When the setting sun asked,
Who shall do the rest?
A little lamp offered
"I shall do my best."

Chapter Four
Judiciary has a pivotal role in upholding human rights, rule of law and democracy. Gone are the days when the judiciary’s role was confined to interpretation of laws and constitution alone. Today, it has a positive and affirmative role in strengthening social justice, economic equality and political democracy. It cannot remain a passive spectator to exploitation of human beings by the fellow human beings. It has assumed the role of an active social catalyst along with the executive and legislative branches. The Supreme Court itself has declared that “the time has come when the legal and judicial system has to be renovated and restructured so that injustices do not occur and disfigure the fair and luminous face of our nascent democracy”.¹ When the fundamental rights of poor are flouted, when the atmosphere of exploitation, torture and fear is created,² when the basic elements of care, comfort, necessaries to sustain life is refused, when injustice and inhumanity emerges and the legislative protection is ignored, it becomes the constitutional obligation of the courts as a guardian of fundamental rights to break the fetters to right the wrong³ and to restore justice to them. The courts have to contribute to the progressive development of laws in tune with the egalitarian ethos of the Constitution without over stepping the boundaries of the other two branches of government. The dilemma before the courts is to strike a balance between rights of citizens and compulsions of stability of the State. The need is to interpret rights in a way beneficial to the society at large. It is this requirement which enhances the importance of the rights and development of the children.

The judicial activism displayed by the judges of Apex Court and several High Courts clearly reflect the judicial wisdom and its commitment to the
cause of upholding child rights and welfare issues. The contribution of the judiciary in liberating children from the clutches of exploitation cannot be ignored. Time and again the judiciary has echoed its grave concern on the flouting of the spirit of legislation concerning rights of children. The pronouncements of the court have had solitary effect on the government and the employers of the children. The regularisation of working hours, fixation of wages, healthcare and medical facilities, provision of education, etc. are ample testimony to the contribution of judiciary. Its role in enforcing the juvenile justice is no less significant. The courts have identified and brought to surface the areas were juvenile justice was conspicuous by its absence and where the State has remained a silent spectator. It may, however, be submitted here that the judiciary has not always been consistent and has not shown the same degree of concern in all the cases regarding issues concerning children’s rights.

In this chapter, an attempt has been made to assess the judicial response vis-à-vis the ‘rights of the child’ in general, and ‘child labour welfare’ in particular. The objective is to examine the extent to which the judicial process has aided or impeded social changes in relation to the status of children in India.

A) Judicial attitude towards Right to Education of children:

The courts have, to a large extent, interpreted and applied the law so as to promote the cause of justice and meet the hopes and aspirations of the people who are looking to the judiciary to give life and content to the basic postulates of the Constitution. As a result, judiciary has given new dimension to the fundamental rights, through a liberal interpretation of Article 21. In the recent times, the judicial process has even taken a lead to read the ‘Directive Principles of State Policy’ into ‘Fundamental Rights’. Due to this new interpretative approach of courts, the non-justiciable principles have acquired the status of fundamental rights. Right to Education, a directive principle
embodied under Article 41 in Part-IV of the constitution was elevated to the status of fundamental right as it is implicit in the right to life.\(^4\)

