports of the Law Commissions are considered with great seriousness by governments; they are submitted to the Parliament, thereby reaching the entire Legislature. These reports are also cited in courts, considered by courts, used in academic and public discourses. And if such reports are accepted by the Government, they lead to law reform.

Law Commission's reports are not binding on the Government. In India, Law Commission is neither a constitutional nor statutory body. It is merely an advisory body whose work is to do research and made recommendations. In Bangladesh, Law Commission is a Statutory Body set up under The Law Commission Act, 1996 and it only empowers Law Commission to make recommendation. Government may or may not act upon its recommendation, though they carry a persuasive value. Recommendations of Law Commissions cannot be mandatory or binding for the simple reason also that power to make Laws in democracies rests exclusively with the elected representatives. Reports of Law Commissions are released and made public for their use. They are used by Governments for the purpose of law making and also by the Court and Lawyers.

In order to demonstrate the scope of a Law Commission's work, produced below is the Terms of Reference¹⁹ of the Twenty-first Law Commission of India (2015 – 2018):

A. Review/Repeal of obsolete laws:

- i. Identify laws which are no longer needed or relevant and can be immediately repealed.
- ii. Identify laws which are not in harmony with the existing climate of economic liberalization and need change.
- iii. Identify laws which otherwise require changes or amendments and to make suggestions for their amendment.
- iv. Consider in a wider perspective the suggestions for revision/amendment given by Expert Groups in various Ministries/Departments with a view to coordinating and harmonizing them.
- v. Consider references made to it by Ministries/Departments through the Department of Legal Affairs, Ministry of Law and Justice in respect of legislations having bearing on the working of more than one Ministry/Department
- vi. Suggest suitable measures for quick redressal of citizens' grievances, in the field of law.

B. Law and Poverty

- i. Examine the Laws which affect the poor and carry out post-audit for socio-economic legislations.
- ii. Take all such measures as may be necessary to harness the law and the legal process in the service of the poor.

C. Keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure:

- i. Elimination of delays, speedy clearance of arrears and reduction in costs so as to secure quick and economical disposal of cases without affecting the cardinal principle that decision should be just and fair.
- ii. Simplification of procedure to reduce and eliminate technicalities and devices²⁰ for delay so that it operates not as an end in itself but as a means of achieving justice.
- iii. Improvement of standards of all concerned with the administration of justice.

D. Examine the existing laws in the light of Directive Principles of State Policy and to suggest ways of improvement and reform and also to suggest such legislations as might be necessary to implement the Directive Principles and to attain the objectives set out in the Preamble to the Constitution.

¹⁹ <http://www.lawcommissionofindia.nic.in/main.htm#a1>

²⁰ Term "Devices for delay" means "Reason or factors responsible for causing delay".

- E. Examine the existing laws with a view for promoting gender equality and suggesting amendments thereto.
- F. Revise the Central Acts of general importance so as to simplify them and to remove anomalies, ambiguities and inequities.
- G. Recommend to the Government measure for making the statute book up-to-date by repealing obsolete laws and enactments or parts thereof which have outlived their utility.
- H. Consider and to convey to the Government its views on any subject relating to law and judicial administration that may be specifically referred to it by the Government through Ministry of Law and Justice (Department of Legal Affairs).
- I. Consider the requests for providing research to any foreign countries as may be referred to it by the Government through Ministry of Law and Justice (Department of Legal Affairs).
- J. Examine the impact of globalization on food security, unemployment and recommend measures for the protection of the interests of the marginalized.

Law Commissions are extremely accessible forums for not only seeking recommendations for law reforms but also in achieving quality recommendations for governments and even draft Bills of legislations. For instance, the Law Commission of India describes its functioning in the following words on its website:

“The Law Commission has been anxious to ensure that the widest section of people are consulted in formulating proposals for law reforms. In this process, partnerships are established with professional bodies and academic institutions. Seminars and workshops are organised in different parts of the country to elicit critical opinion on proposed strategies for reform.”

“It is obvious that the success of the Commission's work in law reforms is dependent upon its capacity to assemble the widest possible inputs from the public and concerned interest groups. The Commission is constantly on the look out for strategies to accomplish this goal within the limited resources available to it. In this regard the media plays an important role which the Commission proposes to tap more frequently than before.

The Commission welcomes suggestions from any person, institution or organisation on the issues under consideration of the Commission, which may be sent to the Member-Secretary.”

