CHAPTER-6

JUDICIAL RESPONSE IN ERADICATION OF CHILD LABOUR
CHAPTER – 6

JUDICIAL RESPONSE IN ERADICATION OF CHILD LABOUR

“I am the child. All the world waits for my coming. All the earth watches with interest for my coming. All the earth watches with interest to see what I shall become. Civilization hangs in the balance, for what I am, the world of tomorrow will be. I am the child. You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail, give me, I pray for you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world”

-Manie Gene Cole

6.1 INTRODUCTION

The children are called as the greatest gift of God to man, our most precious and very important asset. They are tiny apostles of peace but we forget that they are, at first, very much human being – though young.1 The children are very important for any nation. Their needs and rights are not to be attended merely as a by-product of progress. They should be attended as an end and means of progress,2 probably, from the dawn of humanity, child labour has been rampant. With the industrial revolution in Europe, child labour being cheap and disciplined proved to be boon to industrialists. It is interesting to note that employment of children in the agricultural sector is not less widespread. It being cheap and docile, its contribution to both industry and agriculture has been a blessing. Yet, it is the most neglected and exploited class of human labour.3 At present in India there are 100 million working children of one-tenth of the country’s population.4 This has happened despite Art.245 of the Constitution of India stating that no child below 14 shall be employed in any factory or in any other hazardous employment.

---

2 Ibid
3 Paras Diwan and Peeyushi Diwan, Children and Legal Protection, 1994, New Delhi, Deep and Deep Pub. at 201
4 “Another declaration : An illegal Act has been rendered doubly so”, Editorial comment, Indian Express, Bangalore ed. 12-12-1996 at p.10
5 Article 24 of the Indian Constitution lays down that ; “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”
In this chapter an attempt has been made to assess the judicial response to the child labour welfare, with the help of various Supreme Court judgments, as an effective instrument to improve the status of children in accordance with the spirit of the constitution.

The constitutional prohibition that children below the age of 14 years should not be employed in any factory, mine or other hazardous employment was felt to be ineffective in the absence of legislation prohibiting its violation till the decision of the Supreme Court in the case of *People’s Union for Democratic Right v. Union of India.* In this case, the Court found the law wanting. As a fact the Supreme Court found out that the children below the age of 14 were employed in the construction work. On behalf of the Union of India and Delhi Administration it was argued that the Employment of Children Act, 1938, was not applicable to construction industry as it is not specified in the Schedule. The Court observed:

“We have Art. 24 of the Constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate proprio vigore and construction work being plainly and undoubtedly a hazardous employment. It is clear that by reason of this constitutional prohibition, no child below 14 years can be allowed to be engaged in construction work. Therefore there can be no doubts that not withstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in construction work and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country.”

*M.C. Mehta v. State of Tamil Nadu*  
In this case, a public interest litigation was filed under Article 32 of Indian Constitution. In this public interest litigation it was highlighted that in Sivakasi there

---

6 AIR 1991 SC 1473  
7 AIR 1997, SC 699  
8 Article 32 of the Constitution lays down that; “(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of..."
were 221 registered match factories employing 27,338 employees in which 2941 were children.

In this case, the apex court has held that the children are means under Article 45 of the Indian Constitution to be subject to free and compulsory education until they complete the age of 14 years. The Court has, however, observed that the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces tender children to seek employment. It is a matter of surprise that the Supreme Court in this case allowed the children to be employed in match factories of Sivakasi in Madras and said that the children must be provided basic diet during working period. This judgment is not in accordance with the constitutional spirit.

During the Constituent Assembly, Prof. Sibbanlal Saxena, by referring to the draft Article 18 the equivalent of the present Article 24 of the Indian Constitution, said:

“I am glad that this article has been placed among fundamental rights, In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in other countries, we will find that many of them are concerned with economic rights. .... We have provided these things in our Directive Principles, although I think, properly, they should be in this chapter. Even then, this Article18 (now Article 24) is an economic right, that no child below the age of fourteen shall be employed in any factory.”

Despite the Supreme Court attaching special importance to the directives contained in Article 41 and holding that ‘every child/citizen of this country has a right

---

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.
9 Ibid
10 Article 45 of the Indian constitution lays down that; “Provision for early childhood care and education to children below the age of six years. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”
11 Ibid
12 Article 41 of the Indian Constitution provides that; “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”
to free education until the complete the age of fourteen years. The realization of these values remained as a pious dream. At this juncture, the decision of the Supreme Court delivered on 10th Dec. 1991, coinciding with the Human Rights Day celebrations held out a ray of hope.

Delivering a significant judgment – aiming at abolition of child labour in occupations specified in the Child Labour (Prohibition and Regulation) Act, 1986, and implementation of “free and compulsory education” for all children until they attain the age of 14 years as prescribed by Article 45 of the Indian Constitution, the Supreme Court gave a series of ‘directions’ to all States, including Tamil Nadu, the Union Territories and the Central Government for the compliance. A three judge bench comprising Justice Kuldip Singh, Justice B.L. Hansaria and Justice S.B. Mujumdar gave the judgment while disposing of a writ petition filed by M.C. Mehta – the environmentalist lawyer. The Court directed the employers of child labourers to pay a compensation of Rs. 20,000 for every child under the provisions of the Child Labour (Prohibition and Regulation) Act, 1986. In its 36 page epoch – judgement the Court said:

“The inspectors would see that for each child, employed in violation of the Act, the employer concerned pays Rs. 20,000, which would be deposited in a fund to be known as child labour rehabilitation-cum-welfare fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed by him.”

On the directions being carried out, penal provisions contained in the 1986 Act, the Court observed “would be used where employment of a child labour, prohibited by the Act, would be found.”

Other outstanding features of the judgement are as under. The child labour rehabilitation-cum-welfare fund could be district-wise or area-wise and to the fund so

---

13 *Unni Krishnan V. State of Andhra Pradesh*, (1993) 1 SCC 645

14 Article 45 State shall endeavour to provide the early childhood care and education for all children until the age of 6 years.

generated shall form the corpus whose income shall be used only for the child concerned. To generate greater income the fund can be deposited in high-yielding schemes of nationalized banks or public bodies. As the income accruing from the corpus fund of Rs. 20,000 would not be enough to dissuade the parents/guardians from seeking employment of the child, the appropriate government is to deposit Rs. 5,000/- for each child in case the concerned government is not in a position to give employment for an adult, the parent/guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent/guardian shall have to see to it that his child is spared of income would have become available to him. The employment given or payment made would cease to be operative if the child is not sent by the parent/guardian for education. The States are directed to conduct a survey of all kinds of child labour within 6 months. The survey of child labour engaged in hazardous occupation prohibited under Article 2416 of the Constitution, which forms the core sector, should be taken up first. The Secretary, Union Ministry of Labour, is required to apprise the Court of the compliance of these directions within one year.

