CHAPTER VI

ROLE OF THE JUDICIARY

In a democratic country, judiciary performs the important role of interpreting and applying the law and adjudicating upon controversies. In a country, with a written Constitution, Courts have the additional function of safeguarding the supremacy of the Constitution by interpreting and applying its provisions and keeping all authorities within the constitutional framework. In a federation, the judiciary has another meaningful assignment, namely, to decide the controversies between the constituent states inter se, as well as between the centre and the states. A federal government is a legalistic government, a characteristic feature of which is the allocation of powers between the centre and the states. An arbiter is, therefore, required to scrutinise laws to see whether they fall within the allocated legislative area of the enacting legislature and this function is usually left to the judiciary. In India, in addition to the above, the judiciary also has the significant function of enforcing the fundamental rights of the people granted to them by the Constitution.

Justice Untwalia has compared the judiciary to “a watching tower above all the big structures of the other limbs of the state” from which it keeps a watch like a sentinel on the functions of the other limbs of the state as to whether they are working in accordance with the law and the Constitution.

India has a unified judicial system with the Supreme Court standing at the apex and the High Courts below it. The Supreme Court thus enjoys the topmost position in the judicial hierarchy of the country. It is the supreme interpreter of the
Constitution and guardian of the fundamental rights of the people. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of the land and thus it helps in maintaining a uniformity of law throughout the country.\textsuperscript{5}

The role of judiciary in India has been quite significant in promoting the child welfare. The apex court has laid emphasis on the fact that the important task of social justice is to take care of child, as the hope of future of the nation lies on him.\textsuperscript{6}

In this chapter, an attempt is being made to assess the role of the judiciary in the enforcement of the laws made for the child labour and how far it has been able to safeguard their rights.

It is generally seen that the working children come from the families which are below the poverty line. These children have to work either for the incapacity of the adult members of the family or to supplement the family income if the earning of the adult members is not sufficient for the running of the family. If the rights of these child labourers are breached, there are no means to ventilate their grievances because of their disadvantaged status. Therefore, to protect the rights of these child labourers, the Court has introduced the philosophy of public interest litigation.

Public interest litigation or PIL emerged in the late seventies out of a need to make the courts directly accessible to the common man. It was introduced with the aim of providing relief to persons or a determinate class of persons upon whom a legal wrong or injury had been caused and who were unable to redress their grievances in a court of law due to certain socio-economic disadvantages.\textsuperscript{7}

The essential feature of public interest litigation is that the focal point of the litigation is not the parties, but larger public interest is involved with this type of
Public interest litigation transcends beyond the litigating parties. Through such public interest litigations, not only have the rights of the poor and the disadvantaged been vindicated and timely constitutional and legal relief been provided, but also a very broad and liberal interpretation has been given to the provisions of laws.

It is now established that a writ petition may be moved by not only an aggrieved individual, but also by a public spirited individual and social action group, if a larger public interest is involved. The extra ordinary jurisdiction was evolved in S.P. Gupta vs. Union of India, where a seven-judge constitution bench formulated the doctrine of 'Public interest litigation'. The Court defined it comprehensively to apply to any case of public injury arising from the breach of any public duty and violation of some provisions of the Constitution or the law.

The cases relating to child labour should be considered as a distinct category, which is separate from other public interest litigations. There are two reasons for this. Most of the children on whose behalf petitions are filed suffer from the socio-economic disabilities, which were identified by the Courts in the early public interest litigations. Moreover, the children cannot litigate for themselves because of their tender age. Therefore, they have to rely on others for defending their rights.

Keeping in view the pitiable conditions of the child workers, the apex court has shown its generosity by relaxing the concept of locus standi. As the working children generally come from the poor families, the Courts had to change its attitude, so that the grievances of poor people can be properly ventilated. Thus, the concept of locus standi was liberalised, so that the courts become easily accessible.
The issue of *locus standi* has arisen in a number of cases before the Supreme Court. The Supreme Court has held that where a legal wrong or injury is caused to a person or to a determinate class of persons, who are unable to approach the Court for relief, because of poverty, helplessness or disability, then any member of the public can file an application for an appropriate direction or writ or order.

In *People’s Union for Democratic Rights vs. Union of India*, commonly known as *Asiad Case*, the Supreme Court entertained a letter, sent by post as public interest litigation. This case has not only made significant contribution to labour laws, but also has displayed the creative attitude of judges to protect the interests of the child workers.

In *Labourers Working on Salal Hydro Project vs. State of Jammu and Kashmir & others*, a letter was sent by the People’s Union for Democratic Rights. It was addressed to Mr. Justice A. Desai, enclosing a copy of the news report published in the Indian Express, dated August 26, 1982, where it was written that a large number of migrant workmen from different states, including the State of Orissa were working on the Salal Hydroelectric Project in different conditions.

In *District Beedi Workers’ Union vs. State of Tamil Nadu and others* also, a letter petition, which was received from the District Beedi Workers’ Union of Tirunelveli of the State of Tamil Nadu, was treated as an application under Article 32 of the Constitution.

