CHAPTER-V

INDIAN JUDICIARY AND CHILD LABOUR
The National Policy for welfare of the children in its pre ambulatory declaration said that "The Nation's children are a supremely important asset. Their nature and solicitude are our responsibility. Children's programmes should find a prominent part in our National Plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by the society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice". As per this declaration, it is evident that when a child is a national asset, it is, therefore, the duty of the State to look after the child with a view to ensuring full development of its personality.

But, despite the existence of constitutional as well as legislative safeguards the child labourers in India are neither protected nor availing all the rights to the extent as mentioned in the UN declaration and on the contrary their number have been steadily increasing which bounds the Indian Judiciary to play a pivotal role to provide fair justice with a view to ending the misery, suffering and helplessness of the child labourer's who are

1 Sheela Barse and another v. Union of India and others., AIR 1986, SC 1773.
2 For details, see the Statistical Profile of Child Labour in India in Chapter-II.
the victims of the most inhuman exploitation. "The fundamental norm governing the concept of human rights is that of the respect from human personality and its absolute worth, regardless of colour, race, sex, religion or other considerations. These rights are essential for adequate development of the human personality and for human happiness and progress"\textsuperscript{3}. The basic human rights conceived in liberty and dedicated to the position that "all men are created equal"\textsuperscript{4}. This equal status ensures the dignity of a person and protects against socio-economic as well as political oppression. But it is an undeniable fact that most of the children are completely denied of basic human rights and liberty as they are suppressed in every walk of their life. The Indian Judiciary is therefore trying its best to minimise this curse from the society by protecting the child labourers through its various decisions by which they can be able to avail their rights and live with decency and minimum human dignity. The Judiciary has therefore given stress from time to time on Article 21 of the Constitution which provides protection to life in addition to Article 23 and 24 speaks about prohibition of forced labour and employment of children in hazardous work respectively. The

\textsuperscript{3} Singh Dr. Nagendra; Enforcement of Human Rights in Peace and War in Future of Humanity: 1986, P.1.

\textsuperscript{4} Ibid, P.83.
principal intention behind it is that, the lowest cadre must also be provided with human dignity.

For the well being of the child labourers, delivering momentous judgements, the Indian Judges have made various new approaches and new form of rules with their discretion to suppress child labour and to uplift the down trodden labourers. Regarding this discretionary power of the Judges, Lord Denning said that “the law was locked in the breasts of the Judges ready to be unlocked whenever the need arise”\(^5\) and “the Judges have some aspects of their work a discretionary power to justice so wide that they may be regarded as law makers”\(^6\). To quote Justice Krishna Iyer, “It becomes democratic obligation to make the legal process a surer means to social justice”\(^7\) and he stressed that “the function and the end of law is social engineering, law can not divorce itself completely from the society. The ‘social welfare state’ wedded to the ‘rule of law’ ensures to make the rule of law, serve the rule of life”\(^8\).

Later, with the valuable decisions and golden suggestions Justice P.N.Bhagawati has tried a lot to

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\(^6\) Ibid. P.404.
\(^8\) Krishna Iyer, V.R.: U.G.C.Workshop on Legal Education, (Chandigarh); 1976, P.IX.
implement the Principle of 'Social Justice' mainly for the labour welfare with a special care and concentration eradicate the problem of child labour and to rehabilitate them after they become free.

Here, some of the leading cases relating to protection of child labour are taken into account for analysis and to estimate the role of Indian Judiciary in this regard.

5.1 INDIAN JUDICIARY ON PROTECTION OF CHILD LABOUR: ANALYSIS OF SOME LEADING CASES

5.1.1 Supreme Court on "Right to Life" and Child Labour.

The children, who are contributing their labour for even nominal wages to mitigate their daily livelihood are living not at all in a better atmosphere than mere animal existence in the present exploitative set up which clearly violates the expression 'Right to Life' as mentioned in Article 21 of our Constitution. Taking this sensitive issue into consideration the Supreme Court in the Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni and Others9 laid down that, the expression ‘life’ as mentioned in Article 21 “does not merely connote animal existence or a continued drudgery

through life. The expression ‘life’ has a much wider meaning”. ‘Right to Life’ in the true sense of the term is never confined to the taking away of life. It means something more than just physical survival, not merely the right to continuance of a person’s animal existence\textsuperscript{10}. It would include all those aspects of life which go to make a man’s life meaningful, complete and worth living\textsuperscript{11}. Thus, it includes within its ambit the right to live with basic human dignity and the State can not deprive any one of this valuable right. A.P.Sen, E.S.Venkataramiah and R.B.Mishra JJ. were also of the same opinion while decided the case of Regulla Bapi Raju etc. v. State of Andhra Pradesh\textsuperscript{12} with some other cases. In Francis Coralite Mullin v. The Administrator, Union Territory of Delhi and others,\textsuperscript{13} P.N.Bhagwati and S.Murtaza Fazal Ali JJ. interpreted with expansion of the scope and ambit of this article and sowed the seed for future development of the law, enlarging this most fundamental of Fundamental Rights. The decision in Menaka Gandhi’s case\textsuperscript{14} became the starting point, the spring board for a most spectacular evolution of the law in this regard and “the fundamental right which is the most precious human right and which