No doubt, expectations and words of Prof. Sibbanlal Saxena, that Article 2417 is an economic right, have come true by the verdict. At the implementation level definitely it has to run into rough because, the very same provisions were on the statute book for decades and could not be realized. The important judgement is only declaratory in nature.

While the ruling works at the consciousness – raising level, it may not do as well in terms of real action. When a judicial ruling takes on shades of an executive order, it risks being violated, or worse ignored.18 The conduct of judiciary may not infuse additional sanctity into provisions commanding effective implementation. The ruling raises questions like for instance, where are the agencies that will ensure compliance of directions. How effectively the child welfare fund may be utilized? Where from the factory inspectors who had turned a blind eye to the problem hitherto suddenly become alert and diligent? How to prevent the disengaged children from moving into other employments which are equally fraught with risk?

---

16 Article 24, No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
17 Ibid
18 “Another Declaration : An illegal Act has been rendered doubly so”, loc.cit
There cannot be two views about the fact that the child labour brings down the market value of labour and that there is no justification for this in a country with massive adult unemployment. Therefore, the first and the most important step is to hold the government to its promise to provide free and compulsory education for children upto the age of 14 years, and the second is to promote economic growth to raise adult employment and incomes. Unless this is done, each generation of unfortunate workforce will be another of the same kind. Till then the Supreme Court verdict is only some palliative to the children.

To enable furthering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education; acquire knowledge of man and materials and blossom in such an atmosphere that on reaching the age, he is found to be a man with a mission, a man who matters so far as the society is concerned.

Our Constitution-makers, wise and sagacious as they were, had known that India of their vision would not be a reality if the children of the country are not nurtured and educated, for this, their exploitation by different profit-makers for their personal gain had to be first indicated. It is this need, which has found manifestation in Article 24 that is one of the two provisions in Part IV of the Constitution regarding the fundamental rights against exploitation. The farmers were aware that this prohibition alone would not permit the child to contribute its mite to the nation-building unless it receives at least basic education. Article 45 was, therefore, inserted in paramount manuscript casting a duty on the State to endeavour to provide free and compulsory education to children. It is known that this provision in Part IV of our Constitution, after the decision by a Constitution Bench of this Court in *Unni Krishnan. J.P. v. State of A.P.* has acquired the status of a fundamental right. Indian Constitution contains some other provisions also desiring that child must be given an opportunity and facility to develop himself or herself in a healthy manner.

Despite the above, the stark reality is that in like many others, children in our country are exploited a lot. Child labour is a big problem and has remained intractable, even after about 65 years of our having become independent. Despite various legislative enactments, prohibiting employment of a child in a number of occupations and avocations remains unfulfilled.

In the Sivakasi case\textsuperscript{20}, it was noted that the manufacturing process of matches and fireworks (for the manufacture of which also Sivakasi is a traditional centre) is hazardous, giving rise to accidents including fatal cases. So, keeping in view the provisions contained in Articles 39(f)\textsuperscript{21} and 45\textsuperscript{22} of the Constitution, it gave certain directions as to how the quality of life of children employed in the factories could be improved. The Court also felt the need of constituting a committee to oversee the directions given.

Subsequently, suo moto cognizance was taken in the present case itself when news about an “unfortunate accident”, Sivakasi cracker factories was published. At the direction of the Court, Tamil Nadu Government filed a detailed counter stating, inter alia, that number of persons who died was 39. The Court gave certain directions regarding the payment of compensations and thought that an advocates committee should visit the area and make a comprehensive report relating to the various aspects of the matter, as mentioned in the order of 14-8-1991) The Committee was to consist of (1) Shri R.K. Jain, a Senior Advocate; (2) Ms. Indira Jaising, another Senior Advocate, and (3) Shri K.C. Dua, advocate.

The Committee has done a commendable job. It submitted its report on 11-11-1991 containing many recommendations, the summary of which is to be found at pp. 24-25 of the report, reading as below:

a) State of Tamil Nadu should be directed to ensure that children are not employed in fireworks factories.

b) The children employed in the match factories for packing purposes must work in separate premises for packing.

c) Employers should not be permitted to take work from the children for more than six hours a day.

d) Proper transport facilities should be provided by the employers and State Government for traveling of the children from their homes to their work places and back.

\textsuperscript{20} (1993) 1 SCC 645
\textsuperscript{21} AIR 1997, SC 699
\textsuperscript{22} Article 45 State shall endeavour to provide the early childhood care and education for all children until the age of 6 years.
e) Facilities for recreation, socialization and education should be provided either in the factory or close to the factory.

f) Employees should make arrangements for providing basic diets for the children and in case they fail to do so, the Government may be directed to provide for basic diet – one meal a day program in the State of Tamil Nadu for school children may be extended to the child worker.

g) Piece-rate wages should be abolished and payment should be made on monthly basis. Wages should be commensurate to the work done by the children.

h) All the workers working in the industry, whether in registered factories or in unregistered factories. Whether in cottage industry or on contract basis should be brought under the Insurance Scheme?

i) Welfare fund – For Sivakasi area, instead of present committee, a committee should be headed by a retired High Court Judge or a person of equal status with two social workers, who should be answerable either to this Hon’ble Court or to the High Court as may be directed by the Hon’ble Court.

j) A National Commission for children’s welfare should be setup to prepare a scheme for the child labour abolition in a phased manner. Such a Commission should be answerable to this Hon’ble Court at periodical intervals about the progress.

**Sivakasi a Special Case which needs attention**

237 lives were lost in cracker unit accidents in Sivakasi during the last 12 years, a total of 237 lives have been lost due to accidents in 88 fireworks units located in Sivakasi. The government has tightened its controls on the safety measures installed by the units, said an industry official.

"From the study of the accidents that have occurred during the last 12 years. A total of 237 lives have been lost and 200 have been injured in the accidents that occur in the fireworks units," an official of Tamil Nadu Fireworks and Amorces Manufacturers Association (TNFAMA) told IANS over phone from Sivakasi.