The problem of child labour is closely related to child education as it is widely accepted that unless and until education is made compulsory, child labour cannot be abolished.\(^5\) Taking a similar view, the court in a series of cases has unequivocally declared that the right to receive education by the child workers is an integral part of ‘right to life’ embodied in Article 21 of the constitution.\(^6\) In *Anand Vardhan Chandel V. University of Delhi*\(^7\), the Delhi High Court has held that education is a fundamental right under the constitution and has a direct relationship with Article 21. The court observed that “the 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, provided they are necessary for the full development of personality of individual and can be included in various aspects of liberty of the individuals. The right to education is, therefore, implicit in Article 21 of the constitution”. Similarly, the decision of Andhra Pradesh High Court in *Murali Krishna Public School*\(^8\) paved way for better educational opportunity for Dalit children. It pronounced that the “Right to Education to Dalits is a Fundamental Right and it is the mandatory duty of the State to provide adequate educational opportunities to advance educational interests by establishing schools”. This positive attitude of the court towards the poor and the down trodden Dalits, who have been subjected to inhuman exploitation and systematically denied elementary justice for centuries has initiated a peaceful and silent revolution in their lives. These judgments have compelled the State to take concrete action to provide educational facilities to the children of deprived sections. The education of Dalit children is all the more necessary as a major chunk of child labourers come from this lower strata income group of families. The court made it clear that any failure on part of
the State to provide better and adequate educational facilities, economic support and proper atmosphere to grow and develop, to these children is violative of not only Article 45 but also Article 21 of the constitution.

The decision of the Supreme Court in *Unni Krishnan V. State of Andhra Pradesh* is also considered as a positive development towards the goal of achieving universal primary education. The court held education as an aspect of personal liberty and thus elevated it to the level of constitutional right. It declared that a child (citizen) has a fundamental right to free education up to age of 14 years. But the court at the same time in its judgement also held that beyond 14 years, the right to education was subject to the limits of economic capacity of the State. The judge conceded that "the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State".

It is submitted here that the proposition that every one should get free and compulsory education is undisputed. By converting the Directive Principle into Fundamental Right the judiciary has no doubt expanded and developed the law so as to respond to the hope and aspirations of the concerned people. However, making education a justiciable right is not as easy at as it sounds due to prevailing unfavourable socio-economic conditions in the country. Some questions also need to be answered like: will the State be held liable to pay compensation for its failure to provide free and compulsory primary education if such a failure has resulted in a manifest injury or loss to any person? Poverty like education is also affecting the right to live with dignity which the Supreme Court has held to be included within Article 21? But does one have a fundamental right of not to be poor? To incorporate the directive principles within the fundamental rights is no doubt exciting but it may be difficult to articulate it through judicial process. A mere judicial declaration of its fundamentalness without corresponding changes in
the socio and economic policies would reduce the right to an empty promise full of sound and fury signifying nothing. Further, to say that the right to education beyond the primary level, is subject to economic capacity of the State is to make it almost redundant. If right to education is a part of right to life, how can it be made dependent on economic capacity of the State? If it is a fundamental right, it has to be enforced and the State has to provide the necessary economic paraphernalia. If once economic capacity hampers the implementation of a fundamental right, other aspects of Article 21 would also be in jeopardy.

It may once again be recalled that judiciary by making education as a fundamental right has clearly demonstrated that right to education is necessary for the proper flowering of children. Education is the very foundation of good citizenship and a principal instrument to awaken the child to cultural values, in preparing the child for later professional training and in helping him to adjust to the environment. Further, education also nourishes intellectual advancement to develop dignity of person without which there is neither intellectual excellence nor pursuit of happiness. But the fundamentalness of the ‘Right to Education’ can only be achieved through suitable economic, social and administrative reforms and mere judicial declarations will not achieve the desired results.

In Salal Hydro Project the Supreme Court on its part has done a commendable job in drawing the attention of the Government towards the plight of children. It emphasized the need for care and education of poor migrant workers working at the construction site of this power project. The Court observed, “whenever the Central government undertakes a construction project which is likely to last for some time, it should ensure 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 Central government
itself or if it entrusts the project work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor”. The court also directed the Central government to persuade the workmen to send their children to nearby schools and arrange not only the schools but also provide free of charge books and other facilities such as transportation etc. The Supreme Court in this case has taken a very realistic and logical stand by directing the concerned party to provide the basic infrastructure of education to children at the construction site of the project where they live with their parents. This will help in a long way towards eradication of child labour as the construction workers now have a better feasible, cheap and bright option of sending their children to schools than letting them fall into the child labour trap at these construction sites.