In this way, the court has widened the scope of the concept of *locus standi*, so that public spirited persons or organisations also can file suits on behalf of the children and fight for the cause of children in the court.
Rights of the child labour have been guaranteed by the Constitution and some other laws like Factories Act, 1948, Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and Child Labour (Prohibition and Regulation) Act, 1986. The Supreme Court has shown its eagerness in the implementation of these laws.

Some landmark judgements relating to the protection of child labour are People's Union for Democratic Rights and others vs. Union of India and others16, Bandhua Mukti Morcha vs. Union of India and others17, Labourers Working on Salal Hydro Project vs. State of Jammu & Kashmir and others18, Sheela Barshe vs. Secretary, Children's Aid Society and others19, District Beedi Workers' Union vs. State of Tamil Nadu and others20, M.C. Mehta vs. State of Tamil Nadu and others (1991)21 and M.C. Mehta vs. State of Tamil Nadu and others (1996)22.

In People's Union for Democratic Rights and others vs. Union of India23, the writ petition was filed in order to ensure observance of the provisions of various labour laws, in relation to workmen employed in the construction work of various projects connected with the Asian Games. The Court has given a new dimension to several areas such as *locus standi*, public interest litigation, enforcement of labour laws, minimum wages and employment of children. The facts of the case were that the People's Union for Democratic Rights sent a letter to the Supreme Court annexing a report regarding the conditions under which the workmen engaged in various Asiad Projects were working. The Report was prepared by a team of three social scientists who were commissioned by the People's Union for Democratic Rights. In that report it was pointed out that there was violation of Article 24 of the Constitution and the provisions of the Employment of Children Act, 1938. So far as Employment of
Children Act, 1938 is concerned. The case of the Union of India, the Delhi Administration and Delhi Development Authority was that no complaint in regard to the violation of the provisions of that Act was at any time received by them and they disputed that there was any violation of these provisions by the contractors. It was also contended on behalf of these authorities that the Employment of Children Act, 1938 was not applicable in case employment in the construction work of these projects, since construction industry is not a process specified in the Schedule and is, therefore, not within the provisions of sub-section 3 of Section 3 of that Act.

While agreeing with the contention of the respondents that construction industry does not find a place in the Schedule to the Employment of Children Act, 1938 and the prohibition enacted in Section 3(3) against the employment of a child who has not completed his fourteenth year cannot apply to employment in construction industry, the Court opined that it is a sad and deplorable omission. Therefore, it must be immediately set right by every State Government, by amending the Schedule so as to include construction industry in it, in exercise of the power conferred under Section 3-A of the Employment of Children Act, 1938.

The Court expressed the hope that every state government would take necessary steps in this behalf without any undue delay, because construction work was clearly a hazardous occupation and it was absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. That would be in consonance with Convention No. 59 adopted by International Labour Organisation and ratified by India.
Article 24 of the Constitution has prohibited the employment of children in any factory, mine or any other hazardous employment. The Court held that the construction work being plainly and indubitably a hazardous employment, it is clear that by reason of this constitutional prohibition, no child below the age of 14 years can be allowed to be employed in construction work. There can, therefore, 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 work and the Union of India and every state government must ensure that this constitutional mandate is not violated in any part of the country.

It is significant that judiciary, for the first time, in this case accepted that the construction industry is a hazardous industry. It has led to the inclusion of construction industry in the schedule of the Child Labour (Prohibition and Regulation) Act, 1986.

The judiciary in this case has opined that the Constitution of India has prohibited the employment of children under 14 years in hazardous industries. Therefore, even though construction industry has not been mentioned as a hazardous industry in the Employment of Children Act, 1938, a child below 14 years cannot be employed in this sector, as construction industry is 'plainly and indubitably' hazardous in nature. It can be interpreted from this that even if a particular work is not mentioned in any Act as hazardous industry, if it is hazardous in nature, then child labour can be prohibited in that work and action may be taken against the employer for violation of constitutional prohibition under Article 24.
In Bandhua Mukti Morcha vs. Union of India and others, a petition was filed under Article 32 of the Constitution by a bonded labour organisation invoking the Employment of Children Act, 1938 and Article 24 of the Constitution. The petition stated that carpet manufacturers in Mirzapur were employing children.

Admitting the petition, the Supreme Court appointed a Commissioner, to submit a report on the state of child labour in the carpet industry in the Mirzapur-Bhadhoi belt. The Commissioner, in addition to the thirty children mentioned in the original petition, found another 114 children in the forced custody of the loom owners. These children were then released through the office of the district magistrate on 16.4.84. As the loom owners refused to co-operate, the District Magistrate had to conduct raids on the premises with the help of the police. The Commissioner also visited 42 villages in the area with 884 looms and found that 42 per cent of the total work force engaged in those looms were children below the age of fourteen years. The total number of such children was 369. 95 of them were between the ages of six and eleven years and most of them were from Scheduled Castes and Scheduled Tribe communities. The Commissioner was unable to ensure the release of these 369 children. As many children were being taken away from District Mirzapur to avoid the investigation, the Supreme Court extended the jurisdiction of the Commissioner, so that investigation could be properly made. When the Supreme Court issued notice to the State of Bihar in September, 1984, the Deputy Director of Social Security informed the Court that all the confined, kidnapped children were identified and released by the District Magistrate under the Bonded Labour System (Abolition) Act,
1976. The police later filed two criminal cases in the matter, against those who were offending under the Act.