Most of the accidents happen in small and medium-sized units owing to the casual attitude of the workers. TNFAMA has around 700 units as its members and the total industry turnover is around Rs. 2,000 crore logging an annual growth rate of 10

http://www.deccanherald.com/content/276641/237-lives-lost-cracker-unit.html
percent."Accidents in professionally-run units are almost nil and, if at all there is an accident, the casualty will be mostly a single worker,"

There are around 200 units in Sivakasi that are run professionally following all safety rules, Crackers are produced in small rooms with space for not more than four people. The rooms have four doors so that the workers can rush out in case of any emergency. The small units allegedly employ inexperienced workers during the Diwali season in order to meet the demand, which in turn results in such accidents.

Sivakasi, also known as 'kutti' or 'mini Japan', is one of the oldest and biggest firecrackers manufacturing hubs in India. Nearly 90 percent of the country's fireworks are made in Sivakasi. And 80 percent of the safety matches are made here. Low rainfall and dry climate are conducive for this industry to thrive. Some products are also used by the airports to scare away the birds.

**Table 1; Changes in Work Participation (Main and Marginal) Rate of Children in different age groups**

<table>
<thead>
<tr>
<th>All India</th>
<th>1991</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boys</td>
<td>Girls</td>
</tr>
<tr>
<td>5 to 9</td>
<td>0.9</td>
<td>0.9</td>
</tr>
<tr>
<td>10 to 14</td>
<td>10.9</td>
<td>9.9</td>
</tr>
<tr>
<td>5 to 14</td>
<td>5.7</td>
<td>5.1</td>
</tr>
</tbody>
</table>

According to 2001 Census of India[^24], there were 12.26 million working children in the age group of 5-14 years as compared to 11.3 million in 1991 revealing an increasing trend in absolute numbers though the work participation rates of children (5-14) has come down from 5.4 percent during 1991 to 5 percent during 2001. The recent round of the National Sample Survey (NSSO) estimates that the child labour in the country is around 8.9 million in 2004/2005 with a workforce participation rate of 3.4 per cent (NSSO 2004/2005).

Census data shows that there is a decline in the absolute number as well the

[^24]: [http://www.ncpr.gov.in](http://www.ncpr.gov.in)
percentage of Main workers of children (5-14 to total population in that age group, from 4.3 percent in 1991 to 2.3 percent in 2001. But there was a substantial increase in marginal workers in every category of worker irrespective of sex and residence. As a result, despite the number of main workers declining from 9.08 million in 1991 to 5.78 million in 2001, the total number of children in the work force increased. A large part of the increase was accounted for by the increase in marginal workers, which increased from 2.2 million in 1991 to 6.89 million in 2001. Main and Marginal workers put together, the work participation rate (WPR) of children in the 5-14 age group has declined from 5.4 percent during 1991 to 5 percent in 2001. The trends between 1991 and 2001 of declining main child workers along with increasing marginal workers may indicate the changing nature of work done by children. There is a general trend of marginalization of labour force in the country and this is also reflected in the Census figures. This is to be seen in the context of decelerating employment growth in general in the economy during the last decade that is characterized as an era of globalization.
Age group wise Work Participation Rate (WPR)

Table 2: Magnitude of child labour and out of school children

<table>
<thead>
<tr>
<th>Distribution of Children</th>
<th>2001 Population Census(^{25})</th>
<th>2006 Population Projection and estimates(^{26})</th>
<th>% of Children to Population</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2001</td>
<td>2006</td>
</tr>
<tr>
<td>Population</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>13,23,67,710</td>
<td>12,54,85,000</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>12,07,95,938</td>
<td>11,62,74,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>25,31,63,648</td>
<td>24,17,59,000</td>
<td></td>
</tr>
<tr>
<td>Child Labour (10-14)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>68,04,336</td>
<td>42,76,744</td>
<td>8.8%</td>
</tr>
<tr>
<td>Female</td>
<td>58,62,041</td>
<td>38,94,131</td>
<td>8.5%</td>
</tr>
<tr>
<td>Total</td>
<td>1,26,66,377</td>
<td>80,82,954</td>
<td>8.7%</td>
</tr>
</tbody>
</table>

Children out of school

|                |                                |                                 |                             |
|----------------|--------------------------------|--------------------------------|                             |
| Male           | 3,64,28,634                    | 1,91,99,205                     | 27.5%                       |
| Female         | 4,58,78,836                    | 2,41,84,992                     | 38.0%                       |
| Total          | 8,71,26,075                    | 4,32,74,861                     | 34.4%                       |

\(^{25}\) Census of India, 2001

However, if we look at the WPR for different age groups among children, the trend is different. The WPR for children in 5 to 9 age group has marginally increased from less than 1 percent during 1991 to 1.4 percent during 2001. In the case of 10-14 years age group children the decline is only marginal - from 10.4 percent during 1991 to 8.7 percent during 2001. This indicates that a substantial number of children in the 10 to 14 age group are in the labour force despite the decline in the proportion of children in the total population. Latest available estimates on WPR children are from the 61st Round of NSSO (2004-05). According to NSSO estimates WPR for children in the 5-9 age group is negligible and for children in the age group of 10-14, it still continues to be significant though declining. NSSO data being based on a sample survey, this reflects the current economic situation with regard to general employment in the economy. Decline in child labour has to be seen in the context of general decline in employment growth. The current economic process has rendered many more children vulnerable to labour related exploitation, though many of them are classified as out of school children but not in work.

