Chapter IVth

Judicial Approach
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We, the people of India, have given to ourselves a magnificent written constitution to achieve justice, liberty and equality. In order to achieve these objectives, three different organs have been constituted, and they are legislature, executive and judiciary. Each organ is independent and supreme within the sphere allotted to it. The Supreme Court of India, at the apex has been assigned a very important role and constituted as a guardian of the constitution. It expounds and defines the true meaning of law. It is the ultimate interpreter of the constitution and law giver. Thus, it puts a brake on the legislature as well as executive. Therefore, the judicial intervention is one of the most important and powerful instruments for combating any social problem.

Access to justice to protect their Fundamental Rights, was almost illusory for the weaker sections of Indian Humanity due to their poverty, ignorance and illiteracy. To them, rights and benefits conferred by the constitution meant nothing. Because of their handicap, they lack capacity to assert their rights. Thus the majority of the people of our country were subjected to denial of justice. The judiciary regarded it as its duty to come to rescue of underprivileged to help them to reap the benefits of economic and social entitlements. The strategy of Public Interest Litigation (PIL) was evolved to bring justice within the reach of the underprivileged classes. Therefore, the Supreme Court ruled that where judicial redress is sought in respect of a legal injury or a legal wrong suffered by persons, who by reason of their poverty or disability are unable to approach the court for enforcement of their fundamental rights, any member of public acting bonafide, can maintain an action for judicial redress.¹ A large section of the people in India comprise of ‘have-nots’ who suffers from different kinds of disabilities and are not even aware of any

¹ Anand, A.S (Dr.) (2002) “Approaching The Twenty-First Century: The State Of The Indian Judiciary And The Future Challenges” in “Justice For Women: Concern and Expressions”, Universal, New Delhi, p.49
of their constitutional rights. Therefore, access to the court for poor and
downtrodden has become a reality through the medium of Public Interest
Litigation brought by social activists who are well equipped to espouse their
cause. Judicial creativity of this kind has enabled realization of the promise of
socio-economic justice envisaged in the Preamble to the Constitution of India. This expanded role of judiciary has been given the title of “Judicial Activism”.
In cases where the executive refuses to carry out the legislative will or ignores
or thwarts the legislative will, it is surely legitimate for courts to step in and
ensure compliance with the legislative mandate. It must be remembered that the
judiciary is always moved by an aggrieved person after traditional routes have
failed. When the court is apprised of and is satisfied about gross violation of
basic human rights, it can not fold its hands in despair and look the other way.
The judiciary can neither prevaricate nor procrastinate. It must respond to the
knock of the oppressed and the downtrodden for justice by adopting certain
operational principles within the parameters of the constitution and pass
appropriate directions in order to render full and effective relief. Generally,
judicial activism encompasses an area of legislative vacuum. It reinforces the
strength of democracy and reaffirms the faith of the public in the Rule of Law.
If the judiciary was also to shut its door to the citizens who find the legislature
as not responding and executive indifferent, the citizen would take to the streets
and that would be bad both for the rule of law and democratic functioning of
the State. However, the judiciary can act only as an alarm-clock and not as a
time-keeper. Thus the traditional rule of ‘Locus standi’ has been liberalized by
the introduction of the concept of public interest litigation. This is for the
enforcement of fundamental rights of a group of persons or community who are
not able to enforce their rights on account of their incapacity, poverty or
ignorance of law.

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2 Ibid.
3 Id.at 51
4 Id.at 52
5 Id. at53
The Supreme Court of India is a protector and guarantor of the fundamental rights of the people of India. Majority of them are ignorant and poor. The liberalization of the rule of *locus standi* came out of following considerations: (1) to enable the court to reach the poor and the downtrodden sections of society who are denied their rights and entitlements, (2) to enable individuals or group of people to raise matters of common concern arising from dishonest or insufficient governance, and (3) to increase public participation in the process of constitutional adjudication. The liberal rule of *locus standi* has helped social action group to come to the court on behalf of disadvantaged sections of society. Therefore, the public interest litigation was seen as an instrument of bringing justice to the doorstep of the poor and the less fortunate.

The strength of any society depends on the health and welfare of the child. It is in this perspective that wise founding fathers of our constitution have envisaged many provisions for their welfare and cast an obligation on each and every instrumentality of the State, including the judiciary, to transform the *status quo ante* into a new human order in which there will be equality of status and opportunity for all children, high or low.