\textsuperscript{10}In re Sant Ram, AIR 1960 SC 932: See also State of Maharashtra v. Chandrabhan, AIR 1983 SC 803.

\textsuperscript{11}Menaka Gandhi v. Union of India, AIR 1978 SC 597.

\textsuperscript{12}AIR 1983 SC 1073.

\textsuperscript{13}AIR 1981 SC 746.

\textsuperscript{14}Supra note 11.
forms the arc of fall other rights must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person"\textsuperscript{15}. In the instant case it was further held that "the right of life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life which as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing one self in diverse forms ......."\textsuperscript{16} Again "any form of torture or cruelty, inhuman or degrading treatment would be offensive to human dignity and constitute and inroad into this right to live and it would on this view, be prohibited by Article 21 unless it is in accordance with procedure which leads to such torture or cruelty, inhuman or degrading treatment can ever stand the test of reasonableness and non arbitrariness, it would plainly be unconstitutional and void as being violative of Article 14 and Article 21"\textsuperscript{17}. The Supreme Court thus stressed on the protection against torture and cruelty, inhuman or degrading treatment within the scope of Article 21 which is enunciated in Article 5 of the 'Universal Declaration

\textsuperscript{15}Suresh note 13.
\textsuperscript{16}Ibid.
\textsuperscript{17}ibid.
of Human Rights’ and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. All these decisions are definitely helpful for the welfare of the working children who are denied to live within minimum decency.

5.1.2 Child Labour in Construction Work: A Judicial View:

People Union for democratic Rights and Others v. Union of India and others18 which is popularly known as the Asiad Case is an important case on child labour in construction work. In this case the apex Court of the land adopted a new strategy while pronouncing the momentous verdict of the Court for the welfare of the labourers with a special reference to constitutional provisions relating to prohibition of child labour from the society.

In this case, Justice Bhagwati has tried to give some new approaches to Directive Principles of State Policy for providing socio-economic justice to the labourers as well as to protect child labour. At the same time, he has focussed much on the protection of personal liberty and dignity of the poor in particular. To quote him, “the rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law

18AIR 1982 SC 1473.
should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality.\footnote{19}

He was disappointed to point out the continuous violation of Article 23 which prohibits traffic in human beings and beggar and other similar forms of forced labour. According to him, "Article 23 is not limited in its application against the State, but it prohibits traffic in human beings and beggar and the similar forms of forced labour, practised by any one else. The sweep of Article 23 is wide and unlimited and it strikes at "traffic in human beings and beggar and other similar forms of forced labour' wherever they are found....."\footnote{20} The term 'traffic in human beings' means to deal with men and women like goods. It would be traffic in women and children, if they are used for immoral and other purposes. Although 'slavery' is not expressly mentioned, yet it has been in \textit{Dubar} v. \textit{Union of India}\footnote{21}, the expression 'traffic in human beings' would cover it. Therefore Bhagwati, J. has rightly remarked that, the word 'force' must therefore

\footnote{19}(ibid.)
\footnote{20}(ibid.)
\footnote{21}{...} 1952 Cal 496.
be construed to include not only physical or legal force, but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage”

The child labourers who are due to poverty or such type of socio-economic compulsion are forced to work in such a tender age. Therefore, whenever there is violation of any of the fundamental rights enforceable against private individuals guaranteed by Article 23 or 24, it is the constitutional obligation of the State to take necessary steps for the purpose of ensuring observance of these rights and Bhagwati, J. has admitted the fact that, “there was one feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of a feudal exploitative society..... It is therefore necessary to eradicate this pernicious practice and wipe it out altogether from the national scene.....”