Magnitude of child labour across major states

Table 3: Changes in the magnitude of child labour and WPR between 1991 and 2001 (Children in the age group of 5-14)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>1661940</td>
<td>1363339</td>
<td>9.98</td>
<td>7.7</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>12395</td>
<td>18482</td>
<td>5.65</td>
<td>6.06</td>
</tr>
<tr>
<td>Assam</td>
<td>327598</td>
<td>351416</td>
<td>5.46</td>
<td>5.07</td>
</tr>
<tr>
<td>Bihar</td>
<td>942245</td>
<td>1117500</td>
<td>3.99</td>
<td>4.68</td>
</tr>
<tr>
<td>Chattisgarh (New)</td>
<td>364572</td>
<td></td>
<td>6.96</td>
<td>0.0</td>
</tr>
<tr>
<td>Delhi</td>
<td>27351</td>
<td>418999</td>
<td>1.27</td>
<td>1.35</td>
</tr>
<tr>
<td>Goa</td>
<td>4656</td>
<td>4138</td>
<td>1.95</td>
<td>1.82</td>
</tr>
<tr>
<td>Gujarat</td>
<td>523585</td>
<td>485530</td>
<td>5.26</td>
<td>4.28</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----------------</td>
<td>-----------------</td>
<td>------------</td>
<td>------------</td>
</tr>
<tr>
<td>Haryana</td>
<td>109691</td>
<td>253491</td>
<td>2.55</td>
<td>4.78</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>56438</td>
<td>107774</td>
<td>4.55</td>
<td>8.14</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>175630</td>
<td></td>
<td>6.62</td>
<td>0.0</td>
</tr>
<tr>
<td>Jharkhand (New)</td>
<td></td>
<td>407200</td>
<td>5.47</td>
<td>0.0</td>
</tr>
<tr>
<td>Karnataka</td>
<td>976247</td>
<td>822665</td>
<td>8.81</td>
<td>6.91</td>
</tr>
<tr>
<td>Kerala</td>
<td>34800</td>
<td>26156</td>
<td>0.58</td>
<td>0.47</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>1352563</td>
<td>1065259</td>
<td>8.08</td>
<td>6.71</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>1068418</td>
<td>764075</td>
<td>5.73</td>
<td>3.54</td>
</tr>
<tr>
<td>Orissa</td>
<td>452394</td>
<td>377594</td>
<td>5.87</td>
<td>4.37</td>
</tr>
<tr>
<td>Punjab</td>
<td>142868</td>
<td>177268</td>
<td>3.04</td>
<td>3.23</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>774199</td>
<td>1262570</td>
<td>6.46</td>
<td>8.25</td>
</tr>
<tr>
<td>Sikkim</td>
<td>5598</td>
<td>16457</td>
<td>5.18</td>
<td>12.04</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>578889</td>
<td>418801</td>
<td>4.83</td>
<td>3.61</td>
</tr>
<tr>
<td>Tripura</td>
<td>16478</td>
<td>21756</td>
<td>2.29</td>
<td>2.79</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>1410086</td>
<td>1927997</td>
<td>3.81</td>
<td>4.04</td>
</tr>
<tr>
<td>Uttarakhand (New)</td>
<td></td>
<td>70183</td>
<td>3.24</td>
<td>0.0</td>
</tr>
<tr>
<td>West Bengal</td>
<td>711691</td>
<td>857087</td>
<td>4.16</td>
<td>4.5</td>
</tr>
<tr>
<td>India</td>
<td>11285349</td>
<td>12666377</td>
<td>5.37</td>
<td>5.0</td>
</tr>
</tbody>
</table>

(Source: compiled from census of India 1991 and 2001)

Note: The Census Report of 2011 is not completely available, so all the data is based on Census Report 2001.
Percentage Share of Child Labour across states where the magnitude is significant

![Bar chart showing percentage share of child labour across states in 2001 and 1991.](chart)

- West Bengal
- Uttar Pradesh
- Tamil Nadu
- Rajasthan
- Orissa
- Madhya Pradesh
- Karnataka
- Jammu & Kashmir
- Haryana
- Goa
- Chattisgarh (New)
- Assam
- Andhra Pradesh

Bars indicate the percentage share in 2001 and 1991.
As per the census data, the trend on the magnitude of child labour is not uniform across the country. There is across the board decline in the incidence of child labour in the Southern and Western Indian States and UTs between 1991 and 2001.

However, there has been an increasing trend in the Eastern and North Indian States and Union Territories. There is an increase in the absolute magnitude of child labour between 1991 and 2001 in the states of UP, Rajasthan, Punjab, Haryana, Himachal Pradesh and Madhya Pradesh. If we combine the bifurcated states from MP, UP and Bihar the increase in magnitude is much more than what is seen in the divided states. While the Kerala and Tamil Nadu stories are well known, it is heartening to see that the state of Andhra Pradesh, that had a dubious distinction of having the largest child labour force in the country, shows reduction in magnitude of child labour and work participation rates along with a dramatic increase in the enrolment of children in school. However, Andhra Pradesh is the second largest state in terms of magnitude by 2001 Census.

As for as the percentage share of child labour across the states, Uttar Pradesh account for a larger share of about 15 percent all child workforces in India followed by Andhra Pradesh, with 10.8 percent. Rajasthan, Madhya Pradesh, Bihar respectively garnered 10, 8.8 and eight percent of India’s child employment. The share of Uttar Pradesh has shot up from less than 13 per cent during 1991 to 15.2 per cent in 2001, which is a cause for serious concern. Over 53 percent of the child labour in India was accounted for by the five states namely UP, AP, Rajasthan, MP and Bihar during 2001. Karnataka, Maharashtra and West Bengal together had about 20 percent of the child labourers in India during 2001. It is also to be noted here that there is a general increasing trend in the magnitude of child labour in the north east region of the country. Surprising is the case of Himachal Pradesh, which has shown significant increases in school attendance and in literacy levels. However, there is a dramatic increase in the percentage of children in the age-group 5-14 years who are classified as workers, both main and marginal. In Himachal Pradesh, the percentage of child workers has gone up from 5.5 percent in 1991 to 8.6 percent in 2001. This is a reflection of the emerging crisis of poorer segments of the population like in many other states.

27 The Himachal Pradesh story has been well documented by Anuradha De, Claire Noronha and Meera Samson in “Primary Education in Himachal Pradesh: Examining a Success Story” in R. Govinda (edited) (2002) India Education Report, op.cited, pp.297-311
To accomplish the aforesaid task, we have first to note the constitutional mandate and call on the subject, which are contained in the following articles:

- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.\textsuperscript{28}
- The health and strength of workers men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;\textsuperscript{29}
- Children are given opportunities and facilities to develop in an healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.\textsuperscript{30}
- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.\textsuperscript{31}
- The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.\textsuperscript{32}

The State shall regard the raising of the level of nutrition and the standard of living of its people health as among its primary duties and; in particular, the State shall endeavor to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health”.\textsuperscript{33}

\textsuperscript{28} Article 24 No below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment
\textsuperscript{29} Article 39 (e) of the Constitution of India states that ; “ That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”
\textsuperscript{30} Section 2 (c) of the Plantation Labour Act, 1951, p. 10
\textsuperscript{32} Baldev Singh, “Cochin University Law Recovery Child Labour Problems and Proppects” 1999, p. 5
\textsuperscript{33} Article 47 of the Indian Constitution states that ; “Article 47 states that ; “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”
Of the aforesaid provisions, the one finding place in Article 24 has been a fundamental right ever since 28-1-1950. Article 45 too has been raised to a high pedestal by Unni Krishnan, which was decided on 4-2-1993. Though other articles are part of directive principles, they are fundamental in the governance of our country and it is the duty of all the organs of the State to apply these principles. Judiciary being also one of the three principal organs of the State, has to keep the same in mind when called upon to decide matters of great public importance Abolition of child labour is definitely a matter of great public concern and significance.