A look at the judicial behaviour in India in last over five decades, shows that the higher judiciary has gone through many an oscillation in its approach and conduct, depending upon the strengths and weaknesses of the political organs of the state. The Supreme Court of India is said to have become Supreme Court for Indians only during the period of 1980’s and thereafter. Many time, the Court has changed its attitude and adapted the law and constitution to suit India’s changing needs. This change can be observed in *Asiad case*, where the Supreme Court held that the court did not exist only for the rich and the well-to-do but also for poor, the downtrodden, and the have-nots. It was only the moneyed who had, so for, held the golden key to unlock the doors of justice. Now, the ‘portals of the court are being thrown open to the

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7 People’s Union for Democratic Rights V. Union of India; AIR 1982 SC 1473.
poor and the downtrodden.\textsuperscript{8} Therefore, the Supreme Court realized that, “the time has come when the courts must become the courts for poor and struggling masses of this country. They must shed their character as upholders of the established order and the \textit{status quo}. They must be sensitized to the need of doing justice to the large masses of the people to whom justice has been denied by cruel and heartless society for generations. The realization must come to them that social justice is the signature tune of our constitution and it is their solemn duty under the constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realization of the constitutional goal. This new change has to come if the judicial system is to become an effective instrument of the social justice, for without it, it can not survive for long”.\textsuperscript{9} However, an analyses of the judicial development that took place during 1980’s makes it clear that the Supreme Court has succeeded in forging a new tool in the form of PIL, in order to provide to all the sections of Indian society, an easy access to justice. In the process the court has broken the procedural shackles of the concept of \textit{locus standi} in a proceeding under Article 32 and 226 of the constitution.

The judiciary as an institution is charged with the duty of holding the balance between a state or states and the union, and between the state and the citizen, and some times between the states and the individual. It has to hold the scales even in the legal combat between rich and poor, the mighty and the week without fear and favour. India is a welfare State governed by a constitution which lays special emphasis on the protection and well-being of the weaker sections of society. It shows particular regard for children. Therefore, in India the judiciary has played quite significant role in promoting the welfare of child. Justice Subba Rao, the former Chief Justice of India, rightly remarked:

“\textit{Social justice must begin with the child, unless a tender plant is properly nourished, it has little chance of growing into strong and useful tree.}

\textsuperscript{8} \textit{Ibid. at 1478}

\textsuperscript{9} \textit{Ibid.}
So, first priority in the scale of justice should be given to the welfare of children.\(^\text{10}\)

Realising that the future of the society depends on the proper upkeep and bringing up of the children today, the Supreme Court in *Sheela Barse v. Secretary, Children Aid Society and others*,\(^\text{11}\) held: “If there be no proper growth of children of today, the future of the country will be dark. It is obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. If a child goes wrong for want of proper attention, training and guidance, it will be indeed to be a deficiency of the society and of the government of the day. A problem child is indeed a negative factor. Every society must, therefore, devote full attention to ensure children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up”.\(^\text{12}\)

The Supreme Court in *Rohit Singhal and others v. Principal, Jawahar N. Vidyalaya & others*,\(^\text{13}\) held that “children are not only the future citizens but also the future of the earth. Elders in general, and parents and teachers in particular, owe a responsibility for taking care of the well-being and welfare of children. The world shall be a better or worse place to live according to how we treat the children today”.

Keeping in view that the proper health, education and environment for children are imperative needs of the hour. Justice P.N. Bhagwati in *Bandhua Mukti Morcha v. Union of India*,\(^\text{14}\) observed: “This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principle of State Policy and particularly clause (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the

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\(^{11}\) AIR 1987 SC 656:(1987) 3 SCC 50.

\(^{12}\) Id. at 659

\(^{13}\) AIR 2003 SC 2088: (2003) 1 SCC 687.

health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State - neither the Central government nor the State governments, has the right to take any action which will deprive a person of the enjoyment of these basic essentials which go to make up a life of human dignity."  

In this direction the apex court has laid emphasis on the fact that the important task of social justice is to take care of child, for him lies the hope of nation’s future. In Vikram Deo Singh Tomar v. State of Bihar, the Supreme Court rightly held that it is the constitutional duty of the state to abide by the constitutional standard and provide at least minimum conditions ensuring child’s dignity. Describing the ‘care home’ Patna as a crowded hovel in which a large number of human being had been thrown together, compelled to subsist in conditions of animal survival, the Court directed the state of Bihar to take immediate steps to comply with the various directions given by the court for the welfare of the children of care homes. The Hon’ble Court showed a particular regard for children and felt the need to afford them opportunities to live with human dignity and maintained establishments for the care of those unfortunates who were the castaways of an imperfect social order and for whom necessary provision, must be made for their protection and welfare. The Court was highly critical about the miserable conditions of the establishment where the children and women were detained, compelling most of them to sleep on broken floors in damp and dank conditions with no covering whatever to protect them from chilly winds and near freezing temperatures of the north India winter who fed a wretched health-denying diet,