**B) Judiciary on the Protection of Child Labourers:**

The Supreme Court of India in recent years has explored two new devices to the enforce the human rights of the weaker sections of the society by (i) relaxing the doctrine of *locus standi*\(^{14}\) which often had proved hurdle in the way of enforcing rights of the poor and (ii) the emergence of *Public Interest Litigation* (PIL)\(^{15}\). Public Interest Litigation is the arm of legal aid movement intended to bring justice within the reach of poor masses which constitute the low visibility area of humanity.\(^{16}\) It is generally seen that all the working children come from the families which are below poverty line and they have no means to voice their protest against the violation of their fundamental rights. The Apex Court has showed its generosity by relaxing the concept of *locus standi* in a number of cases affecting rights and injuring larger public interest.\(^{17}\) In the *Judges case*\(^{18}\) the court took the view that where a person or class of persons to whom legal injury is caused by reason of violations of fundamental rights, in unable to approach the court for judicial
redress on account of poverty or disability or socially or economically
disadvantaged position, anyone can move the court for relief under Article 32
and 226. The court again deviated from the doctrine of *locus standi* in *Asiad
case*¹⁹ to bring justice within the reach of poor man and held that, "courts are
not meant only for rich and well to do, for the landlords and the gentry, for the
business magnate and the industrial tycoon but they also exist for poor and
downtrodden, the have-nots and handicapped and half hungry millions of our
country men".²⁰ The court, thus, played a significant role in providing some
relief to the poor sections of society, who otherwise had practically no access
to the court for reasons of poverty and ignorance. It includes children who are
not aware of their rights and do not have the means to fight for political, social
and economic justice.

One epoch-making judgement of Supreme Court of India which has no
only made a significant contribution to labour laws, but also has displayed a
creative attitude of judges to protect the interest of child workers is *People's
Union Democratic Rights (PUDR) V. Union of India*²¹ commonly known as
*Asiad case*, where a letter was admitted by the Supreme Court as a Writ
Petition. The letter highlighted the exploitation of child labourers engaged in
the construction work of various projects connected with the prestigious Asian
games in New Delhi. Showing is concern for children the learned judges
observed that even in the absence of appropriate legislation, provisions of
Article 24 must operate with *proper vigore* and therefore notwithstanding the
absence of specification of construction industry in the schedule of the
*Employment of Children Act. 1938*, no child below the age of 14 years can be
employed in construction industry which is undoubtedly an hazardous work.
The court expressed the hope that this sad and deplorable omission would be
rectified by every State government without any undue delay. As a result, the
*Employment of Children Act, 1938* has been replaced by the *Child Labour
(Prohibition and Regulation) Act, 1986 and construction work being an hazardous occupation was also included in the Act. The Court also reminded that the guidelines stipulated by the Convention No. 59 adopted by International Labour Organisation which is ratified by India, should be followed by the labour legislations.