Similarly, the Law Commission of Bangladesh while describing its functioning says as below:

“The Commission in its meeting discusses the priorities of laws of the work plan and reference if any, made by the Government. In the Commission's meeting each member is assigned to prepare a working paper/report with the assistance of a Research Officer. Then the Research team considering the nature and scope of the research of the law adopts different methodologies for collection of data and in appropriate cases studies foreign system of law to see how they meet similar problems. The team in the working paper delineates different deficiencies and drawbacks of the law and suggests provisional recommendations regarding removal thereof. The working paper prepared by the team is placed before the Commission for consideration and approval. After approval the paper is widely circulated among the different stakeholders for comments and suggestions. The team scrutinizes different views received from the stakeholders and thereafter the Commission prepares final report and draft bill if necessary, and sends them to the government for necessary action.”²¹

Pakistan does not have a Law Commission as such but it has a permanent institution called “Law & Justice Commission of Pakistan”, established through Law & Justice Commission of Pakistan Ordinance, 1979. This institution has mandate to review the existing legislation and to proposing amendments and even drafting Laws. As far as its engagement with general public is concerned, Commission is required to publish an annual report of its activities and such other periodic or special reports requiring legislative or implementation effect as it may consider necessary. Some of its reports are available on its website²². Commission does not engage with general public but engage experts on laws and subjects for its work. Law and Justice Commission of Pakistan works for a systematic development and reform of the laws.

5.4 Approach (generating interest/ political mileage, working with media)

Advocacy yields fantastic results when carried out with an integrated approach. An effort made in isolation remains weak. Focusing merely on any one target group is not the best strategy. For example, while working on the issue of child domestic workers, it is important to keep flagging incidents of violence or abuse upon them in media. This keeps all other organs of polity aware about existence of this problem. While such issues are regularly reported in media, it is important that political parties are also approached for addressing this issue through representations, by inviting political leaders to seminars, conferences etc. Since political parties are mostly interested in electoral benefits, it is crucial to demonstrate before them the scale of population affected by the issue and it is at this juncture that demonstration of public support by way of organising public protests, rallies, Dharna etc. becomes useful.

²¹ <http://www.lawcommissionbangladesh.org/about.htm>

²² <http://www.ljcp.gov.pk>

Proclamation of absolute prohibition on alcohol in Indian State of Bihar²³ illustrates success of advocacy through protests and demonstrations. This was seen as a step to consolidate women votes in favour of the ruling party, women being the ultimate victims of alcoholism.

Target groups must see a direct line of their interest in supporting the advocacy initiative. Media should see a news value, political parties must be made to understand how it will help them electorally, courts must be made to see justice in the demands being raised and communities must see their empowerment in joining the initiative.

Almost all the democratic governments engage with a wide range of players in formulation of laws, policies and schemes through various channels and forums. For such players, engaging in advocacy requires a certain degree of engagement with the subject.

What must be known?

1. Situation as it exists around the subject

Need for advocacy emerges from understanding of situation as it exists around the subject. The better one knows the situation, the better one can understand the areas which need to be brought up in advocacy. Organizations who work on the specific issue are best to be approached for situation analysis.

2. Domestic Laws, knowledge of international laws as well to be able to demand for change accordingly?

One must know what the existing laws around the subject of advocacy are. Knowing legislative history of such laws adds advantage because it helps understanding how and whether a certain law has evolved, changed or deteriorated over time.

3. Policies and Schemes

Before enacting a law, sometimes governments bring out policies. For example, in India there is National Policy for Children which is upgraded and revised periodically. Pakistan Government in the year 2000 issued its National Policy and Plan of Action to Combat Child Labour. In policies, Governments lay down their approach on the issue and laws are enacted in the light of such policies. It is important to have knowledge of these policies and schemes

²³ On 9th April 2016, Chief Minister of Bihar proclaimed total prohibition on sale and consumption of any type of alcohol in hotels, bars, clubs and any other place, making it a criminal offence carrying a penalty of 5 years to 10 years imprisonment.

because these are Government's own commitments and in advocacy, it is always better to remind Governments about their own commitments.