15 Id. at 811&12
16 AIR 1988 SC 1782.
17 Id. at 1783.
were denied the basic amenities of convenient toilets and private bathing place, who, if they complained, were beaten up, although attacked by diseases and illness, were unable to find timely medical relief.\textsuperscript{18} Probably moved by the appalling conditions of inmates, the Supreme Court further directed the state government to renovate the existing building to provide sufficient amenities by way of living rooms, bathrooms and toilets within the building and also provide adequate water and electricity, suitable range of furniture including cots must be provided at once, and adequate number of blankets and bed sheets besides clothing, must be supplied to inmates.\textsuperscript{19} It is further said that on non-compliance with the order, the case may be reopened and further steps may be considered for its enforcement.

Similarly, sincere efforts have been made by the Supreme Court to uphold the dignity of children born to prostitute, in \textit{Gaurav Jain v. Union of India},\textsuperscript{20} by rejecting the submission that provision should be made for separate schools and hostels for children of prostitutes. The Court was of the view that separating prostitutes’ children by locating separate schools and providing separate hostels would not be in the interest of such children and society at large. Generally it is said that prostitute do not want to have children but if they are born to them it is against their desire not to rear children.................such children should be segregated from their mothers and be allowed to mingle with others and become part of the society.\textsuperscript{21} Further, the Court added that children of prostitutes should not be permitted to live in inferno and the undesirable surroundings of prostitutes’ homes. This is in particular so for the young girls whose bodies and minds are likely to be abused with growing age for being admitted into the profession of their mothers.\textsuperscript{22}

\textsuperscript{18} Id. at 1884.  
\textsuperscript{19} Ibid.  
\textsuperscript{20} AIR 1990 SC 292.  
\textsuperscript{21} Id. at 293  
\textsuperscript{22} Ibid.
In *Vishaljeet v. Union of India and other States*, the Supreme Court after understanding the plight of the victims of the prostitution, especially children who are forced into it, passed various directions to the Governments (State and Central) to implement the law, to set up advisory committees to make suggestions for measures to be taken to eradicate prostitution and also introduce social welfare programmes. The court also directed that steps should be taken to appoint trained personnel in the rehabilitatory homes. Further, the central government was directed to look into the inadequacies of the law, system, institutions and make appropriate amendments.

However, on the basis of recommendations of the advisory committee appointed by the court in Gaurav Jain's case, the Supreme Court in *Gaurav Jain v. Union of India*, held that “even if the economic capacity of the mother of a neglected juvenile in the red-light area to educate and to bring him up would not relieve the child from social trauma. So, they should be rescued, cared for and rehabilitated. As stated earlier, the counseling, cajoling and coercion of the fallen woman to part with the child or child prostitute herself from the manager of the brothel is more effective, efficacious and meaningful method to rescue the child prostitute. The income criteria, therefore, is not a factor in not rescuing the child prostitute for rehabilitation”.

The urgent need to tackle the vital issues of child survival, growth, health and labour which in India are turning into a serious developmental crisis, have also been emphasized by several important judicial interventions in recent years. This highlights the fact that in a democracy with lopsided growth and dire poverty, the judiciary can step in to demand accountability from government and order relief from deprivation. The most far-reaching directive from the recent Supreme Court judgment on Integrated Child Development Services (ICDS) decided on December 13, 2006 in *PUCL v. Union of India and Others*; wherein the court specified a time frame (December, 2008) to

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23 (1990) 3 SCC 318
24 Supra note 20
25 (1997) 8 SCC 114
“sanction and operationalise” the proposed *Anganwadi* centres (AWC). It mandated that the Central Government identify SC/ST hamlets for the creation of AWCs “on a priorities basis”. It further directed that slums and rural habitations are entitled to an “anganwadi on demand”, in cases where there is a settlement with at least 40 children under six. The time period for this is three months from the date of demand. In addition, for the first time the Court took a serious view of the non-implementations of its earlier orders. It asked the Chief Secretaries of nine States to explain the lapse. The Court also issued notices to Chief Secretaries of 12 States for contempt proceedings. Thus, the Supreme Court’s intervention emphasizes the serious nature of the deprivation that the majority of young children in this country are subjected to.