In the Asiad Case, Bhagwati, J. on behalf of the Indian Judiciary has applied all the reformative

22 Supra note 18.
23 ibid.
principles to protect the interests of the child labourers. It was pointed out that the children below the age of fourteen years were employed by the contractors in the construction work of the various projects. It was further alleged that the noble provisions of Article 24 of the Constitution, Employment of Children Act, 1938, Contract labour (Regulation and Abolition) Act, 1970, Minimum Wages Act, 1948, Equal Remuneration Act, 1976, Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979 were violated resulting the deprivation and exploitation of the workers - men, women and children who were brought by the jamadars from different parts of the country and particularly the State of Orissa, Rajasthan and Uttar Pradesh. Again all these workers were denied of their proper living conditions and medical and other facilities to which they are entitled. But it was contended on behalf of the Union of India, Delhi Administration and the Delhi Development Authority that the Employment of Children Act, 1938 was not applicable in case of employment of the construction work of those projects since the construction industry is not a process specified in the Schedule and is, therefore, not covered within the provisions of section 3(3) of that Act. But Bhagwati, J. was of the opinion that the employment of children below the age of fourteen years is also
prohibited in any type of construction work as it is hazardous in nature, though it is not specified in the Schedule of the Act. He has justified this fact in the light of the relevant constitutional provisions. Thus, regarding the omission of construction industry from the Schedule of the Act, he remarked that "this is a sad and deplorable omission which we think, must be immediately set right by every State Government by amending the Schedule so as to include construction in it in exercise of the power conferred under section 3-A of the Employment of Children Act, 1938. We hope and trust that every State Government, will take the necessary steps in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of fourteen years must be prohibited in every type of construction work\textsuperscript{24}. Much stress was given in this case on the scope of Article 24 of the Constitution by saying that "so far as Article 24 of the Constitution is concerned, it embodies a fundamental right which is plainly and indubitably enforceable against every one and by reason of its compulsive mandate, no one can employ a child below the age of fourteen years in a hazardous employment........ and therefore not only are the contractors under a constitutional mandate not to employ

\textsuperscript{24}Ibid.
any child below the age of fourteen years, but it is the duty of the Union of India, the Delhi Administration and the Delhi Development Authority to ensure that this constitutional obligation is obeyed by the contractors to whom they have entrusted the construction work of the various Asiad projects. The Union of India, the Delhi Administration and the Delhi Development Authority can not fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors\textsuperscript{25} and really it is a momentous direction to prohibit child labour in hazardous occupations with an internal aim to protect the basic human dignity and freedom of child labourers.

Further Bhagwati, J. with R.S. Pathak and Amarendra Nath Sen JJ. delivered another valuable decision in Labourers working on Salal Hydro Project v. State of J&K\textsuperscript{26} to protect the interests of the child labourers working on the project by which these children can get their rights as well. In the above mentioned case, the judiciary, has insisted for strict implementation of the provisions of Article 24 besides issuing orders to prohibit child labour. The Supreme Court made the directions to educate the children of workers and this responsibility is imposed both on the Government as well as on the private

\textsuperscript{25}\textit{Ibid.}

contractors under whom the parents of such unfortunate children are working.

It was pointed out in the final report of the Labour Commissioner (J & K) that in the said project some minors were found to have been employed on the project site but the explanation given was that “these minors accompany make members of their families on their own and insist on getting employed”. The Court has reiterated the same ruling, as laid down in the Asiad case that, construction work being a hazardous employment, children below the fourteen years of age can not be employed in any way in this work because of constitutional prohibition contained in Article 24. The Court stressed much on the rights of a child like right to education and said that “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”. In the instant case, it was further suggested that “the Central Government would do well to persuade the workmen to send their children to a nearby school and arrange not only for the school fees to be paid but also free of charge books and other facilities such as

27 Ibid.
28 Supra note 18.
29 Supra note 26.
transportation\textsuperscript{30}. Particularly mentioning the educational facilities to be provided to the children of workers working on any construction project, the Court said 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 who are living at or near the project site should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provisions to this effect may be made in the contract with the contractor\textsuperscript{31}”.

5.1.3 Indian Judiciary on Education and Child Labour

The importance of education has come to be recognised in various judicial decisions and the Supreme Court has delivered a noteworthy decision in this regard in the case of Unnikrishnan, J.P. and Others v. State of U.P and others\textsuperscript{32}. The Court is of the opinion that “the fundamental purpose of education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the

\textsuperscript{30}Ibid.
\textsuperscript{31}Ibid.
\textsuperscript{32}AIR 1993 SC 2178.
sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and here after\textsuperscript{33}. Similarly in Mohini Jain’s case\textsuperscript{34}, it was even observed that, the right to life under Article 21 and the dignity of an individual can not be assured unless it is accompanied by the right to education. The State Government is therefore, under an obligation to make an endeavour to provide educational facilities at all levels to its citizen. Education seeks to build up the personality of the pupil by ascertaining his physical, intellectual, moral and emotional development\textsuperscript{35}. In \textit{re Unnikrishnan}, B.P.Jeevan Reddy, J. has interpreted the Article 21 so as to include the right to education within the scope of that Article as ‘right to education’ flows directly from ‘right to life’. In other words, ‘right to education’ is concomitant to the fundamental rights enshrined in Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of citizens. The benefit of education can not be confined only to the richer classes. Every citizen has a right to education under the Constitution and thus no child should be debarred from availing this right and the

\textsuperscript{33}Ibid.