In its order, the Court expressed its regret that the Government of Uttar Pradesh had flouted the earlier direction of the Court and said that it would give the state another opportunity to implement the directions. The Court also noted that the State of Uttar Pradesh had not yet responded with the lists of children employed or with a scheme for their rehabilitation.

In Labourers Working on Salal Hydro Project vs. State of Jammu & Kashmir and others, a letter sent by the People's Union for Democratic Rights was treated as writ petition. In the letter, a copy of the news report published in the Indian Express was enclosed. There it was written that a large number of migrant workmen from different states were working on the Salal Hydroelectric project in difficult conditions. The contractors to whom different portions of the work were entrusted by the central government subjected these workers to exploitation. Pursuant to the order made by the Court, the Labour Commissioner visited the site of Salal Hydroelectric Project. In his final report he pointed out that some minors were found to have been employed on the project site, but it was explained that these minors accompanied male members of their families on their own and insisted on getting employed.

The Court observed that so long as there is poverty and destitution in this country, it would be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate, the incidence of child labour, 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.

From this judgement, it can be understood that the Court has realised that so long as poverty and destitution are there in this country, complete elimination of child labour will not be possible. Therefore, the government should try to regulate child labour and take steps to provide education to them.

In Sheela Barse vs. Secretary, Children’s Aid Society and others\textsuperscript{26}, the appellant who was a freelance journalist by profession and a member of the Maharashtra State Legal Aid and Advice Committee, sought to challenge the judgement of the Bombay High Court delivered on February 4, 1985 on a writ petition filed by her.

In the writ petition, she made grievance about the working of the New Observation Home located at Mankhurd, which was maintained and managed by the Children’s Aid Society, registered under the Societies Registration Act, 1860 and had also been treated as a public Trust under the Bombay Public Trusts Act of 1950. The society was founded on May 1, 1926. The society, which received grants from the state, set up a Remand Home at Umakhadi within Bombay area and later it was run as an Observation Home under the provisions of the Bombay Children’s Act, 1948. The letter of the appellant of August 22, 1984 was treated as a writ petition by the High Court wherein the grievances made by the petitioner were of four types: (1) there was delay in repatriation or restoration of the children to their parents in respect of whom orders of repatriation were made by the Juvenile Court (2) there was non-application of mind in the matter of taking children into custody and directing
production before the Juvenile Court (3) there was absence of proper follow up action after admission of the children in the observation homes (4) detention in such circumstances was illegal and the condition very often resulted in harassment to the children so detained.

The Court directed the State of Maharashtra to take prompt action to strictly enforce the law and act up to the requirements of the constitutional obligations and proceed to implement the directions given by the High Court as also by the Supreme Court in its judgement.

In District Beedi Workers’ Union vs. State of Tamil Nadu and others27, a letter petition received from the District Beedi Workers’ Union of Tirunelveli in the State of Tamil Nadu was treated as an application under Article 32 of the Constitution and the notice was issued initially to the state, later to other beedi manufacturing units within the state. In the letter complaint was made about non-payment of appropriate dues for work taken, failure to implement the provisions of the labour laws and prevalence of contract labour systems.

The Supreme Court directed in this Case that the labour laws as also the Beedi and Cigar Workers’ (Conditions of Employment) Act should be strictly enforced so that the workers get their legitimate dues and the conditions of employment improve. It also opined that tobacco manufacturing is hazardous to health and therefore, child labour in this trade should be prohibited as far as possible. Employment of child labour should be stopped either immediately or in a phased manner. The Court also held that in view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of
Rupees 50,000 and the premium should be paid by the employer and the incidence should not be passed on to the workmen.

Section 24 of the Beedi and Cigar Workers Act has prohibited the employment of children, but in this judgement, the court opined that in tobacco manufacturing, child labour should be prohibited as far as possible. So, instead of total prohibition as provided by the Act, the Court has indirectly allowed the employment of children. Moreover, as the Court in this case had accepted tobacco manufacturing as hazardous, constitutional prohibition on employment of children below 14 years under Article 24 is also applicable in this matter. So, in no case, the question of employment of children in this sector should arise.

Instead of using lenient words like 'as far as possible', the Court should have pointed out the employers as well as the government about their constitutional and legal obligations regarding the prohibition of child labour.

In M.C. Mehta vs. State of Tamil Nadu and others (1991), the petition under Article 32 of the constitution was brought before the Supreme Court by way of public interest litigation and was connected with the problem of employment of children in Match Factories of Sivakasi in Kamaraj District of Tamil Nadu State.

The Court held that the working conditions in the match factories involved health hazards in normal course. Apart from the special risk involved in the process of manufacturing, the adverse effect on health was a serious problem. Exposure of tender aged to these hazards required special attention.