4. Know how Government functions & its Priorities

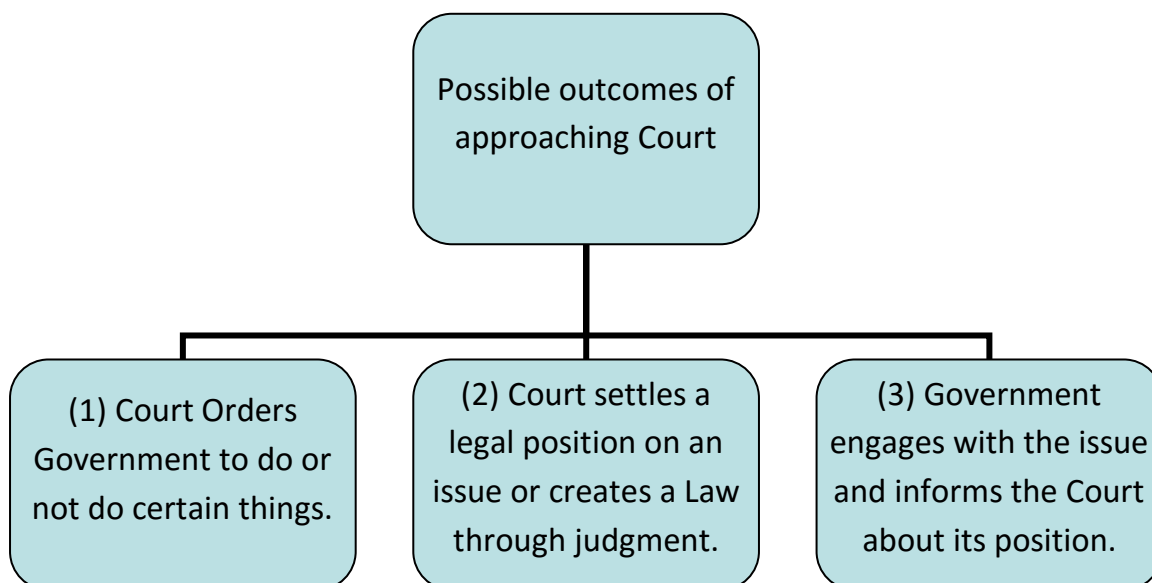
Every Government and every Ministry or Department of Governments have their own unique work culture. There is always a hierarchy and mechanism for decision making. Knowing these details is a great advantage. It helps in ascertaining who should be approached and in what manner.

Also every democratic government comes in power with a mandate. This mandate shapes their priorities. Our advocacy strategy must relate to government's priorities, notwithstanding that one purpose of advocacy is also to raise an issue to the level of priority.

Law, Courts & Legal Action

(Practice & Methods, Challenges, Opportunities and Case Studies)

Using law and courts strategically strengthens advocacy efforts in several ways. India, Pakistan and Bangladesh have constitutional guarantees in their constitutions that in case of violation of a fundamental right or a legal right, High Courts and Supreme Court can examine such violations and issue orders in Writs, which are binding on governments. Writ Petitions can be filed by any individual for any individual relief or can be filed in public interest as Public Interest Litigation by any individual or group or organization or even suo moto by the Courts based on news paper report or any other source of information. Tradition of Public Interest Litigation (PIL) is well established in all three countries. Taking issues to Courts can bring the following results:



(1) Court orders Government to do or not do certain things

One Petitioner Mr. Kazi Mazharul Islam, Professor of Orthopedics and Head of Department of Orthopedics, Shahabuddin Medical College, approached Supreme Court of Bangladesh alleging that despite having a valid Passport, Visa and all other documents, he was prohibited by emigration officials from going to London, UK on 19.09.2014. He claimed that his fundamental rights were thus violated. Supreme

Court examined the case, sought response of the Government and ordered²⁴ Government of Bangladesh to allow petitioner to depart and re-enter Bangladesh as and when necessary in exercise of his fundamental right to freedom of movement.

(2) Court settles a legal position on an issue or creates a law through judgment

Many a times, it is seen that children who are found involved in any aspect of human trafficking or in prostitution, are booked by Police as offenders and are treated as children in conflict with law. Law on this point is not clear because on the one hand in law they are recognised as children in conflict with law and on the other hand they also qualify to be treated as children in need of care and protection. When this issue came before Delhi High Court in a case²⁵, it settled this issue by giving a definite finding that such children cannot be treated as children in conflict with law, instead they will be treated by police and all other state agencies as children in need of care and protection under the Juvenile Justice Act. Delhi High Court observed that, “A bare reading of the statutory provisions, International Conventions & Treaties as well as the available jurisprudence manifests the statutory intendment that such child (i.e. a child found begging is a street child, a working child or a child being or likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse or illegal acts as well as a child who is found vulnerable and likely to be inducted into drug abuse or trafficking) is not to be treated as an offender but is only to be treated as a victim hence as a ‘*child in need of care and protection*’ within the meaning of the expression under the Juvenile Justice Act. Similarly when Bachpan Bachao Andolan, an Indian child rights organisation, raised the issue of missing children before Supreme Court of India in a public interest litigation²⁶ and demonstrated lack of police attention on this issue, Supreme Court of India laid down a new law that required police to treat all cases of missing children as cases of kidnapping of children and to investigate the cases with assumption of kidnapping or trafficking. Thus, court created law that made it mandatory for Police to register First Information Report in all cases of missing children, treating it as a cognizable offence.