\textsuperscript{35}University of Delhi \textit{v. Rammath}, (1964) 2 SCR 703: AIR 1963 SC 1873.
Government should take all possible steps in this regard. Because "education is a principal instrument in awakening the child to cultural values, in preparing him for later professional training and in helping him to adjust normally to his environment"\textsuperscript{36}. Therefore without education being provided to the children in the Preamble to the Constitution can not be achieved. The view expressed by the Supreme Court in Unnikrishnan v. State of A.P. was reaffirmed in P.Cherrivakoya v. Union of India and others\textsuperscript{37} and it was thus well established that even though it is not expressly stated in Article 21 regarding 'right to education', it forms part of the concept of 'right to life'. 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. However the court held "Right to Education" understood in the context of Article 45 and 41 means;

\begin{itemize}
  \item[a)] every child/citizens of this country has a right to free education until he completes the age of fourteen years, and
\end{itemize}

\textsuperscript{36}Oliver Brown v. Board of Education of Topeka. U.S.SC Reports (1953) 98 Law Ed. 873 as referred in Supra note 35.

\textsuperscript{37}AIR 1994 Ker. 27.
b) after a child/citizens completes fourteen years, his right to education is circumscribed by the limits of the economic capacity of the state and its development\(^38\).

With the pronouncement of these decisions, the Indian Judiciary hopes that if all the children of our country can be educated, then the problem of child labour will automatically be minimised to a large extent.

5.1.4 Supreme Court on Bonded Child Labour

The Indian Judiciary has played a vital role to safeguard the interests of the child workers who have to contribute their labour as bonded labourers, while giving decision in an another leading case Bandhua Mukti Morcha v. Union of India and others\(^39\). In this case the petitioner is an Organisation dedicated to the cause of release of bonded labourer's in the country who made a survey of some of the stone quarries in Faridabad district and found there a large number of bonded labourers who were working under inhuman and intolerable conditions and almost 99 percent of them were from drought prone areas of Maharashtra, Uttar Pradesh, Madhya Pradesh, Rajasthan, Bihar and Orissa. It was pointed out that the provisions

\(^{38}\)Ibid
\(^{39}\)AIR 1984 SC 802.
of the Inter-State Migrant Workmen’s Act, 1976 were violated to a large extent by denying any residential accommodation, clothing, drinking water facilities with absolutely no facilities for schooling or child care etc. Even the bonded labourers were not provided with any medical care, what to speak of compensating the poor worker for injury or death. This system of bonded labour is “based on exploitation by a few socially and economically powerful persons trading on the mise and suffering of large numbers of men and holding them in bondage is a relic of a feudal hierarchical society”40 and the petitioner, therefore, prayed for identification and release of bonded labourers besides issue of a writ for proper implementation of the provisions of the Constitution and Statutes with a positive attitude so as to end the misery, suffering and helplessness of these victims.

In the above mentioned case, the Supreme Court has admitted that due to acute poverty and hunger, they become bound to accept this bondage by the powerful exploitative society. It is an undeniable fact that “there are still a number of bonded labourers in various parts of the country and significantly as pointed out in the report of the National Seminar on ‘Identification and Rehabilitation of

40Ibid.
Bonded Labourers', a large number of them belong to scheduled castes and scheduled tribes41”. On behalf of the Court, Justice Bhagwati in the instant case remarked that “it is a problem which needs urgent attention of the Government of India and the State Governments and when the Directive Principles of State Policy have obligated the Central and State Governments to take steps and adopt measures for the purpose of ensuring social justice to the have-nots and the handicapped it is not right on the part of the concerned governments to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected .......... It is therefore essential that which ever be the State Government it should, where there is bonded labour, admit the existence of such bonded labour and make all possible efforts to eradicate it. By doing so, it will not only be performing a humanitarian function, but also discharging a constitutional obligation and strengthening the foundations of particularly democracy in the country42”.