The Court also held that employment of children within the match factories directly connected with the manufacturing process up to final production of
matchsticks or fireworks should not at all be permitted. Children could be employed in the process of packing, but packing should be done in an area away from place of manufacture to avoid exposure to accident.

The Court opined that compulsory insurance scheme should be provided for both adult and child employees taking into consideration the hazardous nature of employment. The State of Tamil Nadu should ensure that every employee, working in these match factories, is insured for a sum of Rs. 50,000 and the Insurance Corporation, if contacted, should come forward with a viable group insurance scheme to cover the employees in the match factories in Sivakasi area. The premium for the group insurance policy should be the liability of the employer to meet as a condition of service.

In this case, the Court held that the children can be employed in the process of packing, but packing should be done in an area away from the place of manufacture to avoid exposure to accident. It cannot be expected from the employers that they will arrange separate places for child workers. Even if this is done, the chemical which is used in the matchsticks is harmful for the children. Apart from that, as matchsticks cause fire, at any time, there is the possibility of accident, even though the place may be far away from the manufacturing site.

Moreover, the Court justified it on the ground that the tender hands of young workers are more suited to sorting out the manufactured produce and process it for the purposes of packing. The Child Labour (Prohibition and Regulation) Act, 1986 banned the employment of children in manufacturing of matches. Therefore, whatever may be the nature and circumstances of the work, child labour cannot be
allowed to be employed in the manufacturing of matches. None, including the Court, can justify this on some flimsy ground like suitability of tender hands in sorting out the manufactured produce and process it for the purposes of packing. The Court is expected to perform the role of protector of law, but in this matter, it has become the violator of law.

In *M.C. Mehta vs. State of Tamil Nadu and others (1996)*, *suo motu* cognisance was taken when news about an 'unfortunate accident' in one of the 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 compensation and thought that an Advocates’ Committee should visit the area and make a comprehensive report relating to the various aspects of the matter.

In the report submitted by the Committee there were many recommendations. It recommended that the State of Tamil Nadu should be directed to ensure that children are not employed in fireworks factories. The children employed in the match factories for packing purposes must work in separate premises for packing. Employers should not be permitted to take work from the children for more than six hours a day. The employers and State Government should provide proper transport facilities for travelling of the children to their work places and back.

A write-up in the *Indian Express* of 25.10.1996 had described Bhavnagar as another Sivakasi in the making, as that town of about 4 lakh population held at least 13,000 children employed in 300 different industries. The Court opined that the problem of child labour in India had spread its fangs far and wide. The Court held
that the offending employer should be asked to pay compensation for every child, employed in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986, a sum of Rupees 20,000. This sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund.

The Court directed to withdraw the children who were working in hazardous industries to ensure their education in appropriate institutions. The appropriate government will provide employment to one adult member of the family of the child withdrawn from work and if this is not possible, the government would contribute a sum of Rupees 5000 for each child to the welfare fund. The government would either provide a job to an adult member of the family in lieu of the child or deposit a sum of Rupees 25,000 in the Child Labour Rehabilitation-cum-Welfare Fund. In case of getting employment for an adult, the parent or guardian shall have to withdraw his child from the job. Even if no employment is provided the parent or guardian cannot allow the child to continue in the employment as an alternative source of income will be provided by the government to them from the fund.

In case of the children working in non-hazardous jobs, the inspectors shall have to see that working hours of the child are not more than six hours a day and he or she receives education at least for two hours each day. Entire cost of education will be borne by the employer. In view of the magnitude of the task, the Court directed to create a separate cell in the labour department of the appropriate government. The scheme will be monitored by the Secretary, Department of Labour, Government of India. The Court also directed to make a survey for the identification of the working children within six months.
After this judgement of the Supreme Court, detailed guidelines were forwarded to the state governments on 26th December, 1996 indicating the manner in which the directions of the Supreme Court could be given effect to. A conference of the Labour Ministers of the states and union territories was convened. The details of conducting the survey, setting up of the fund and required improvements in the enforcement machinery were worked out. The second conference of the state Labour Ministers was held on the 7th and 8th July, 1997 to review the action taken by the state governments to comply with directions of the Supreme Court. The review revealed that the survey has been completed in most of the states and union territories. A questionnaire was circulated to the Labour Secretaries of all state governments and union territories requesting them to send the feedback of the steps taken by the state governments and union territories to enable the central government to file an affidavit in the Supreme Court. On the basis of information received from the states and union territories, an affidavit dated 5th December, 1997 was filed before the Supreme Court.

In the affidavit, it was stated that the first phase of survey was completed by all the state governments and union territories except in Nagaland. The ministry of labour had sanctioned a sum of Rupees 8 crores for this purpose. The state governments, where employment of child labour in hazardous occupations was found, had already initiated steps for the constitution of the Child Labour Rehabilitation-cum-Welfare Funds at the district level. Labour cells had been contributed by the administrations of some states and union territories like Andhra Pradesh, Chandigarh, Dadra and Nagar Haveli, Goa, Haryana and Karnataka to ensure the enforcement of
various provisions of the Act. Besides taking action to comply with the directions of Court, the central government has initiated action to amend the Child Labour (Prohibition and Regulation) Act, 1986, to make it more stringent and effective. It was also stated in the affidavit that the central government has identified a number of new occupations and processes like gem cutting, zari making and leather goods manufacturing, for inclusion in the schedule to the Act, so that employment in these additional occupations and processes could be prohibited under Section 3 of the Act.