The Employment of child below the age of 14 is unconstitutional indication insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the age of 14 years in view of this being’s fundamental right now, and that the tender age of children is not abused and citizens are not forced by economic necessary to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualized by Article 39(f), to the fulfilment of legislature intent behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986.

Taking guidance there from, the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs. 20,000; and the Inspectors, whose appointment is visualized by Section 17 to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed under Section 17 would see that for each child employed in violation of the provision of the Act, the employer concerned pays Rs. 20,000 which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund district wise or

---

34 Article 24 No below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment
35 Baldev Article 45 State shall endeavour to provide the early childhood care and education for all children until the age of 6 years.
36 (1993) 1 SCC 645
37 Article 37 of the Constitution of India lays down that ; “The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental
38 Article 39 (e) of the Constitution of India
39 Article 39(f) Ibid
area wise. The fund so generated shall form corpus whose income shall be used only for the child concerned. The quantum could be the income earned on the corpus deposited for the child. To generate greater income, fund can be deposited in high-yielding scheme of any nationalized bank or other public body.

As the aforesaid income could not be enough to dissuade the parent/guardian to seek employment of the child, the State owes a duty to come forward to discharge its obligation in this regard. After all, the aforementioned constitutional provisions have to be implemented by the appropriate Government, which expression has been defined in Section 2(i) of the Act to mean, in relation to establishment under the control of the Central Government or a railway administration or a major port or a mine or an oilfield, the Central Government, and in all other cases, the State Government.

Now, strictly speaking a strong case exists to invoke the aid of Article 41 of the constitution regarding the right to work and give meaning to what has been provided in Article 47 relating to raising of standard of living of the population.

And Articles 39(e) and (f) as to non-abuse of render age of children and giving opportunities and facilities to them to develop in a healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child.

This would also see the fulfilment of the wish contained in Article 41 after about half a century of its being in the paramount manuscript, like primary education desired by Article 45, having been given the status of fundamental right by the decision in Unni Krishnan. It cannot be asked to the State at this stage to ensure alternative employment in every case covered by Articles 24 and 21 of the Constitution of India, as Article 41 of the Constitution speaks about right to work “within the limits of the economic capacity

---

40 Article 41 of the Indian Constitution provides that; “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

41 Ibid

42 Article 39(e) the state shall in particular direct its policy towards securing that the health and strength of workers, men and women and the tender of children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age and strength.

43 Article 39(f) the state shall in particular its policy towards securing that children are opportunity and facilities to develop in a healthy manner in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
and development of the State.” The presence of large number of child labourers in the aforesaid occupations would require giving jobs to a large number of adults, if they were to ask the appropriate Government to assure alternative employment in every case. This would strain the resources of the State, in case it would not have been able to secure job for an adult in a private sector establishment or, for that matter, in a public sector organization. It is the matter to be sorted out by the appropriate government. In those cases where it would not be possible to provide jobs as abovementioned, the appropriate Government would have to, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs. 5,000 for each child employed in a factory or mine in any other hazardous employment.

The aforesaid would either see an adult (whose name would be suggested by the parent/guardian of the child concerned) getting a job in lieu of the child, or deposit of a sum of Rs. 25,000 in the Child Labour Rehabilitation-cum-Welfare Fund. In case of getting employment for an adult, the parent/guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent/guardian shall have to see that his child is spared from the requirement to do the job, as alternative source of income would have become available to him.

To give shape to the aforesaid directions, the States concerned should to do the following:

1) A survey would be made of the aforesaid type of child labour which would be completed within six months from today.

a) To start with work could be taken up regarding those employments which have been mentioned in Article 24, which may be regarded as core sector to determine which hazardous aspect of the employment would be taken as criterion. The most hazardous employment may rank first in priority, to be followed by comparatively less hazardous and so on.

The employment so given could as well be the industry where the child is employed, a public undertaking and would be manual in nature in as much as the child in question must be engaged in doing manual work. The undertaking chosen for employment shall be one which is nearest to the place or residence of the family.
In those cases where alternative employment would not be made available as aforesaid, the parent/guardian of the child concerned would be paid the income which would be earned on the corpus, which would be a sum of Rs. 25,000 for each child every month. The employment given or payment made would cease to be operative if the child would not be sent by the parent/guardian for education.

On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make him a better citizen. It may be pointed out that Article 45 mandates compulsory education for all children until they complete the age of 14 years, it is also required to be free. It would be the duty of the Inspectors to see that this call of the Commission is carried out.

A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors. Further, in view of the magnitude of the task, a separate cell in the Labour Department of the appropriate government would be created. Monitoring of the schemes would also be necessary and the Secretary of the Department could perhaps do this work. Overall monitoring by the Ministry of Labour, government of India, would be beneficial and worthwhile.

It must be observed that one the directions given being carried out, penal provision contained in the aforesaid noted 1986 Act would be used where employment of child labour, prohibited by the Act, would be found.

In so far as the non-hazardous jobs are concerned, the Inspector shall have to see that, the working hours of the child are not more than four to six hours a day and he/she receives education at least for two hours each day. It would also be seen that the entire cost of education is borne by the employer.

We can find the hope that the closing twenty first century would see us keeping the promise made to our children by our Constitution about a half-century ago. Let the future child find himself into that “heaven of freedom” of which our poet laureate Rabindranath Tagore has spoken in Gitanjali.

---

44 Child Labour (Prohibition and Regulation ) Act, 1986
6.2 Supreme Court Judgements on Child Labour

In the past there has been plethora of Supreme Court decisions which prohibits child labour and makes it punishable offence. Following are the cases;

The Supreme Court observed that right to life under Article 21 embraces not only physical existence of life but the quality of life. It is notable that a child labour is not given opportunity to lead a life of quality and hence this practice is violation of Constitution of India.