According to him, when the poor come before the Court, particularly for enforcement of their fundamental rights it is necessary to depart from the adversarial procedure and to evolve a new procedure which will make it possible for the poor for the purpose of securing

41Ibid.
42Ibid.
enforcement of their fundamental right........ it is of
no use having social welfare laws on the statute book, if
they are not going to be implemented. We must not be
contented with the law in books, but we must have law in
action, if we want our democracy to be a participated
democracy, it is necessary that law must not only speak
justice, but must also deliver justice\textsuperscript{43}. From all the
welfare measures suggested and directions given to the
Central as well as State Governments regarding prohibition
of bonded labour seems that, it is proportionately
applicable to the child workers who have also to work as
bonded labourers in different fields due to the bondage
debts incurred by their parents or other family members.

In the case of \textit{Neeraja Chaudhury v. State of M.P.}\textsuperscript{44}
the court said that "it is not enough merely to identify
and release bonded labourers, but it is equally, perhaps
more important that after identification and release, they
must be rehabilitated, because without rehabilitation,
they would be driven by poverty, helplessness and despair
into serfdom once again\textsuperscript{45}". According to the fact of this
case, the freed bonded labourers of the Faridabad stone
quarries were brought back to their respective villages of
Madhya Pradesh with a promise of rehabilitation by the

\textsuperscript{43}\textit{Ibid.}
\textsuperscript{44}\textit{AIR 1984 SC 1099.}
\textsuperscript{45}\textit{Ibid.; See also P. Sivaswamy v. State of A.P., AIR 1988 SC 1863.}
Chief Minister of the State. But according to the petitioner, it was found that most of the released bonded labourers had not been rehabilitated though about six months had already passed since their release. But on release only the duty of the State Administration was not finished and its failure to provide proper rehabilitation for these freed bonded labourers amounted to violation of the fundamental right under Article 21 of the Constitution. The petitioner therefore prayed for a direction to the State Government to take immediate steps for the Economic and Social rehabilitation for these poor, unfortunate freed bonded labourers who were released as a result of the order made by the Supreme Court in the first week of March 1982. The Court said that, "the Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution" and, therefore, directed the State Government to provide rehabilitative assistance to these freed bonded labourers within one month from the date of giving the decision. Because "if any bonded labourer is only freed from his
bondage and is set at liberty, he will in all probability have to side back in to bondage again keep his body and soul together. Freedom from bondage without effective rehabilitation after such freedom will indeed be of no consequence and in the absence of proper arrangement for such rehabilitation being made, the entire purpose of the Act will be frustrated”47. Thus, it seems that the children who are working as bonded labourers shall definitely be benefited and protected proportionately by the verdict given by the apex Court in the above mentioned case.

5.1.5 Cases on Inter-Country Adoption and Child Labour

The Indian Judiciary has reiterated another valuable judgement in Lakshmikant Pandev v. Union of India48 to protect the poor children who are made to become child labourers for doing domestic service and or other worst forms of forced labour like slavery etc. under the guise of inter-country adoption by foreign parents and thus there is every danger to the lives of these adopted children. In the instant case it was complained through a writ petition regarding malpractices indulged in by different social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. It was also alleged that “not only the Indian

47Ibid.
48AIR 1984 SC 471.
children of tender age are under the guise of adoption exposed to the long horrendous journey to distant foreign countries at great risk to their lives, but in cases where they survive and where these children are not placed in the Shelter and Relief Homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foreign parents⁴⁹. Keeping this matter in view Bhagwati, J. on behalf of the Indian Judiciary has appealed that every authority concerned must be very careful while permitting such adoption and remarked that "while supporting inter-country adoption, it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents. Last the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able to provide to the child a life of moral or material security or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research or may be placed in a worse situation than that in his own country⁵⁰". Bhagwati, J. has, therefore, rightly said that "it is obvious that in a civilised society the importance of child welfare can not be over emphasized.

⁴⁹Ibid.
⁵⁰Ibid.
because the welfare of the entire community, its growth and development, depend on the health and well being of its children. Children are a ‘supremely important of the nation depends on how its children grow and develop⁵¹” and thus suggested that every application from a foreigner desiring to adopt a child must be sponsored by a Social or Child Welfare Agency recognised or licensed by the Government of the Country in which the foreigner is resident⁵². He further restricted to entertain this process directly by any Social or Welfare Agency in India or Institution or Centre or Home to which children are committed by the Juvenile Court. It is very clear from the above decision that though this process can not be eradicated totally, still then the process of adoption, by the foreign parents can be minimised to a great extent by which child abuse, child trafficking and forced labour can be protected.