(3) Government engages with the issue and informs the Court about its position

Sometimes it is seen that either Governments do not engage with an issue affecting public or engages in a superficial manner, bringing no adequate relief to affected people. Courts can be effectively used in both situations. For instance, India since 1956 has a law called “The Immoral Traffic (Prevention) Act, 1956.” Women and

²⁴ Kazi Mazharul Islam Versus Secretary, Ministry of Home Affairs, Government of the Peoples’ Republic of Bangladesh and Others, Writ Petition No. 9546 of 2014, Citation: 4 SCOB [2015] HCD

²⁵ Delhi High Court Legal Services Committee Versus Union of India and Others, Criminal Revision No. 443 of 2009 & Criminal M.A. No. 3071 of 2010, Judgment dated 12.08.2014

²⁶ Bachpan Bachao Andolan Versus Union of India and Others, Writ Petition (Civil) 75 of 2012

children are largest victims of human trafficking. An organization “Prajwala” approached Supreme Court of India in year 2004, seeking adequate protection of women who are victims of trafficking²⁷, highlighting inadequacy of existing legislation. In a long stretched legal affair in the Court, finally in year 2015, Government of India agreed to enact a new comprehensive law on human trafficking and gave an undertaking to the Court to this effect. Court also directed Government of India to set up “Organized Crime Investigating Agency” and to make it fully functional by December 2016²⁸. As a result of this, Ministry of Women and Child Development of Government of India has proposed draft of a comprehensive Bill on Human Trafficking.

Similarly, Rajendra Anbhule, a lawyer, approached Supreme Court of India by way of a public interest litigation saying that, “A majority of orphans are moved out of the children's homes once they are 18 and face a lot of issues relating to their right to citizenship, identity, rehabilitation, social re-integration and education etc. We are seeking a system where such children are issued an 'Orphan Certificate' that can be the basis for issuance of various government documents for availing education, self employment, voting and other benefits”. Supreme Court admitted this case and asked Government of India to respond to it. Government of India responded saying that it will draft a comprehensive policy for such people. During course of this case²⁹, Government placed before Court a draft Policy and assured the Court that it will implement this policy. Court recorded such assurance of Government and closed the case. This is an example how Courts can be effectively used to seek immediate engagement of government with an issue and propel Government to take action as required.

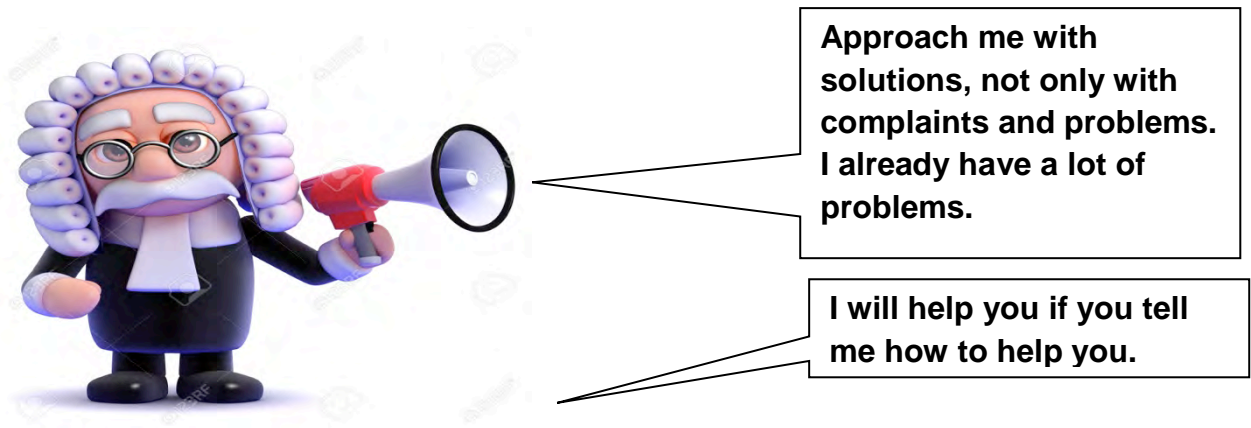
Using Courts

There exists a general tendency to approach courts with an attitude that the courts will solve the entire problem. This attitude is not only unrealistic but also unfair to judges. Therefore, one must approach the Court with not only authentic evidence of facts claimed but must also present solutions for consideration of Judges.

²⁷ Prajwala Versus Union of India and Others, Writ Petition (Civil) No. 56 of 2004

²⁸ Supreme Court of India Judgment dated 09.12.2015 in Prajwala Versus Union of India and Others, Writ Petition (Civil) No. 56 of 2004

²⁹ Rajendra Anbhule Versus Union of India and Others, Writ Petition (Civil) No. 303 of 2012



Before approaching a court, it must be kept in mind that approaching a court is ordinarily a measure of last resort. It must be exercised with full understanding of the situation. Sometimes, taking an issue before Courts, closes the opportunities for negotiations and dialogue with the Governments.