The judgement of the Supreme Court in the Salal Hydro Project case was yet another landmark in the upliftment of child labourers from their miseries and exploitation wherein the court reiterated its earlier stand of the Asiad case. The Labour Commissioner (J&K) in its final report after visiting the site as per directions of court, had 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 in its judgement also held that construction work is a hazardous employment and, therefore, under Article 24 of the Constitution, no child below 14 years can be employed in construction work. Commenting on the complexity of the problem and prevailing ground reality, the court was of the opinion that child labour, being an economic problem, cannot be solved merely by legislation so long as there is poverty and destitution in the country. But even then an attempt can certainly 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 so that he can prove himself as a useful member of society capable of playing a constructive role in the socio-economic development of the country. The court suggested that the children of construction workers should be provided schooling facilities at project sites and the government should persuade the workmen to send their children to nearby schools and to arrange not only their school fees but also free of charge books and transportation facilities.
Another writ petition on the issue of child labour filed by Bandhua Mukti Morcha in 1985 was disposed off by the Apex Court on 21st February 1997, wherein the petitioners had contended that the employment of children in any industry or in any hazardous industry was violative of Article 24 of the Constitution and derogatory to the mandates contained in Articles 39 (e) and (f) and 45, read with the preamble. The petitioners accordingly prayed for the issue of the Writ of Mandamus directing the Government to take steps to stop employment of children in carpet industry in the State of U.P., appoint a committee to investigate into the conditions of employment, and to issue such welfare directives as are appropriate for total prohibition of employment of children below 14 years and to direct the respondents to give them facilities like education, health, sanitation, nutritious food etc. Pursuant to the filing of this Writ petition the court appointed a committee to investigate and report to the court on the engagement of children below 14 years by carpet manufacturers. The committee submitted comprehensive reports detailing the incidence, exploitation and the hazardous nature of child labour. The court in a laudatory exposition of the importance of child and childhood observed that “every nation developed or developing, links its future with the status of child..... If children are deprived of their childhood... socially, economically, physically and mentally..... the nation gets deprived of the potential of human resources..... (and) due to poverty, children and youth are subjected to many visible and invisible sufferings and disabilities..... Therefore ban on employment of children must begin with most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like. The court further directed the Government of India to convene a meeting of ministers of state governments and their principal secretaries for evolving principles for
progressive elimination of child labour and periodical reports to be submitted to the court.27

The Court has maintained that child labour is an economic problem and the total prohibition of child labour in any form may not be socially feasible in the prevailing socio-economic environment. That is why it has called for a ban to begin from the most hazardous occupations. But it may be pointed out here that the assertion of the court that the poverty is the root cause of child labour is over simplification of a very complicated problem. While poverty may be one of the causes it is definitely not the only cause. The court here may also be not in a position to enforce its directions regarding child labourers. That such orders do not achieve much in terms of actual implementation was brought home clearly in the *suo moto* contempt proceedings initiated by the Supreme Court against the officials of State of Haryana when it was found that orders regarding bonded labour made in the Writ petition brought in by Bandhua Mukti Morcha, was still not implemented.28

Another judgement which is considered as a landmark ruling of the Supreme Court is the *M.C. Mehta V. State of Tamil Nadu and Others case*29, where the deeper implications of the problem of child labour was considered. Taking the problem as a national one, the court considered it fit to travel beyond the confines of Sivakasi (T.N.) to which place the present petition related and dealt with the issue in a wide spectrum and broader perspective. The court felt that the judiciary being one of the three principal organs of State, when called upon to decide on the matter of such great public concern and significance as abolition of child labour, has to contribute its share for the betterment of the most vulnerable section of the society.

The *M.C. Mehta case*30 brought to surface that there were 227 registered match factories in Sivakashi providing employment to 27,338
workmen, out of which 2,941 were children. Fatal accidents were not uncommon owing to the hazards involved in the manufacturing processes of matches and fire works. Speaking for the court, Hansaria J. addressed the problem “as to how we can, and are required to, tackle the problem of child labour, solution of which is necessary to build a better India”.

The Court held that in view of the Constitutional mandate of Article 24, children below the age of 14 years cannot be employed in any factory or mine or other hazardous work and they must be given education as mandated by Article 45 of the Constitution as interpreted by the Apex Court in *Unni Krishnan case*. The Court held that poverty is the basic reason which compels parents to send their children to work. If compulsory education is insisted upon, may be this problem would be taken care of to a certain extent. However, the child of poor parents would not receive education, if he has to earn to survive. Therefore, till an alternative income in assured to the family, the question of abolition of child labour would remain fantasy. The Court, therefore, issued certain directions regarding the manner in which the children working in the hazardous occupations are to be withdrawn from work and rehabilitated and also the manner in which the working conditions of the children working in non-hazardous occupations are to be regulated. The important directions include that the children could be employed in packing (in the present case of match industry) but packing should be done in an area away from the place of manufacture to avoid exposure to accident. The Court was also of the opinion that in consideration of the special adaptability of children, at least 60% of the prescribed minimum wages for an adult employee in the factories doing the same job should be given to them. The Court also emphasized the need for providing special facilities such as education, recreation and opportunity for socialization. It further held that the facility for general and
job-oriented education should be provided. Moreover school time should be adjusted in such a manner that employment is not affected.