This is a landmark judgement where the Supreme Court has not only directed the erring employers to pay compensation amounting to Rupees 20,000 for every child appointed in contravention of the Child Labour (Prohibition and Regulation) Act, 1986, but also formation of Child Labour Rehabilitation-cum-Welfare Fund. It is also significant that the Court asked the Secretary, Labour Ministry to inform about the compliance of the directions of the Supreme Court within one year from December 10, 1996.

Apart from these, the Supreme Court has dealt with in detail on various aspects of child labour like causes of child labour, constitutional provisions and international initiatives to combat child labour. From these it can be understood how seriously the problem has been taken by the Supreme court and what importance it has given to this problem.

It was expected that the government would work with the same spirit as it had worked to file the affidavit within one year from the date of judgement in the Supreme Court. Had this been done the conditions of child labour must have improved and the number of child labour would also have gone down to a
considerable extent. Unfortunately, this did not happen. There has not been any improvement of the situation. Violation of the rights of the child labour is very often reported in the newspapers. Number of child labour is also regrettably very high.

Constitutional commitment under Article 15 (3), empowering the state to make special provisions for women and children, was confirmed by judicial pronouncement in the case of Dattatrey Moti Ram vs. State of Bombay. In this case Chagla, C.J. (as he then was) had held that the state could discriminate in favour of women and children against men. The Court also held that the state could not discriminate in favour of men against women and children.

Article 23 of the Constitution prohibits traffic in human beings, begar and other similar forms of forced labour. The true scope of the legislations prohibiting 'traffic in human beings and forced labour' as laid down in Article 23 of the constitution has been enlarged by the Supreme Court in People’s Union for Democratic Rights vs. Union of India. This case came up before the apex court as a result of refusal of minimum wages to the workmen engaged in the construction work of the Asiad, 1982 and non enforcement of the Minimum wages Act, 1948; Equal Remuneration Act, 1976; Employment of Children Act, 1938; the Contract Labour (Regulation and Abolition) Act, 1970 and Article 24 of the Constitution. The attention of the Court was drawn by a voluntary organisation in the usual form of writ petition. Bhagwati, J. (as he then was) observed, “Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values.”
The Court also observed that the Constitution makers when they set out to frame the Constitution found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socio-economic regeneration with a view to providing social and economic justice to common man. After two centuries of foreign rule, the country got freedom. However, the freedom was not an end in itself; it was only a means to an end, the end being the raising of the people to higher level of achievement and bringing about their total advancement and welfare. Political freedom had no meaning, unless it was accompanied by social and economic freedom and it was, therefore, necessary to carry forward the social and economic revolution so that everyone would be able to enjoy basic human rights. It was with this end in view that the Constitution makers enacted the Directive Principles of State Policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order.

The Court also stated that the existence of bonded or forced labour in large part of the country was an ugly and shameful feature of our national life. The evil was a relic of feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which the people of India were determined to build. It constituted a gross and most revolting, denial of basic human dignity. It was, therefore, necessary to eradicate the pernicious practice and wipe it out altogether from national scene and this had to be done immediately, because with the advent of freedom, such practice could not be allowed to blight the national life any longer. The Constitution makers, therefore decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the
chapter on Fundamental Rights, so that abolition of such practice may become enforceable and effective. The prohibition against ‘traffic in human beings and begar and other similar forms of forced labour’, clearly intended to be general prohibition total in its effect and all pervasive in its range and it is enforceable not only against state, but also against any other person.

In Laxmi Kant Pandey vs. Union of India, the Supreme Court took active steps to abolish bonded domestic service and slavery of poor. The Court has shown vigorous courage to point out that both state and central governments have badly failed to execute the spirit of labour welfare legislations with the result that there is a large-scale violation of the provisions and thereby the employers have miserably exploited the innocent child labourers. In Vishaljeet vs. Union of India case, the Court referred to Article 23 of the Constitution which prohibits traffic in human beings and clause (e) of Article 39, which provides that the tender age of the children is not abused and they are not denied social and economic justice. It held that it was the duty of the state to see that these provisions were strictly adhered to. Every step should be ensured to safeguard the interests of the child labourers and to save them against all forms of exploitation.

Despite judicial activism, there are many cases where the acute poverty has compelled the parents to sell their children hoping that the children would be engaged only in household duties. But there are persons who purchase the female children for the purpose of forcing them to brothel keepers. Once these unfortunate children are sold to brothel keepers, they are brutally treated until they succumb to the desire of the brothel keepers and enter into the unethical and squalid business of prostitution.
Some such cases were brought to the notice of the Supreme Court in Vishaljeet vs. Union of India case.  

Article 24 of the Constitution of India is a constitutional prohibition which even if not followed up by appropriate legislation must operate proprio vigore.  