Public Interest Litigation (PIL)

Public Interest Litigation is a system which has been constructed by Higher Courts (High Courts and Supreme Courts) gradually to allow public causes to be brought before Courts by *bona fide* parties. PIL is a great and extremely potent tool in the hands of citizenry for creating or changing a law or procedure. Since it is a Judge-made system, Judges are extremely cautious in maintaining its sanctity. Initiating a PIL therefore is an act of responsibility.

Through PIL, various government agencies, ministries or departments are compelled to come together before Court as respondents to answer any specific issue raised in the PIL. The process of response thus initiates education, awareness, co-ordination within governance, while binding court directions help in fixing accountability and in resolution of overlapping mandates of various government agencies, ministries and departments.

Why PILs fail?

Not all the PILs succeed, how so ever well intentioned they may be. It is therefore useful to know some causes on account of which PILs fail or get defeated.

1. The individual or group which brings a PIL before a Court has a hidden personal agenda or interest.
2. No prior effort has been made by the Petitioner to seek Government's indulgence with the subject matter.
3. Petition is not well researched.
4. Remedy sought is beyond the Powers of Courts.

5. The remedy/solutions sought by the Petitioner are impractical or illegal.
6. Question/Issue raised in a PIL is not a “Public Cause”.
7. Question/Issue raised in a PIL has already been adjudicated by the Court.
8. Petition is ambiguous and unclear.
9. Petitioner’s intentions or conduct is not trust worthy or PIL is being abused for some ulterior purpose.

While Public Interest Litigation works as a great tool for obtaining court orders, sometime they backfire. Apart from dismissal of the case, Court orders may result into a setback and but may also cause financial loss. Dr. Amanullah in his analysis³⁰ of PILs in India and Pakistan has listed following factors which result into refusal or dismissal of a PIL:

India	Pakistan
No breach of Fundamental Right	No breach of Fundamental Right
Political Questions	Political Questions
Mala Fide	Mala Fide
Frivolous or Vexatious	Frivolous or Vexatious
Abuse of Process for Private/Personal Benefits	Private Rights
Cheap Fame	Cheap Fame
Contempt of Court	Writ by a third party
Mega Projects	When Law is followed properly
Scarcity of Resources	Not of Public Importance

State of Uttaranchal v Balwant Singh Chauhan³¹ is a remarkable case from Supreme Court of India where appointment of an Advocate General of State of Uttaranchal was challenged in a PIL on the ground of him having exceeded the age of 62 years before High Court. Case reached Supreme Court in an appeal filed by the State of

³⁰ “Public Interest Litigation in India and Pakistan: Innovate Approaches to Refuse Standing”, Dr. Aman Ullah, Journal of Quality and Technology Management, Volume IX, Issue II, December 2013, Page 91 to 105.

³¹ (2010) 3 SCC 402

Uttaranchal. Court took serious objection to the fact that despite court issuing notice, Petitioners who had filed this Petition before High Court did not appear before Supreme Court when case went into appeal by State before Supreme Court of India. Supreme Court also expressed its displeasure over the fact that the Petitioners, who were practicing lawyers of High Court, chose to invoke extra ordinary jurisdiction of High court on an issue which was authoritatively settled by previous judgments in 1962 itself by the Supreme Court. Court took this case as a misuse of judicial process, resulting wastage of precious time of Courts and preventing Courts from deciding other deserving cases. Considering it as a case of misuse of Public Interest Litigation, Supreme Court of India issued directions to all the High Courts to frame guidelines for streamlining the system of PILs to encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations. Now in all the High Courts and Supreme Court in India, all the PILs have to ensure compliance with such guidelines as set up PIL Rules issued by High Courts in terms of this decision of Supreme Court.

There have been innumerable instances where courts have imposed exemplary cost on petitioners, initiated contempt of Court proceedings and have even gone to the extent of disqualifying some petitioners from filing any more PILs. In a case³² challenging election of a President of India in the year 1982, the Supreme Court held Petitioners to be lighthearted and indifferent in filing petitions and held that Petitions were careless, meaningless, clumsy and against public interest and therefore, the Court ordered the Registry to initiate prosecution proceedings against the petitioner under the Contempt of Courts Act. Additionally, the court forbade the Registry from entertaining any future PIL petitions filed by the petitioner, who was an advocate in this case.

It is important to check whether there exist some guidelines or rules for filing guidelines. Generally consulting a lawyer for this is a good idea. One does not need to go to an expert lawyer of PILs for this. Any practicing lawyer (who practices in High Courts or Supreme Court) will be able to provide guidance. A PIL must conform to the standards set for them.