A similar view was also suggested in Rasiklal Chhaganlal Mehta v. Union of India⁵³. In this case it was recommended that “in the interests of the child it is necessary to regulate inter-country adoption by legislations and by strict collaboration between qualified and authorised personnel and social authorities. The end

⁵¹Ibid.
⁵²Ibid.
⁵³AIR 1982 Guj 193.
result of the process will be that, adoption would not be mere legalistic arrangement but the creation of an environment in which the child can grow in healthy and happiness and be really integrated in the society of its adoption. Further by referring Dr. J. Preger’s Article “Trading in Young Hops”55 in the instant case, the Gujurat High Court indicated the malpractices that lie in the inter country adoption and how the international traffic in children is taking place under the guise of inter-country adoption. Thus the Gujurat High Court has taken a positive attitude in this regard and stressed much on more adoptions of Indian Children by the Indians to safeguard the well being of the helpless poor children as “the possible existence of an international racket trading in such children and selling them at profit in to slavery or prostititution can not be altogether ruled out56.

5.1.6 Decision relating to Child Labour in Beedi Industry

In our country, the child labourers are scattered in various sectors and besides others, in beedi; or match industries they are plentifully available. So far as child labour in beedi industry is concerned, it is very

54Ibid.
55Preger Dr. J.”Trading in Young Hops”: The Statesman (Delhi Edition), May 25, as referred in supra note 53.
56Supra note 53.
important to discuss the leading case Rajangam, Secretary, Dist Beedi Workers Union v. State of Tamil Nadu and others\textsuperscript{57} with K.Chandra Segaram v. State of Tamil Nadu and others\textsuperscript{58}. In these cases, various allegations were alleged regarding failure to implement the provisions of the labour laws, manipulation of records regarding employees, non payment of appropriate dues for work taken etc. including the child labour and specifically the non-implementation of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. To protect child labour, the apex court of the land in its noteworthy decision directed for the strict enforcement of the labour laws and also the Beedi and Cigar Workers (Conditions of Employment) Act 1966 and further suggested that “tobacco manufacturing has indeed health hazards. Child Labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Governments, but within a period not exceeding three years from now. The provisions of the Child Labour Act, 1986 should be strictly implemented\textsuperscript{59}”. The Court further admitted that the exploitation of labour is rampant in the beedi trade and suggested that “in view of

\textsuperscript{57}AIR 1993 SC 404.
\textsuperscript{58}\textit{Ibid.}
\textsuperscript{59}\textit{Ibid.}
the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer60”.  

5.1.7 Child Labour in Match Factories

In the case of M.C.Mehta v. State of Tamilnadu and others61 regarding employment of children in match factories of Sivakasi, it was pointed out that, out of 27,338 workmen employed in the match factories of Sivakasi, 2,941 were children. Basing on a petition filed under Article 32 of the Constitution by way of a public interest litigation the Court very disappointedly remarked that “the problem has been in existence for over half a century....... and not appropriate attention has been focussed on it either by the Government or by the public62”. As the process of manufacturing of matches and fire-works is a hazardous one, the exposer of tender ages to these hazards therefore requires special attention and keeping the attention on Article 39(f) of the Constitution, to protect child labour, the Supreme Court has rightly remarked, “we are of the view that employment of children within the match factories, directly connected

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60Ibid.
61AIR 1991 SC 417
62Ibid.
with the manufacturing process up to final production of match sticks or fire-works should not at all be permitted\textsuperscript{63}. It was further said that "the spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Articles 45 they are meant to be subjected to free and compulsory education, until they complete the age of fourteen years. 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 fourteen years are supposed to be in school, economic necessity forces grown up children to seek employment\textsuperscript{64} and therefore the Supreme Court stressed to provide special facilities for these children like general and job oriented education, scope for recreation and opportunity for socialisation etc. and the school time should be suitably adjusted so that their employment shall not be affected, and hence allowed the employment of children in this sector only in the process of packing which should be done in an area away from the place of manufacture to avoid exposure to accident. It was further suggested for the creation of a welfare fund to which the registered match factories as well as the State shall contribute so as to provide facilities for education

\textsuperscript{63}Ibid.
\textsuperscript{64}Ibid.
and recreation for the employed children besides other facilities for the workers in general and it was advised to the State of Tamilnadu to take appropriate steps in this matter. Further the State of Tamilnadu was directed to enforce the facilities for recreation and medical attention so that the basic requirements were attended to. Taking into consideration the hazardous nature of the employment, it was further directed that "compulsory insurance schemes should be provided for both adult and children employees..... The State of Tamilnadu shall ensure that every employee working in these match factories is insured for a sum of Rs. 80,000..... The premium for the group insurance policy should be the liability of the employer to meet as a condition of service".