This Article prohibits employment of children below the age of 14 years, but not of minors as defined in the Indian Majority Act, 1875, nor does it prohibit the children below 14 years of age being employed in other works besides factories or mines or assignments of hazardous nature, inclusive of construction work.  

The expression ‘hazardous’ has reference only to children and not to adults. The expression ‘hazardous employment’ cannot be construed ejusdem generis with work in factory or mine because even the construction work has been held by the Supreme Court, to be plainly and indubitably hazardous.  

Construction work is a hazardous employment and no child below the age of 14 years can 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 government.  

The provisions of Section 3 of the Employment of Children Act, 1938, Section 67 of the Factories Act, 1948, Section 40 of the Mines Act, 1952 and the Schedule to the Employment of Children Act, 1938 foster the spirit of Article 24. Although the Schedule to the Employment of Children Act, 1938 has not included the construction work in the specification of works prohibited under Section 3 (3) thereof, yet such omission has been described by the Supreme Court to be sad and deplorable. All the state governments have been directed by the Supreme Court to
amend the said Schedule, so as to include construction work therein, in exercise of the power conferred under Section 3-A of that Act.

Article 24 of the Constitution prohibits the employment of children below the age of 14 years in factory, mine or any hazardous employment. In People's Union for Democratic Rights vs. Union of India, the Supreme Court held that the fundamental Right embodied in Article 24 is plainly and indubitably enforceable against everyone. The Apex Court also held that employment of children below the age of 14 years in a hazardous employment was *ultra vires* of the Article 24 of the Constitution. The Court opined that as 'construction work' is a hazardous employment, so no child below the age of 14 years could be employed in construction work.

In Labourers Working on Salal Hydro Project vs. State of Jammu & Kashmir and others case also, the Court held that the 'construction work' being hazardous employment, children below the age of 14 years could not be employed in this, because of constitutional prohibition.

The issue of the Indian Express dated August 26, 1982, carried a news item that a large number of migrant workmen from different states, including the State of Orissa, were working on Salal Hydroelectric Project in difficult conditions and they were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the central government. In pursuance of this news report, the Peoples Union for Democratic Rights wrote a letter to Mr. Justice D. A. Desai, enclosing a copy of the news report and requesting him to treat the letter as a writ petition, so that justice may be done to poor labourers working on the Salal Hydroelectric Project. The letter was treated as a writ petition. The Court directed the
Labour Commissioner, Jammu to visit the site of the Salal Hydroelectric Project. The Labour Commissioner, Jammu submitted the final report on October 15, 1982.

In the final report of the Labour Commissioner, it was pointed out that some minors were found to have been employed on the project site, but the explanation given was that “these minors accompany male members of their families on their own and insist on getting employed”. The Court pointed out in its judgement in Asiad Case that the ‘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 work. It opined that as it is an economic problem, it couldn’t be solved merely by legislation. But even so, an attempt has to be made to reduce, if not eliminate, the incidence of child labour, 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. The Court also 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. That is why, Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments. ‘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 government.
The Supreme Court in District Beedi Workers Union vs. State of Tamil Nadu\textsuperscript{46} pointed out that beedi manufacturing is also hazardous and child labour in this trade should be prohibited and employment of children should be stopped.

In Sheela Barse vs. Union of India,\textsuperscript{47} the Supreme Court held that Article 39 (f) of the Constitution provides that the state shall direct its policy towards securing the goal that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. The Apex Court further held that though various states have enacted children Act for fulfilment of constitutional obligation for welfare of children under Article 39 (f), yet it is not enforced in some states and the Court directed that such beneficial statutes should be brought into force and administered without delay.

The Constitution (86th Amendment) Act, 2002 has added a new Article 21-A after Article 21 and has made education for all the children of the age of 6 to 14 years a fundamental right. It provides, “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may by law determine”. Originally this right was guaranteed under Article 45 within the chapter of Directive Principles of State Policy.

Before the 86th Amendment of the Constitution also, the Court in a series of cases had unequivocally declared that right to receive education by the child labour is an integral part of right of personal liberty embodied in Article 21 of the Constitution. These judicial mandates clearly demonstrate that right to education is necessary for the proper flowering of his mind and personality. Hence the right to education is one
of the facets of right to personal liberty. The Delhi High Court also, in Anand Vardhan Chandel vs. University of Delhi,\textsuperscript{48} has held that education is a fundamental right under our Constitution. The Court also observed that expression of life and personal liberty in Article 21 of the Constitution includes a variety of rights, though they are not enumerated in Part III of the Constitution. It held that they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individual. The right to education is, therefore, in Article 21 of the Constitution.

This right can be denied only by means of 'procedure established by the law' as contemplated in Article 21 of the Constitution. The procedure to be fair, just and reasonable must pass a test under Articles 14, 19 and 21 of the Constitution.

In Murli Krishna Public School Case\textsuperscript{49} also, the Andhra Pradesh High Court observed that right to education of the dalits is a fundamental right and it is the mandatory duty of the state to provide adequate opportunities to advance educational interests by establishing schools.