As far as Letter Petition and non-formal PILs are concerned, there are no such rules but there are basic requirements which must be maintained. For example, not providing your name, address and contact details in a letter PIL or writing an anonymous Letter to a Judge or Court will not succeed. How so ever meritorious your cause or issue may be, in absence of basic details like name, address and contact details, no Judge or Court will be able to take cognizance of your letter and treat it as a PIL. PILs are not confidential or secret proceedings. They are very much a public affair and conducted in open court with all fairness to even those against whom allegations are raised in PILs.

³² Charan Lal Sahu and Others Versus Giani Jail Singh and Another, AIR 1984 SC 309

What can one expect from a PIL?

Even though the ways Superior Courts respond to PILs are quite unpredictable and surprising, yet judicial responses to PILs often target the gaps and inadequacies in the existing laws, critique and question Governments on lack of implementation of laws. PILs are great educator for various organs of the State, and it is through PILs that they are informed about new situations requiring attention and actions. PILs thus are not adversarial proceedings necessarily. In nutshell, following outcomes can reasonably be expected from a PIL:

1. New Interpretation of a law in a manner which is congenial to society's interest
2. Framing of new and innovative remedies
3. Application of International Law into the National Legal System
4. Creation of a new Law altogether
5. Abolition or striking down of an existing Law
6. Compelling or persuading Governments to respond to an issue raised in a PIL

In 2009, when a police party raided on a trans-gender's private function in Punjab's Rawalpindi Division, Aslam Khaki, an activist and a lawyer of Supreme Court of Pakistan filed a public interest petition³³ in the Supreme Court of Pakistan to protect the community's constitutionally guaranteed right to equal treatment before the law. The petition stressed that the rights of the hijra community were being collectively violated by their families who rejected them and sent them to the 'Gurus'; by society in general, which discriminated against them, marginalised them, and shunned them; and by the government, whose coercive apparatus threatened, maltreated and harassed them. It asserted that this treatment was a violation of 'the right of dignity guaranteed by the Constitution of Pakistan. Supreme Court took up the petition under Article 184(3), ordering the social welfare secretaries of all four of the country's provinces to conduct surveys with a view to documenting the number of hijras/trans-genders across the country. The social welfare secretaries were also ordered to recommend measures that would fully integrate eunuchs into society. Since its first landmark judgment issued in 2009, the Court held more than 20 subsequent hearings to monitor the follow-up to the case, and has increased the ambit of its original judgment of July 2009 to include directions to the authorities to ensure the registration, which changed the life of Trans-genders and gave the fundamental rights; like right of identity, right of vote and involvement in political process was the result of the public interest litigation. This is a classic example of how PILs can be effective tool for compelling or persuading Government to engage with an issue of public interest.

³³ Constitution Petition No. 43 of 2009, Dr. Mohammad Aslam Khaki and another Versus Senior Superintendent of Police (Operation) Rawalpindi and Others, Supreme Court of Pakistan

Sampurna Behrui Versus Union of India³⁴

India had a legislation called the Juvenile Justice Act, 1986 which was comprehensively revised and re-enacted as "The Juvenile Justice (Care and Protection of Children) Act, 2000 in view of India's ratification³⁵ to the United Nations' Convention on the Rights of Child, 1989 (UNCRC). This law was aimed on drastically increasing State's duty towards Children in need of care and protection and children in conflict with law.

Implementation of this Law however remained abysmal across the country to the extent that even most basic set up like Juvenile Justice Boards, Child Welfare Committees and Special Juvenile Police Units were not even constituted in most part of the country.

In this situation, one social worker named Sampurna Behrui collected basic information about existence of Juvenile Justice Boards, Child Welfare Committees and Special Juvenile Police Units across few states in India, approached an efficient public Interest Lawyer, prepared a petition and demonstrated before the court that this law was not being implemented properly.

This case was admitted for hearing by the Supreme Court of India in September 2005 and so far has heard this matter on 46 occasions since then. Over a period of 11 years, Supreme Court not only passed orders for not only creation of a basic set up (creation of Juvenile Justice Boards, Child Welfare Committees and Special Juvenile Police Units in almost all the districts across India) required to implement the Act, but also ensured that these orders were complied with by the Governments. All the States and Union Territories have been compelled by the court to file updated status report on implementation of this Act and fresh orders are passed every time the court feels some aspect is being ignored or missed by the Governments. This case is still alive and being continuously heard by the Supreme Court. At the moment, the court is passing orders to induce quality in various aspects of juvenile justice administration system.

One of the remarkable features of this case is that the deficit of coordination between States/ Union Territories and Central Government was filled up by binding Court orders and it enabled the Central Government to compel States/ Union Territories to take steps, demonstrate progress and report it to the Central Government on a regular periodic basis.