Going ahead a step further the apex court in *J. P. Unnikrishnan Case*\(^45\), held that the primary education is an aspect of personal liberty and thus elevated it to the level of child’s fundamental right. A child has fundamental right to free education upto the age of 14 years, added the court. By declaring the right to education as fundamental right the court has obligated the State to create circumstances facilitating schooling of below 14 years children. This in turn connotes where a child goes to work place only because there is no adequate arrangement for him to exercise his basic right to education or he is forced by his parents to go to work place instead of school or not sent to the school or is taken out of school by anybody or he does not go to school for education because of his own compulsions, the State shall be violating constitutional mandate to see that every child of prescribed age goes to school. It must take care of such child and ensure his schooling. This is possible only when primary education is made compulsory.\(^46\)

It is a pious obligation of State to see that each and every child of the country goes to school and takes education. If parents err and do not understand the importance of education for the children the State is supposed to teach and train them. The child employment and education are mutually opposed. The two cannot go together. So while the primary education is the fundamental right of the child under Article 21, the child labour is violative of this right and hence ultra vires to Constitution of India.

In case of *People Union for Democratic Right v. Union of India*\(^47\), the Supreme Court considered the meaning and scope of the phrase “hazardous

---

\(^45\) (1993) 1 SCC 645
\(^46\) The Pioneer Kanpur Edn. Dt Sept. 30, 1994
\(^47\) AIR 1991 SC 1473
employment”. In this case inter alia, the question before the Supreme Court was that whether the employment of children in the construction work amounts to employments in hazardous concerns and whether it violated the Employment of Children Act, 1938. The Union of India, the Delhi Administration and the Delhi Development Authority contended that this act is not applicable in case of employment in the construction work since construction industry is not a process specified in the Schedule and is, therefore, not within the provision of sub-section (3) of section 3 of the Act, which prohibits the employments of children under the age of 14 years in hazardous concerns.

The Supreme Court pointed out that this was a sad and deplorable omission which must be immediately set right by every State Government by amending the Schedule so as to include construction industry. This could be done in exercise of the powers conferred under section 3A of the Employment of Children Act, 1938. The Supreme Court said that every State government will take the necessary step in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment under the age of 14 must be prohibited in every type of construction work. That would be in consonance with convention 59 adopted by the International Labour Organization and ratified by India. But apart altogether from the requirement of Convention No. 59 we have Article 24 of the Constitution which provides that no child below the age of fourteen shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The Supreme Court held that Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which, even not followed up by appropriate legislation, must operate proprio vigore.

Further The Apex Court observed that “there can be, no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the employment of Children Act, 1938, no child below the age of 14 years can be employed in construction and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country.
Through this judgement the Apex Court explore the doctrine of Locus Standi by saying that not only aggrieved persons have a right to approach the court for redress their problems but also public spirited institution or any person affect by the interest of the some persons can approach the court on behalf of the aggrieved persons who are not in a position to come for relief. In that case the Apex Court took notice on this point that no doubt constructive industry did not come into the Category of schedule of Section 3 of the Employment of Children Act 1938 but it violates the fundamental rights of the children by engaging them in a construction site which is considered to be hazardous one and Article 24 of the Constitution also prohibits the employment of children below the age of 14 years in factory or mine or any other hazardous employment it is very irony that instead of giving them education they puts employment of children in construction sites this operates propiro vigore of Art 24 of the Constitution. So they go further extent by giving directions to the State Governments for looking out the benefit of children and take stand in the absence of Child labour legislation for the welfare of the children

In *Neerja Chaudhary v. State of Madhya Pradesh*48 is another momentous decision of the apex court where the judiciary has taken a serious note of the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating the bonded labourers in the country. The present case is based on a letter of September 20, 1982 addressed to one of the judges of the apex court by a petitioner who is a civil rights correspondent of Statesman in an article written by her and published in the issue of Statesman dated 14th September, 1982 in which she set out how these bonded labourers were without land and work, facing immense hardship and near starvation in the absence of any rehabilitation assistance by the State Government. It seems that once these freed bonded labourers were brought back to their villages, the administration of the State Government thought they had discharged their duty and then they conveniently forgot about the existence of this unfortunate specimen of humanity. When the petitioner interviewed some of these bonded labourers they said that they would rather go back to the stone quarries for work then starve and added “we might have been killed there, but we are also dying here”. The petitioner pointed out this statement in the leading newspaper in the country. The petitioner stated that 135 bonded labourers who were working in the stone quarries in Faridabad had been released from

48AIR 1984 SC1099
bondage by an order made by this court in the first week of March, 1982 since they were found to be bonded labourers with in the meaning of the Bonded Labour System (Abolition) Act, 1976 and on release, they had been brought back to their respective village in Bilaspur District of the State of Madhya Pradesh with a promise of rehabilitation by the Chief Minister of that State. But when she visited three villages namely, Kunda, Pandhari and Bhairavapura in Mungeli Taluka of Bilaspur District in September 1982, with a view to ascertain whether or not the process of rehabilitation as promised by the Chief Minister had commenced, she found that most of the released bonded labourers belonged to these three village had not yet been rehabilitated though six months has passed since their release and they are living almost on the verge of starvation. It may be pointed out that out of 135 released bonded labourers, about 75 belonged to these three villages and 45 out of them were from village Kunda. The petitioner also pointed out that some of the released bonded labourers owned land at one time but they had lost it to the money lender and some of them had pledged their jewellery and other small belonging to raise money for their subsistence. Therefore, the petitioner argued that it was statutory obligation of the State Government to ensure rehabilitation of the free bonded labourers and failure to do the same amounted to violation of the fundamental right of the freed bonded labourers under Article 21 of the Constitution. The petitioner prayed for a direction to the State Government to take steps for the economic and social rehabilitation of the freed bonded labourers released in March, 1982.

When the writ petition came up for preliminary hearing, the court asked the State Government for providing information regarding the framing of scheme for rehabilitation including constitution of vigilance committee as well as the steps taken for rehabilitating 135 released labourers living in the village in Mungeli Taluka of District Bilaspur. An affidavit was filed by the Assistant Labour Commission informing the court of the various steps taken by the State Government for identification, release and rehabilitation of bonded labourers..