Other important directions include payment of compensation amounting to 20,000/- by the offending employer of every child employed in contravention of the provisions of Child Labour (Prohibition & Regulation Act, 1986; constitution of a Child Labour Rehabilitation-cum-Welfare Fund, giving alternative employment to an adult member in place of a child withdrawn from a hazardous occupation; or payment of Rs. 5000/- for each child employed in hazardous employment by the appropriate government; completion of the survey of children working in hazardous employment within a period six months; payment of interest on the corpus of Rs. 25,000/- (Rs. 20,000/- to be paid by the employer and Rs. 5000/- to be contributed by the appropriate government) to the family of the child withdrawn from work; provision of education in a suitable institution for the child withdrawn from work; constitution of a separate cell in the Labour Department of the appropriate government for the purpose of monitoring etc.33

It is submitted here that the decision of the Court appears to be highly confusing. It has allowed the children to be employed (in packing and process) on account of poverty, which is not in tune with the constitutional spirit and aspirations, which envisages a fair deal for children. Again there is too much stress on poverty, which is certainly one of the reasons for children to take to work but not the only cause. While on the other hand, the activist role of judiciary to provide social security to child labourers is evident from this decision when it calls for constitution of Rehabilitation-cum-Welfare Fund, compensation from offending employer, provision of education etc. But how effective and practicable these directions are for tackling the problem of child labour remains to be seen.
The Hon'ble Supreme Court, it seems, also could not foresee that the risk is also involved in the sorting out and processing for the purpose of packing of such objects when it observed that tender hands of young workers are more suited to sorting out the manufactured products and process it for the purpose of packing. Going a step further against the rights of the child it considered children's special adaptability working in match and fire-work in sorting out and packing manufactured products and holds that 60% of the prescribed minimum wages for adult worker doing the same job should be given to child workers. It is not understandable why the Court has insisted only on 60% and not the full wages of adult workers.

**C) Judicial attitude towards other Child rights issues:**

On the point of true scope and meaning of traffic in human beings and other forms of forced labour, the court has specifically pointed out that “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 judicial response to the problem of eradicating the barbarous practice of child abuse and forced prostitution has to be assessed in the background of sordid social realities in *Vishal Jeet V. Union of India* a public interest litigation which exposed the miseries of children and women being exploited by highly organized sex industry. The judgement summarized the averments relating to livid lucid tales of sex and sickening details alleged to have been confessed by children who had escaped or were rescued from brothels. Showing its sensitiveness to the problem and in order to discourage the practice of traffic in human beings and forced labour the court referred to Article 23 of the Constitution which prohibits traffic in human beings and clause (e) of Article 39, which *inter alia*, provides that the tender age of children is not abused and the citizens are not forces by economic necessity to enter into work unsuited to
their age and strength. The Apex Court also referred to clause (f) of Article 39, which, *inter alia*, provides that childhood and youth are protected against exploitation and against moral and material abandonment. The judiciary rightly realizes that the malady is not only social but also a socio-economic problem, and therefore, the measures that are to be taken in this regard should be more preventive than punitive.