By this decision, the Court recognised the need of providing better educational opportunities for the Dalit children. The Dalits who were neglected earlier have the fundamental right to education and they can compel the state to take positive action to provide education facilities to their children. Any failure on the part of the state to provide better and adequate educational facilities, economic support and proper atmosphere to the children belonging to the lower strata of the society is violative of not only Article 45, but also Article 21 of the Constitution.
In Mohini Jain vs. State of Karnataka,\textsuperscript{50} which is popularly known as the “Capitation Fee Case”, the Supreme Court held that the right to education is a fundamental right under Article 21 of the Constitution, which cannot be denied to a citizen by charging higher fee known as the “Capitation Fee”. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The Court also observed that the right to education is concomitant to the fundamental rights enshrined under Part III of the Constitution. The fundamental right to speech and expression cannot be fully enjoyed unless a citizen is educated and conscious of his individualistic dignity.

But in Unnikrishnan vs. State of A.P.\textsuperscript{51}, the Supreme Court partly overruled the Mohini Jain’s Case and held that the right to free education is available only to children until they complete the age of 14 years, but after that the obligation by the state to provide education is subject to the limits of its economic capacity and development.

What transpires from the above case is that the Supreme Court has for the first time in the judicial history declared the right to education up to 14 years as fundamental right with the result that it will necessarily enable the poor children to have access to education. It will help them in achieving social, economic and political justice.\textsuperscript{52}

In M.C. Mehta vs. State of Tamil Nadu(1991)\textsuperscript{53}, the Supreme Court has held that in terms of Article 45, children should get free and compulsory education until they complete the age of 14 years. It, however, observed that the provision of Article
45 in 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 schools, economic necessity forces grown up children to seek employment.

So, even before 86th Amendment of the Constitution, the judiciary had recognised right to education as a fundamental right under Article 21.

The judiciary has interpreted different provisions of laws and has given necessary directions to the government or the employers so that the rights of the child labour can be safeguarded.

In Walker T. Ltd. vs. Martindale, the Court held that the prohibition laid down in Section 67 of the Factories Act, 1948, that no child who has not completed his 14 years can be allowed to work in any factory, is absolute and not restricted to employment in any particular manufacturing process. Thus, a child employed as a sweeper to clean up the floor of a factory also contravenes the provisions of the Section, even though he is not employed in any manufacturing process.

The following employments have also been prohibited by the court:

(a) Shorting of groundnuts in a courtyard near the machinery room for decorticating

(b) To employ children under seven years in plating straw in a workroom, the benefit of which goes to mother

(c) Oiling of parts of machinery of the spinning mill by young person during meal time, though done without orders and for workers' own amusement.

The object of the statutory restrictions over the employment of young person is to prevent the exploitation of young labourers and to provide for their safety. This
was the view expressed by Chief Justice Narasimha of Orissa High Court in *Jhunjhuwalla vs. B. K. Patnaik*,\(^5^8\) where the occupier of a glass factory was severely punished for employing 14 adolescents in blowing section of the factory, which is a hazardous occupation, without a certificate of fitness required under Sections 68 and 69 of the Factories Act.

In *Mechnitosh vs. First Brook Book Company*,\(^5^9\) it was observed that it was the duty of the employer to ascertain by reasonable means that the applicant was of requisite age and merely the statement of child about his age should not be treated as correct. In *M/S P.M. Patel and sons vs. Union of India*,\(^6^0\) the Supreme Court held that the definition of the employee given in Beedi and Cigar Workers (Conditions of Employment) Act, 1966, is very wide. Apart from the employees employed directly by the employer, it includes those employees also, who are employed through contractors. It includes not only the persons employed in connection with the work of the factory engaged in the task of rolling beedis, but also the home workers engaged in rolling beedis.

There has been violation of child labour laws in different parts of the country. Some public-spirited persons have brought these to the notice of the judiciary. Judiciary in different cases\(^6^1\) not only gave directions or orders to the specific employers relating to the subject matter of the particular case, but also interpreted different laws, gave general directions and comments regarding what measures can be taken up for the protection of children and their welfare.
From the above it is seen that the judiciary has been performing an important role in proper implementation of the laws, which were enacted to safeguard the rights of the child labour. Even the scope of the law has been expanded and developed.

In Sheela Barse vs. Secretary, Children's Aid Society and others⁶² and in District Beedi Workers' Union Case,⁶³ the scopes of the litigations were extended.

It is not only the implementation of the own orders of the Supreme Court that were monitored, but also the implementation of the existing statutory framework. Having extended the scope of the litigation in Sheela Barse Case,⁶⁴ the Court ensured that each state government responded to its orders.

To ensure that the commitments made to children by the Constitution of our country are not forgotten or the new justifications for neglect do not again gain a foothold amid poverty and other socio-economic conditions in the years to come, the courts have a solemn duty to safeguard the legal rights of children and make judicial intervention in the realisation of the constitutional goals. So, there is the need of judicial activism in this area.