The court expressed its disapproval of the information supplied by the State Government. It found that the attitude of the State government was indifferent and the State was not willing to admit the existence of bonded labour as according to it, unless a workmen was able to show that he is forced to provide labour to the employer in lieu of an advance received by him, he cannot be regarded as a bonded labourers within the
meaning of the definition of that term as laid down in the Act of 1976. But having regard to the decision of the *Bandhua Mukti Morcha* case. The court reasserted its stand in the following word. “It would be cruel to insist that a bonded labourer in order to derive the benefits of this social welfare legislation should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well as obliterate this Act from the statute book.

Justice Bhagwati observed that whenever it is shown that a labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded labourer. Unless the employer or the government rebuts this presumption, the court shall presume that the labourer is a bonded labourer entitled to the benefit of a provision of the Act.

In the facts of the case it came to conclude that the court has, issued direction to the State government to include in the vigilance committee representatives of Social Action for identification, release and rehabilitation of bonded labourer. It also made a number of suggestions and recommendations for improving the existing state of affairs. One such suggestion is related to their re-organization and activation of vigilance committees.

It is submitted that the observations of the Apex Court in *Neerja Chaudhary* made in the context of rehabilitation of free bonded labourers provide a new impetus to the observance of provisions of labour welfare legislations as failure on the part of the State to implement the same would contravenes the provisions of the Article 21 of the Constitution. It was a unique case where the court compelled the State to implement with the directions issued in favour of the bonded labourers.

In *Labourers Working on Salal Hydro –project v. State of Jammu and Kashmir and other* Justice Bhagwati observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction works by reason of the prohibition, enacted

---

49 AIR 1984 (3) SC 161
50 AIR 1984 SC 177
in Article 24 and this constitutional prohibition must be enforced by the Central Government.

In this case honourable Supreme Court also agreed that child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed to augment their meagre earnings. And child labour is an economic problem, which cannot be solved by mere legislation. Because of poverty and destitution in this country it will be difficult to eradicate child labour, so attempts should be made to reduce to eliminate child labour because it is essential that a child should have be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development in the country. They must concede that having regard to the prevailing socio-economic conditions it is not possible to prohibit the child labour altogether and in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments clearly construction work is a hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this Constitutional prohibition must be enforced by the Central.

The Supreme Court also suggested that whenever the Central Government undertakes a construction project which is likely to last for sometime, the Central Government should provide that children of construction, workers which are living it or near the project site should be given facilities for schooling because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. It is conceded that, having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact; any such move may not be socially or economically acceptable to large masses of people.

86th Amendment- judicial effort

Nani Palkhivala in his book “We, the Nation, The Lost Decades” writes that Education is the rock on which India must build her political salvation. Our country will be built not on bricks but on brains; not on cement but on enlightenment. If we cannot
 afford education, we cannot afford to remain a civilized society. It is acknowledged all over the world that value based education is the only instrument for transmuting national talent into national progress. Amongst the important countries of the world, India is not adequately educated. Article 45 of our constitution enacts; The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. He concluded that Education is an end in itself; and not merely a means to an end like financial well-being. There should be no profit motive in liberal education, any more than in friendship. Then alone can knowledge ripen into wisdom. The timeless lesson of ancient Indian culture is that man is more than man, and there is more to the world than the world. Hence Palkhivala comments that the education system in India is not satisfactory & does not create intellectually wise elites.

The 86th Amendment to the constitution of India gave all children between the age of 6 years and 14 years a fundamental right to free and compulsory education. Various educationists have expressed their opinions after creation of such a fundamental right. The elevation of elementary education to the status of a justiceable fundamental right does not explain how such a move would reverse the conditions that prevented the universalization of elementary education in the last 61 years of operation of the Indian Constitution. It would lead to bureaucratic rush to make substantive law and the need to decide on procedural aspects like curriculum, pedagogy, teacher orientation and appropriate institutional arrangements are likely to be neglected. The new constitutional amendment seeks to make elementary education free and compulsory for children in the age group of 6 to 14 years. The ambit of meanings of the key terms “free” and “compulsory” is to be explicated by subsequent legislation, a Central law serving as a framework for a plethora of State laws. Commentators have been quick to point out that the crucial age segment of zero to six has been left out, and that there is no state commitment to quality. In addition, there is the important issue of deciding as to whose legal liability it is, if the child does not go to school once the state has made the provision for free schooling. Voices are rising apprehending that the quality of education will degrade as the earlier concern for overall development will be replaced by a preference for behaviouristic, necessarily superficial, symptoms of learning. The National Human Rights Commission in response to a petition submitted by some social activists has said that the right to education can only be safeguarded by a democratically
oriented system that is capable of providing education of a certain quality. The Commission said that the law has merged the issues of equality and quality. I think that the status of education as a fundamental right extends to the character and the quality of the education provided.

Therefore, the need for good quality free education is required for our children. The Right of Children to Free & Compulsory Education Act, 2009 aims to achieve such objectives. This act will be analysed as to how far it has been successful in achieving its aim.

6.3 Conceptual Framework

As desired by our constitutional forefathers, the Union of India is trying along with its machinery to make India a welfare state. Amendments are made to various substantive laws to achieve the goal of our forefathers. One such example is Article 21A to our constitution. Article 21 guarantees protection of life and personal liberty of individuals. The obligation of the State to protect the life all the persons in the country includes the obligation of the State to guarantee an individual reasonable standard of living & with human dignity. The term “personal liberty” has been given a very wide amplitude covering variety of rights which constitutes personal liberty of citizen. This right includes the right to a fair trial, right to free legal aid, quality of life, right to livelihood, right to education, protection from sexual harassment, the right to privacy, right to health. The march of Article 21 still continues. The frontiers of article 21 are expanding.