The menace of bonded or forced labour, a hangover of feudal society, which constitute an ugly and shameful part of our national life has also been severely dealt with by the judiciary. In the case of *People’s Union for Civil Liberties V. Union of India* which was a tragic account of cruelty meted out to the child workers and the subject matter of Public Interest Litigation brought to court by PUCL based on a report by N.G.O. ‘Campaign against Child Labour’. “The Supreme Court upheld the claim in the public law for compensation for contravention of human rights, and fundamental freedoms, the protection of which is guaranteed by constitution”. The report pointed out that one Rajput used to go to Madurai in Tamil Nadu and procure children by paying paltry sums of Rs. 500/- to Rs. 1000/- to poor parents. These children were then forced into bonded labour. Eight year old Shiva Murugan, so procured, was beaten to death by Rajput. Through the courts orders three other boys aged 13, 15 and 16 years were rescued by Maharashtra police which was still unable to trace Shiva Murugan’s brother Raja Murugan. Rajput had in the meantime been convicted for the offence of murder. The court ordered a compensation of Rs. 2 lakh to be paid by the State of Maharashtra to Raja Murugan, who was still untraced, for himself and his deceased brother. The other boys were paid Rs. 75,000/- each. The activist role of judiciary in this case not only saved the children from being further exploited but also compensated them for the miseries and exploitation that they had gone through. The tough stance of the court also helped in
nabbing the murderer of an innocent child who otherwise would have remained unpunished and thereby the lives of many more children would have been put into danger.

The Judiciary has also kept the Executive branch of the Government on its toes vis-a-vis its responsibilities. The Apex Court in *Sheela Barse V. Union of India*\(^{40}\) emphasized the significance of the dignity of youth and childhood in a civilized society and recalled that Article 39 (f) mandated that the children be given the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.\(^{41}\) This case was moved to the Supreme Court by a freelance journalist and social worker Sheela Barse who was seeking the release of all the children below 16 years detained in jails in different states of the country. The petitioner had also prayed for information about the juvenile courts, observation homes and schools for children. The Supreme Court while condemning the detention of children below 16 years very daringly held that, "it is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country. It further said that it is the atmosphere of jails which has a highly injurious effect on the mind of the child estranging him from the society and breeding in him aversion bordering on hatred against a system which kept him in jail..... on no account should be children be kept in jail".\(^{42}\)

Again regarding the basic rights and plight of juvenile offenders, the Apex Court in the case of *Munna V. State of U.P.*\(^{43}\) observed that the juvenile delinquency is, by and large, a product of social and economic maladjustment. Even if it is found that these juveniles have committed any offence they should not be allowed to be maltreated. They do not lose their fundamental rights when they enter the jail. Moreover, the object of the punishment being reformation, we fail to see what social objective can be
gained by sending them to jails where they come in contact with hard criminals and lose whatever sensitivity they may have to finer and nobler sentiments.\textsuperscript{44} In this case, many juvenile under trials were kept in Kanpur Central Jail where they were being sexually exploited by the adult prisoners, inspite of the fact that there was children’s home in Kanpur. The court condemning this practice and declaring it illegal, observed that no person under 16 years of age should be sent to jail, instead he must be detained in a children’s home or any other suitable place of safety as the law is very much concerned with ensuring that a juvenile does not come into contact with hardened criminals and that his chances of reformation are not hampered by contact with habitual offenders. The case of \textit{Gopi Nath Gosh V. State of West Bengal}\textsuperscript{45} also reflects high judicial activism as the Supreme Court in this case set aside the sentence of imprisonment for life imposed by the trial court and confirmed by High Court against a minor who was tried with other accused for murder and remitted the case to learned Magistrate for disposal according to the provisions of the juvenile Act.

The Supreme Courts order in \textit{L.K. Pandey}\textsuperscript{46} ushered in a new philosophy of juvenile justice, wherein the Court observed that every child has a right to love and affection and of moral and material security and this is possible if a child is brought up in the family and that is why inter-country adoptions should be permitted after exhausting the possibility of adoption within the country by Indian parents. However, the Court held that its primary object must be the welfare of child and that great care must be exercised in permitting the child to be given to the foreign parents. Again in \textit{Gaurav Jain V. Union of India}\textsuperscript{47} the Apex Court upholding human dignity directed that the children of prostitutes, including child prostitutes should be treated as neglected juveniles as defined by the \textit{Juvenile Justice Act, 1986} and no stigma should be attached to them. They should be rescued from the red-
light areas and shifted to juvenile homes for a short stay to relieve them off the trauma they might have suffered and thereafter they should be properly rehabilitated. The court also highlighted the need to eradicate prostitution and their consequent rehabilitation.