This case demonstrates how Courts in PILs can bring an issue to the priority of Governments.

³⁴ Writ Petition (Civil) 473 of 2005

³⁵ Indian Government ratified UNCRC in year 1992.

Profile Building of a Court Case/ PIL

Success of a judicial intervention on an issue depends to a great extent on the profile of a case. Profile building is an art and it requires a combination of strategies to be utilized before filing a case and it continues even after the case is admitted in the Courts. Some strategies to build profile a case are mentioned below:

1. Organizing public hearing or stakeholders' consultations on a subject, along with proper documentation of proceedings and reporting in the media.
2. Demonstrations and Public Protests are democratic tools for public mobilization in support of a cause. However, once such matters are taken before Courts, the matter becomes sub-judice and then holding demonstrations or public protests can be taken as interference with Court or even sign of showing no faith in Courts. Prior to filing a case before Court, organising demonstrations or protests may result into greater attention towards the case and hence in building up profile of an issue or cause, but such efforts must stop at the filing of case before Courts.
3. Broad-basing an issue. Forging alliances, creating networks or federations or even raising a national or regional campaign broad bases an issue. Not only it helps in refining our own understanding of the issue and position but also it takes the issues beyond the conventional constituency of immediate interest groups. For example, on all the issues pertaining to labour women rights groups, trade unions, child rights groups, disability rights groups - all have some component of interest. These shared components of interest can easily work as a catalyst for broad-basing the issue.

Ethics of Working with Communities, Groups and Organizations etc.

Legislative advocacy, in simple terms, means that a group of concerned and informed citizens take upon themselves to organise themselves and engage with legislative processes to create positive change. This involves adherence to certain values or ethics. Though we are using word “Ethics” here but let us not be confused. These ethics are our code of conduct while we engage in advocacy and adherence to them brings greater ease in work and ensures success. Keeping in mind these pointers is crucial for those who play a key role in advocacy initiatives.

7.1 Why Ethics are Important?

Ethics are just not the right things to do, they also bring tremendous advantage to the work. It is important to also visualize the advantages of adhering to and enforcing ethical rules. To have clear set of ethics brings professionalism in the initiative at the very first place. With professionalism, comes effectiveness in the programme/initiative. It enhances credibility in the community and helps maintaining leadership. It also helps in eliminating possibility of any legal issues coming up in human interactions between organisation and community. There are various laws which require certain standards to be maintained by the professionals like doctors, lawyers and counselors. Depending on domestic laws, there may be various actors who are legally bound to adhere to certain set of standards in their interactions. Mostly these are doctors, lawyers, social workers, public servants, mediators, para-legals etc. Deviations can result into legal troubles. That's why it is helpful to make everyone understand that ethics need to be strictly maintained in all interactions with community, organizations and groups. Maintaining ethics also helps in creating a platform for dialogue in case of any dispute. It also helps in maintaining impartiality. So ethics are not just matter of morality, they have direct advantages and failure to uphold them may ensue adverse consequences.

7.2 DOs and DON'Ts of Working Together

Argue! Do not fight.

Consult! Do not decide.

Discuss! Do not criticize.

Inform! Do not educate.

Listen! Do not teach.

Organize! Do not lead.

Request! Do not demand.

Share! Do not hide.

Trust! Do not isolate.

Understand! Do not impose.

These ten golden rules of ethics should guide all our actions and behavior, while we engage with any advocacy initiative.