The Court interprets and applies the law so as to promote the cause of justice and to meet the hope and aspiration of the children as per the mandates of the Constitution. In Bihar Legal Support Society vs. The Chief Justice of India and others,⁶⁵ the Supreme Court expressed its concern for the underprivileged poor section of the society. The court said, “... that the weaker section of the Indian humanity have been deprived of justice for long, long years, they have had no access to justice on account of their poverty, ignorance and illiteracy.... The strategy of public interest litigation has been evolved by the Court with a view to bringing justice
within the easy reach of the poor and disadvantaged sections of the community. The Court has always shown the greatest concern and anxiety for the welfare of the larger masses of people in the country who are living a life of want and destitution, misery and suffering and has become a symbol of hopes and aspirations of millions of people in the country...."

Notwithstanding the concern shown by the Court for the child labour, some orders of the Courts depict a completely different picture. Even the available statutory framework has not been endorsed, in spite of the stated commitment of the Court to the objects of the enactments. For example, Child Labour (Prohibition and Regulation) Act, 1986, banned the employment of children in manufacture of matches, but in M.C. Mehta vs. State of Tamil Nadu & others (1991), it was held by the Court that, children can be employed in the process of packing, but packing should be done in an area away from the place of manufacture to avoid exposure to accident. The Court justified it on the ground that the tender hands of young workers are more suited in sorting out the manufactured produce and process it for the purposes of packing. However, it may be assumed that in actual practice in most of the cases it is not possible to separate the processes of manufacture and packing. Such judgements will not be able to benefit the child labourers. Therefore, it may be expected that the judgements should be pronounced keeping in view the actual situation which prevails in a particular employment.

In District Beedi Workers' Union Case, the Court held that child labour in tobacco manufacturing trade should be prohibited as far as possible. Moreover, the Court indirectly allowed illegal practices to continue by directing that the state is to
decide whether contract labour be employed, thus, it has left the responsibility of phasing out child labour to the state which should have been held answerable to the existence of child labour in the beedi industry. Moreover, the liability of the Sivakasi industries to ensure the well being of the labourers was translated simply into the payment of compensation, absolving other responsibilities for the safety of workers.

It is expected that the Court should be very cautious while delivering its judgment as utmost importance is given to every word pronounced by the Court. Moreover, some employers may also take refuge to these statements of the Courts to violate the rights of child labour. So, it should see that the statutory provisions should be properly followed. At the same time, it should also see that the interests of the child labour are safeguarded.

Considering the role played by the Court for protecting child labour so far, it will be better to consider the abovementioned decisions of the Courts as exceptions. It is hoped that the Court will rectify these in subsequent decisions.

Barring some exceptions, the role of the Court, in general, has been praiseworthy. The judiciary has made concrete efforts to safeguard the child labour against the exploitative tendencies of their employers by regularising their working hours, fixing their wages and laying down rules about their health and mental facilities. It has, also interpreted and applied the law so as to promote the cause of justice and to meet the hope and aspirations of the children as per the mandates of the Constitution.

After the pronouncement of a judgement, it is expected that it should be properly followed, but unfortunately, necessary importance is not shown by the
concerned authorities who have the responsibility in the implementation of the judgements. The judiciary, therefore, should monitor how far the judgement is implemented. It should direct the government to submit reports in every six months regarding what measures it has taken for the implementation of the judgements concerning children and what progress has been made in this respect. It should also fix the time limit within which the direction given by the judiciary is to be implemented. If these steps are taken, it may be expected that the children will actually be benefited by the judgements pronounced for them by the judiciary.

NOTES AND REFERENCES


3. Supra, Note 1.


5. Supra, Note 1.


8. Ibid.
9. Ibid.

10. AIR 1982 SC 149.


17. AIR 1984 SC 802.


20. Supra, Note 15.


22. 1996 (6) SCC 756.


24. Supra, Note 17.

25. Supra, Note 14.

26. Supra, Note 19.

27. Supra, Note 15.


29. Supra, Note 22.

30. 55 Bombay LR 323.

32. Supra, Note 13.

33. Ibid.

34. AIR 1984 SC 469.

35. AIR 1990 SC 1412.

36. Supra, Note 6, p. 92.

37. Supra, Note 35.

38. Supra, Note 13.


40. Supra, Note 13.

41. Labourers Working on Salal Hydro Project vs. Union of India, in Supra, Note 14.

42. Ibid.

43. Ibid.

44. Supra, Note 13.

45. Supra, Note 14.

46. JT 1991 (S) SC 299.

47. Supra, Note 19.

48. AIR 1978 Delhi 308.

49. AIR 1968 AP 204.


51. AIR 1993 SC 2178.

53. Supra, Note 21.

54. (1916) 85 J.L.K.B. 1543.

55. Ramanathan vs. K.E. AIR 1927 Mad 435.

56. Beedon vs. Parrot, (1871) LRQB 718.


59. (1904) 34 CLT 360.

60. AIR 1987 SC 447.

61. People’s Union for Democratic Rights and others vs. Union of India and others, Labourers Working on Salal Hydro Project vs. State of Jammu and Kashmir and others, Sheela Barse vs. Secretary, Children’s Aid Society and others

62. Supra, Note 19.

63. JT 1991 (S) SC 299.

64. Supra, Note 19.

65. AIR 1987 SC 38.

66. Supra, Note 21.

67. Supra, Note 63.