On the issue of child rape the judges have reacted very strongly and have called for, maximum punishment. In *Kamta Tiwari V. State of Madhya Pradesh*\(^{48}\) where the accused raped a girl of seven years, strangulated her to death and threw her body into a well to conceal the evidence, the Supreme Court sensing the motivation of the perpetuator, the vulnerability of the victim, the enormity of crime and its execution was persuaded enough that it was one of the ‘rarest of rare cases’ where the sentence of death was eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society’s abhorrence of such crimes.

The above mentioned cases reveal that the role of judiciary has been quite significant in promoting and protecting the rights of child, it has displayed its sensitivity to children by giving new interpretation to laws in order to address their problems and provide relief to them. But despite all this, sometimes the casual attitude of some of the judges in matters pertaining to child rights has punctuated the exercises that the judiciary has resorted to. For instance the Madhya Pradesh High Court in *Madan Gopal Kakkad V Naval Dube*\(^{49}\) a case of child rape, construed it as one of outraging the modesty of a girl, and then let-off the accused, a doctor, with a fine of Rs. 3000/- (on appeal, however, the Apex Court convicted the accused for the offence of rape). Again in *State of Rajasthan V. Ram Narain*\(^{50}\) a rape case on a victim aged between 15 to 17 years, the Rajasthan High Court surprisingly reduced the sentences to a period already undergone viz. one and a half month. This was done inspite of the trial judge having found the accused guilty under section 376, 366 and 342 of the IPC and being sentenced seven

140
years imprisonment. The Supreme Court while setting the judgment of High Court aside observed\(^{51}\) that the High Court committed a grave error of law, in reducing the sentence.

The Sapna Jacob V. Government of Kerla\(^{52}\) shows the strong influence of patriarchal ideology and the Hindu sectarian view of the reservation policy. In this case it was held that a Government Order extending concessions given to Schedule Caste’s children of inter caste marriages, did not have the effect of making such a child of the inter caste marriage entitled to the benefit of reservation earmarked to SC’s. Sapna Jacob was born out of a wedlock between her Schedule Caste mother and Christian father. The court denied the benefit of reservation to her on the ground that she being a Christian does not satisfy the condition or requirements of the Schedule Caste policy, which says that the person must be professing the Hindu religion. The Judgement is a reversal of the Andhra Pradesh ruling\(^{53}\) where it was held that a person from a forward community marrying a person from a backward class could claim admission from the reserved quota. The Court observed that since a Hindu marriage was not a contract but a samskara, the wife passed into the domain of her husband on marriage and is qualified for reservation quota.

The decision in Lekh Raj Kukreja V. Raymon\(^{54}\) is rather unfortunate, where the High Court reserved the order of lower court regarding the interim custody of child. In this case, the mother (who was also the custodian of her daughter) had sought the custody of her 11 year old son (studying in hostel under the guardianship of his father) for two week during vacation. The lower court had granted it on the ground that by giving such custody for a period of two weeks to mother, he would be in the company of his sister. On appeal, however, the High Court reversed the order and held that it was not appropriate to give custody to mother “as if he was a chattel”. It gave only weekly visiting rights to the mother till the opening of school. It is submitted
 Chapter 1

here that the consideration which weighed with the lower Court in giving interim custody to the mother was indeed logical and far-sighted. It surely is in the interest of child to have the company of the other sibling and to know her better. Divorce and separation between the spouses should not bring about a divorce between the brothers and sisters as well. As far as possible the courts should hope them to mix-up and grow together with love and affection which is their foremost right, rather than isolate them with their respective legal guardian or custodian.