7.3 Addressing Dissent or disagreement

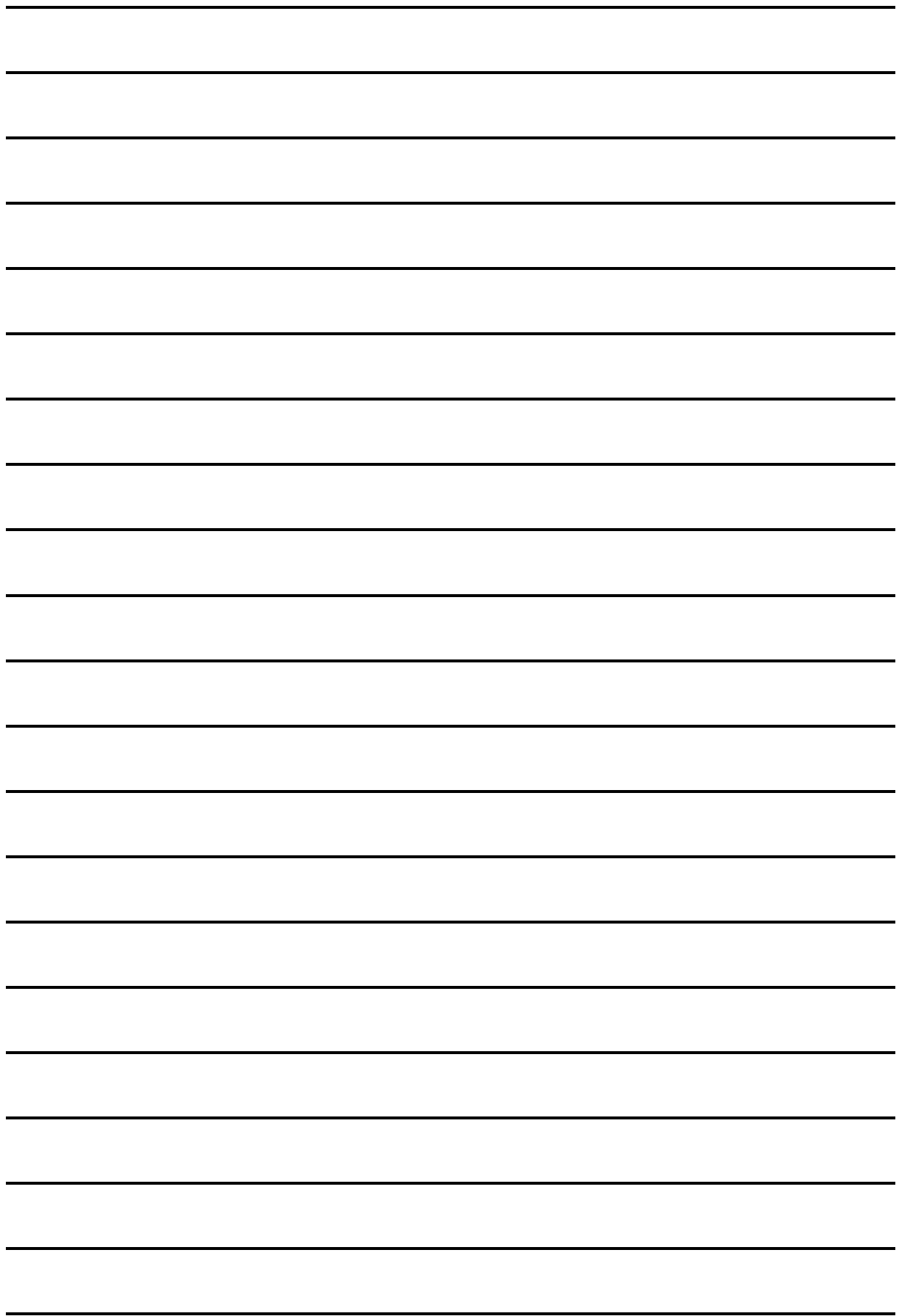
Advocacy initiatives are easy to start, but difficult to sustain. Once an initiative receives momentum and popular support, there is a great risk of dissent and frictions to prop up. It is important to channel such dissent in a positive direction. Dissent must be addressed not eliminated. Understanding dissent and creating space for dialogue is a key to address dissent. A dissent, not addressed, may jeopardize entire initiative.

7.4. Confidentiality, Disclosure, Reporting, Consent, Conflict of Interest and Competence: Legal Consequences

These terms may sound ethical but they are legal, having consequences. There are laws regulating these terms everywhere. For example, in India, if one comes to know about incident of sexual offence against a woman or child, it must be reported to police and failure to do so is a criminal offence³⁶. A lawyer who comes not know something from the person whom he is representing is bound to not disclose it to anyone. Violating it may bring the lawyer adverse action from the Bar Council. Similarly consent is a loaded legal term. Just because someone is giving consent for something does not mean that the person's consent is valid in law also. One also needs to be aware about competence of that person to give a valid consent. The fact that a person is a victim of a sexual offence cannot be disclosed in some jurisdictions, for instance in India. There is always a certain age for entering into an agreement. One cannot make an agreement with someone who is legally now competent to enter into agreement. A counselor is bound with confidentiality. It is important to be familiar with laws, rules and regulations surrounding these aspects.

Those who engage with any kind of advocacy, be it legal or legislative, they necessarily engage and interact with a wide range of actors- individuals, groups, organizations. In case of child domestic work and women rights, one engages a lot with children and women. To be informed about ethical and legal aspects of such interactions is imperative and beneficial.

³⁶ Section 21 of the Protection of Children from Sexual Offences Act, 2012





GLOBAL MARCH

Against Child Labour
Contra el Trabajo Infantil
Contre le Travail des Enfants

L-6, Kalkaji, New Delhi-110019
Ph.: 49211111-12 | Email: info@globalmarch.org
www.globalmarch.org