5.1.8 Child Labour in the Factories: Some Important Decisions

Millions of children are working in different factories in various hazardous processes to earn their daily livelihood or due to some other compulsion, which goes beyond the provisions of the factories Act, 1948, as this Act like other labour law is committed to protect the interests of the child labourers. When the question of employment of children in factories arises, the mind is

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65Ibid.
automatically diverted towards the decision delivered in the leading case *Jhunjhunwala v. B.K. Patnaik*\(^66\). In this case, it was alleged that 14 adolescent workers were employed by the occupier in the blowing section without having certificate of fitness, which violates section 68 of the Factories Act, 1948. The Inspector of the factories suspected certain workers among these adolescents were children and prosecuted the occupier for the contravention of Section 68. The workers were not medically examined under section 75, before prosecuting the occupier for contravention of section 69. The legality of the action taken by the Inspector of Factories was challenged. Section 75 prescribes that, no complaint can be filed by the Inspector of Factories in respect of contravention of section 68 by any person, unless the first proceeds under section 75 of the Act. To protect the child workers the Orissa High Court has interpreted the above provision more liberally and remarked that "if adolescent workers not possessing fitness certificate are found in factory, it is not obligatory upon the Inspector of Factories to first get them medically examined under section 75 before prosecuting the occupier for contravention of section 69 of the Factories Act, 1948\(^67\). In case of employment of young persons, it is decided that, when an owner or

\(^{66}(1964)\) 2 LLJ 551 Ori.: (1963) 29 C.L.T. 573.  
\(^{67}\)Ibid.
occupier is being prosecuted for violation of section 68 it is his duty to prove that the worker was not of adolescent age 68.

In the case of *Emperor v. Gokuldas* 69 the problem of employment of children in the factories was considered very seriously by the Bombay High Court. In this case it was alleged that some girls of fourteen years of age were employed in the factory without having any token or fitness certificate and they would come under the definition of child as mentioned in the Act 70 under section 23(a) which provides that every child of fourteen years of age employed in any factory has also to obtain a fitness certificate or a token giving reference to that certificate granted under section 7 or section 8 showing that he is not less than twelve years of age and is fit for employment. On behalf of the Crown, when it was contended that there is no need for such certificate in the case of a child of fourteen years of age, it was not accepted by the Court. Speaking on behalf of the Court, Mirza, J. Clearly stated that “we do not agree with that contention 71”. The intention behind this non-acceptance of the contention was the strict implementation of the

68Ibid.
69AIR 1929 Bom. 272 : 30 Cri LJ 793(DB).
70The Factories Act, 1911.
71Supra note 69.
provision of section 23(a) of the Factories Act, 1911 so as to prohibit child labour and at the same time not to give any scope to the employer for employing children in contrary to the provision of the Act. It is the duty of the employer to ascertain the age of the children whom he allows to work in any factory. He can not depend on the statement of the applicant.

Jackson, J. on behalf of the Madras High Court, at the time of deciding the case of Ramanadham v. King Emperor to abolish the appointment of children in factories, took a sincere step for interpreting the provisions of the Indian factories Act, 1911 to have a better insight into the intent of the legislator. The fact is that, some children were employed for sorting of groundnuts in a yard close to machinery room, where machinery for decortication of groundnuts were used. It was contended by the petitioner that the drying yard in which the children were employed does not form a part of the factory under section 2(3) of the Act and thus there was no employment of children in the factory as contemplated by the Act under Section 46. But it was not accepted by the Court as the Court by interpretation of the term 'factory' as provided under section 2 (3) came to the conclusion that factory includes everything, machine,

72See Machintosh v. First Brook Box Co. (1904) 34 CLT 370.
73AIR 1927 Mad. 345.
rooms, sheds, godowns, yards and Jackson, J. therefore said that "it must be held that sorting that article (groundnuts) is work connected with the article subject of the manufacturing process...... the regular use of the decorticator for all the groundnuts, leaves no room for doubt that the article has been subject of manufacturing process. It must held, therefore, that the children were employed in the factory. It is immaterial who actually paid them their wages, and thus the occupier or manager is liable under section 4174".

5.1.9 Supreme Court on Welfare Fund for the Child Labourers

The Supreme Court in its latest decision on child labour in *M.C. Mehta v. State of Tamilnadu*75 issued the directions to State Governments regarding fulfilment of legislative intendment behind the enactment and ordered the setting up of a corpus fund with Rs. 25,000 contribution by the employer of a child labourer employed in a hazardous industry. Besides, every offending employer will have to pay Rs. 20,000 as compensation for violation of the Child Labour (prohibition and regulation) Act, 1985. With this decision, the apex court totally banned the all India evil in hazardous industries and directed

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74Ibid.
75AIR 1997 SC 699.
the Government to ensure compulsory education of the child. “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 found to be six hours a day and it receives education at least for two hours each day. It would also be seen that the entire cost of the education is borne by the employer”.