In case of Mohini Jain v. State of Karnataka51 the Supreme Court in a number of cases (before 2002) had implied that the right to education is a fundamental right which flows directly from Article 21. The word ‘life’ has been held to include “education” because education promotes good and dignified life. The facts of the case is as follows:

With a view to eliminate the practice of collecting capitation fee for admitting students in educational institutions, the Karnataka legislature passed an act purporting to regulate tuition fee in private medical colleges in the State. Candidates admitted against government seats were to pay lesser amount than those admitted from non- aided

51 1992 SC 1858
category. The students from outside the State had to pay more than two times the amount paid by the State category students. The Supreme Court quashed the notification under Article 14 of the Indian Constitution and held that “charging capitation fee in consideration of admission to educational institution is a patent denial of a citizen’s rights to education under the constitution.” The court accepted that the Constitution does not expressly guarantee the right to education, as such, as a fundamental right. But reading cumulatively Article 21 along with the Directive Principles of State Policy contained in Article 38, 39(a), 41 and 45, the court opined that “it became clear that the framers of the constitution made it obligatory for the State to provide education for its citizens.” The court also held that without making the right to education under Article 41 a reality, The Fundamental Rights would remain the reach of many illiterate citizens; The Fundamental Rights including the Freedom of Speech and Expression and other rights guaranteed under Article 19, cannot be fully appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. Hence it was held that “the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens.” The provisions frequently cited from the Indian Constitution are as follows:

Article 38 of the Indian Constitution which aims at the state to secure a social order for the promotion of welfare of the people and reads as follows:

i) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

ii) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39 provides that the shall, in particular, direct its policy towards securing-

a. that the citizen, men and women equally, have the right to an adequate means of livelihood;

52 Inserted in the Constitution of India by the Forty-fourth amendment Act, 1978
that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

Article 41 enshrined in Part IV of the constitution aims to provide the right to work, to education and to public assistance in certain cases: It reads as follows:

The state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45 aims at providing for early childhood care and education to children below the age of six years.\(^{53}\)

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Article 46 aims at promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. It reads as follows:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Further in this case, it was laid down that “the Directive Principles in Part IV guarantees the dignity of man. It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. The framers of the constitution were aware that more than seventy percent of the people to whom they were giving the constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights,1948 emphasises “Education shall be directed to the full development of the human personality. Article 41 in Chapter IV of the Constitution of India recognises

\(^{53}\) Substituted by the Constitution (Eighty-Six Amendment) Act, 2002.
an individual’s right “to education”. It says that “the State shall within the limits of its economic capacity and development, make effective provision for securing the right to education.”

In the case of Unni Krishnan J.P. and others etc v. State of Andhra Pradesh 54 court has reiterated the proposition that the right to education to the life is implicit in, and flows from the right to life guaranteed by Art. 21. But, the parameters of this right, which is not absolute, have to be determined in the light of the Directive Principles contained in Arts. 41, 45 and 46. The court has now limited the State obligation to provide educational facilities as follows:

a) Every citizen has a right to free education until he completes the age of 14 years;

b) Beyond that stage, the State obligation to provide education is subject to the “limits of the economic capacity and development” of the State.

In case of P. Cherriyakaya v. Union of India 55, the Supreme court observed that: “The right to education that has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. Without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. The right to education is implicit in the right to life and personal liberty guaranteed under Article 21. This right to education is to be understood in the background of Articles 45 and 41 of the Constitution and the State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right”

In case of Bandhua Mukti Morcha v. Union of India 56, another broad theme of life and dignity is to be found. Court gave its expanded interpretation of Article 21 that “live with human dignity, free from exploitation, it must includes protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which

54 (1993) 1 SCC 645
55 A.I.R. 1994 Kerala (2)
56 1984 (3) SCC 161
must exist in order to enable a person to live with human dignity. No government can take any action to deprive a person of the enjoyment of these basic rights.”

In case of *Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidhayala*\(^{57}\), the court recognised the importance of higher and secondary education. The court observed that “The National Policy on Education, 1986, as modified in 1992 envisages the improvement and expansion of education in all sectors, elimination of disparities in access and laying greater stress on improvement in the quality and relevance of education at all levels, including technical and professional education. It also emphasizes that education must play a positive and interventionist role in correcting social and regional imbalance. The nation is firmly committed to providing Education for all, the priority areas being free and compulsory primary education, covering children with special needs and eradication of illiteracy.” It is clear that Article 21A would cover primary as well as secondary education.

In case of *Ashok Kumar Thakur v. Union of India*\(^{58}\), one of the questions before Justice Dalveer Bhandari was that an the fundamental right under Article 21 be accomplished without laying emphasis on primary education? The Honourable judge reiterated that free and compulsory education of children has now become a fundamental right. He said that in order to achieve a casteless and an egalitarian society, this right has to be guaranteed right from the beginning. He said that the State is duty bound to implement Article 21A and its provisions on a priority basis. There has been a great laxity in its implementation which is affecting citizens in every walk of life. The court directed the Union of India to implement this right within a set time limit of six months or the latter would have to necessarily intervene. The root cause of all the problems in our country is poverty and if the State wants to uplift the socially, educationally and economically backward class in the society, then it must implement Article 21A. Thus by providing educational facilities from day one, the need for reservations at the university level will not be felt in a few years time. Also the allocation of more funds for primary and secondary education was necessary. In almost all the major countries of the world like Britian, U.S.A, Spain, France, Germany, Switzerland, Austria education is free and compulsory. The State should ensure that compulsory education is feasible. The State has to take some efforts to materialise

\(^{57}\) (2006) 9 SCC 1  
\(^{58}\) MANU/SC/1397/2008
Article 21A, one such effort is SSA (Sarva Shikshana Abhiyan). The bill in order to make education free and compulsory should punish defaulting parents with six imprisonment. Scholarships, hostel facilities should also be provided. It is the goal of Article 21A to achieve universal and quality education children. The court made the following concluding remarks:

i) Provide low income parents financial incentives so that they can afford sending their children to school.

ii) Criminally penalise those who receive financial incentives and yet they fail to send their children to school.

iii) Penalise employers who do not allow children to go to school or do their homework.

iv) The government should increase the education budget every year until the aim of free and compulsory education is achieved.

v) The State is under an obligation to implement Article 21A in toto.

6.4 Conclusion

Thus the chapter reveals that the role of judiciary in India has been quite significant in promoting child labour welfare. The study discloses that judiciary has always given a lead to save the child workers from exploitation and improve their conditions. Judiciary has shown a generosity towards poor child workers by relaxing the rules of locus standi. It has always been made efforts to benefit the poor child workers by entertaining their problems and giving them relief to them despite the limitations of locus standi. The observations made by the judiciary in various decided cases show that it is always committed to the cause of the child-workers.

Inspite of the various efforts of the judiciary in promoting child welfare, there has been tremendous increase in the child labour. Poverty, illiteracy and unawareness about the government policies and programmes are the main reason for the increase in child labour. Though the government has been taking measures, but always lack behind in implementation. Also, in the process of promoting and establishing new industries, the government of India has turned a blind eye to the continued utilization of children at exploitative wages in hazardous conditions, a fact that its own jurisprudence has considered illegal.