SUMMARY:

The role of judiciary has been quite significant in promoting the child rights and welfare inspite of the deviations in few cases as cited. Before the dawn of judicial activism, the poor and down trodden had been regarding the law as something mysterious and forbidding, always taking away something away from them and not as positive and constructive social device for changing the social economic order and improving their life conditions by conferring rights and benefits on them. In such a situation the Supreme Court of India has injected the concept of equal justice by invoking judicial radicalism and setting a new Constitutional ethos at a time when there was lack of concern on the part of State for human values. The judiciary by giving life and content to the law has almost brought a revolution in the life of child workers in India. The mandates of judiciary in various cases has given a new dimension to several areas such as locus standi, minimum wages to children, protection of fundamental rights, sexual exploitation of children in flesh trade, employment of children in hazardous occupation, etc. which reflects judicial creativity in the field of welfare of the children. The Apex Court time and again has insisted on providing special facilities to child workers which include facilities of education, scope for recreation and opportunity of
socialization to promote child labour welfare.\textsuperscript{59} The credit also goes to judiciary for its exemplary role in highlighting and enforcing juvenile justice.\textsuperscript{60} It is largely due to judicial activism that we find a sort of awakening even among the children towards their rights. They have now started to realize that they have certain rights even against their parents which they can, of course, exercise. It is due to this awakening that a child of 14 years knocked the door of Patiala High Court and pleaded to stop his marriage, which was arranged contrary to his own wishes.\textsuperscript{61}

The judiciary has very daringly endeavoured to uphold the spirit of child labour welfare legislations by consistently reprimanding everyone who has violated their spirit. The court has, time and again, reminded the State to direct its policy in consonance with the mandate of National Charter where child workers have opportunities and facilities to grow in a healthy and dignified manner.\textsuperscript{62} The Apex Court in its mission to secure juvenile justice\textsuperscript{63} did not even spare its fellow judges when it blasted them for their failure to submit the report about conditions of the children in jails and about existence of the Juvenile Courts and Observation Homes within their jurisdiction. It may be pointed out that though the courts have taken much pain for securing social justice of children from time to time, but it has certain limitations. It cannot monitor every welfare scheme as it is over burdened with work. It is, therefore, for the Executive to complete the task by implementing the judicial mandates in true letter and spirit to get, the desired results. And without its active cooperation, we cannot usher in a new social order in which justice, social, economic and political and equality of status and opportunity can prevail.

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References:

10. Ibid at 735.
11. Ibid at 737.
14. See, (i) Fertilizer Corporation Kamgar Union v. Union of India, AIR 1981 SC 344, and
       (ii) Bahdhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
15. See, People’s Union for Democratic Rights v. Union of India, AIR 1982, SC 1473. (Asiad Case).
16. Ibid.
17. See, (i) Bahdhua Mukti Morcha v. Union of India, AIR 1984 SC 802. (Mukti Morcha Case)
19. Supra note 15.
20. Ibid at 241.
21. Supra note 15.
22. Supra note 13.
24. Ibid at 533.
25. Ibid at 534.
26. Ibid at 557.
27. Ibid at 558.
31. Supra note 29 at 765.
32. Supra note 9.
33. Supra note 29 at 771-74.
34. See, AIR 1982, SC 1473.
36. Ibid.
37. Ibid at 1416.
39. Cases referred to:
41. Ibid at 598.
42. AIR 1986 177.
44. Ibid.
49. Madan Gopal Kakkad V. Naval Dube, JT 1992 (3) SC 270.
50. State of Rajasthan V. Ram Narain, 1996 (2) Scale 34.
51. Ibid at 36.
52. Sapna Jacob V. Government of Kerla, AIR 1993 Ker. 75.
53. R. Uma Devi V. Principal Kurnool Medical College, Kurnool, AIR 1993 A.P. 38.
55. Supra note 6.
56. Supra note 15.
57. Supra note 35.
58. Supra note 15.
59. Supra note 6
60. Supra note 43.
62. Supra note 6.
63. Supra note 40.