In a 36 page judgement on a public interest petition by the well known environmentalist lawyer M.C. Mehta, the Court framed a scheme to ameliorate the lot of the child labourers. According to the scheme, an offending employer will have to deposit Rs. 20,000 as compensation to each child under the Act. This will be deposited in a Child Labour Rehabilitation-Cum-Welfare Fund and “the Inspectors, whose appointment is visualised by section 17 to secure compliance with the provision of the Act, should do this job ...... 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 area-wise. The fund so generated shall form corpus whose income shall be used only for the concerned child”.

\(^{76}\)Ibid.

^7\textsuperscript{77}Ibid.
The Court further asked the State to ensure that an adult member of the working child’s family gets a job in place of the child. In case this was not possible, Rs. 5,000 be contributed to the fund for each child. It was also stated that, in those cases where alternative employment would not be made, the parent or guardian of the child concerned would be paid a monthly income earned on the corpus of Rs. 25,000. But “the employment given or payment made would cease to be operative if the child is not be sent by the parent or guardian for education”. 

The Court’s judgement was based on a report by a three-member legal experts committee headed by the Supreme Court Bar Association President, R.K.Jain. The Committee has identified nine major industries as hazardous, like match industry of Sivakasi, diamond polishing of Surat, precious stone polishing of Jaipur, Ferozabad’s glass industry; brassware industry of Moradabad, handmade carpet industry of Mirzapur and Bhadohi, Aligarh’s lock making industry and slate industry of Marakpur and Mandsaur.

Justice Kuldip Singh with B.L. Hansaria and S.B.Majumdar JJ. on behalf of the Court further said that “on discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make it a better citizen. It may be pointed out

78 Ibid.
that Article 45 mandates compulsory education for all children until they complete the age of fourteen years; it is also required to be free. It would be the duty of the Inspectors to see that this call of the Constitution is carried out”.

The Secretary to the Minister of Labour, Government of India would appraise the Court within one year about compliance of its directions and when the directions given by the Supreme Court are carried out, penal provisions in the Act of 1986 would be used only where child labour, prohibited under the Act is found.

By this valuable decision, it seems that the employment of children in the hazardous occupations may now be tackled to a great extent, though not be eradicated completely due to loopholes in the enacted laws.

5.1.10 Role of the State to protect Child Labour.

The decision of the judiciary can not eradicate the problem of child labour until and unless the State shall take any action and therefore in various cases, the judiciary has categorically stressed the State to take necessary steps to safeguard the interests of the child labourers and thus it has been rightly said in D.S.Nakara

79Ibid.
and others v. Union of India\textsuperscript{80} that “since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part-IV of the Constitution, which when achieved, would permit to claim that we have set up a Welfare State..... In particular, the State shall strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities\textsuperscript{81}”. It was further decided that the State shall take necessary actions to eliminate the above inequalities including standard of life of the working class in particular.

Similarly, it has also been decided by the Indian Judiciary from time to time in different cases\textsuperscript{82} that for the protection of the weaker sections of the society in general and women and children in particular, the State is bound to take protective measures as enshrined in the Constitution as well as other labour could be saved from the clutches of the exploitation prone society and their childhood could be protected against moral and material abandonment and thus they could be able to avail their rights to some extent.

\textsuperscript{80} AIR 198 SC 130.
\textsuperscript{81} Ibid.
\textsuperscript{82} See Balan Nair v. Bhavani Amma Valsalamma and others, AIR 1987 Ker. 110(FB); See also Bai Tahira v. Ali Husain Fissali, AIR 1979 SC 362: 1979 Cri. LJ.151; See also Jagir Kaur v. Jaswant Singh, AIR 1963 SC 1521: 163 (2) Cri. L.J. 413.
5.2 An overview:

To sum up, it is very heartening to note that the Indian Judiciary has done noble services to minimise the problem of child labour in all possible ways where it gets the opportunity to safeguard the welfare of the children as well as by suggesting to amend the loopholes in the existing laws. The inclusion of the expression ‘social justice’ in the Preamble of our Constitution is the recognition of the greater good to a larger number without depriving accrued rights to anybody. Illiteracy, poverty and ignorance of rights and entitlements under the law abounds leading to deception, exploitation and deprivation of rights and benefits under the law and it is observed that the Indian Judicial system has not taken a back seat for deep interpretation to the extreme end of the existing labour laws relating to child labour as well as the Constitution, so that, the interests of the child labourers can be protected by all means by which they can avail their right to live with minimum decency and with human dignity. So, it can be rightly argued that Indian Judiciary has always favoured and played an important role to create an open and real welfare society where one is given his due rights and complete freedom to exist.