It is thus evident from the judicial trend and attitude that the issue of child protection and welfare remained always under the active consideration of the apex court. Justice P.N. Bhagwati, in *Laxmi Kant Pandey v. Union of India*²⁶, has expressed his viewpoint on the importance of children in following words: “It is obvious that in a civilized society the importance of child welfare can not be over-emphasised, because the welfare of the entire community, its growth and development, depends on the health and well-being of its children. Children are a “supremely important national asset” and the future well-being of the nation depends on how its children grow and develop.................there is a growing realization in every part of globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realization of the role which they have to play in the nation building process without which the nation can not develop and attain real prosperity because a large segment of the society would then be left out of the development process”.²⁷

²⁶ AIR 1984 SC 469.
²⁷ Id. at 474.
The question of child welfare seems to cause considerable anxiety to the court in eradicating exploitation of children, including sexual exploitation. It was probably due to this reason that court issued certain directions in this regard to the central, the state governments and union territories. The court further laid down certain principles and norms which must be observed and the procedure which must be followed in adoption of children.

Thus, judiciary with its innovative and inspiring judgments has been a bedrock of social justice. This concept of social justice would remain a myth if protection could not be provided to children—the future generation of any nation. With a collage of constitutional and legislative provisions the judiciary took up cudgels against the exploitation of children and whenever called upon gave full protection to the rights of children in consonance with the international commitments which India has made. However, the biggest challenge—the child labour and its exploitation—remains.

Throwing light on the problem of child labour, the Supreme Court of India has shown its concern by bringing occupations and processes under the court’s order by the direct application of constitutional provisions. In People’s Union for Democratic Rights v. Union of India [Asiad Case]; a liberal interpretation was given to the term ‘hazardous employment’. In this case a writ petition is brought by way of PIL in order to ensure observance of the provisions of various labour laws in relation to workmen employed in the construction work of various projects connected with Asian games. The matter was brought to the attention of the court by first petitioner, an organization formed for the purpose of protecting democratic rights, by means of a letter addressed to the court. The letter was based on a report made by a team of three social scientists who were commissioned by first petitioner for the purpose of investigating and enquiring into conditions under which the workmen engaged in the various Asiad project were working. Since the letter was based on report

29 Supra note 7
made by social scientists after personal investigation and study, it was treated as a writ petition by the court and notices were issued to the respondents.

It was contended that the Employment of Children Act, 1938 was not applicable in case of employment of children in the construction work of Asiad project in Delhi, since the construction industry was not a process specified in the schedule to the Children Act.

The Supreme Court held that the term was wide enough to include employment in construction work and directed that the schedule to the Employment of Children Act, 1938 should be suitably amended to include construction industry in it. It was held by the Court that:

"Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which even if not followed up by appropriate legislation must operate *proprio vigore*. There can therefore, be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Act, no child below 14 years can be employed in construction work, and the Union of India as also every state government must ensure that this constitutional mandate is not violated in any part of the country".30

Following the constitutional dictates, the Supreme Court once again in *Labourers Working in Salal Hydro Project v. State of J & K*31; has reiterated the earlier principle enunciated in *Asiad case*32, and held that construction work is a hazardous employment and no child below 14 years can, therefore, be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 of the Constitution.

In this case, the issue of Indian Express dated 26th April, 1982 carries a news item that a large number of migrant workmen from different States including the State of Orissa were working on the Salal Hydro Electric Project

30 Id. at 1480
32 Supra Note 7, Asiad case.
in difficult conditions and they were denied the benefits of various labour laws and were subjected to exploitation by the contractors to whom different portions of work were entrusted by the central government. The People’s Union for Democratic Rights thereupon addressed a letter to Mr. Justice D.A. Desai enclosing a copy of news report and requesting him to treat the letter as a writ petition so that justice may be done to poor labourers working in the project. The letter was placed before the Supreme Court and it was treated as a writ petition. The Court directed the Labour Commissioner, Jammu to ascertain:

- Whether there are any bonded labourers employed on this project and if so, to furnish their names;
- Whether there are any migrant workers who have come from other states;
- What are the conditions in which the workers are living; and
- Whether the labour laws enacted for their benefits are being observed and implemented.

In pursuant to the order made by the court, the Labour Commissioner visited the site of the project and submitted the report that adequate medical care is provided to the workmen employed on the project site. It is also reported 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 observed that:

“The problem of child labour is a difficult problem and it is purely on account of economic reasons that parents want their children to be employed in order to be able to make two end meet. The possibility of augmenting their meager earnings through employment of children is very often the reason why parents do not send their children to schools and there are large drop outs from schools. This is an economic problem and can not be solved merely by legislation. So long as there is poverty and destitution, it will be difficult to
eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate, the incidence of child labour because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of society and to play a constructive role in socio-economic development of the country. We must concede that having regard to the prevailing socio-economic conditions it is not possible to prohibit child labour altogether and, in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against the employment of child labour only in factories, mines or other hazardous employments. The Central Government would do well to persuade workmen to send their children to a nearby school and arrange not only for the school fee, for charges, books and other facilities such as transportation.\textsuperscript{33}

The Supreme Court in this case has traveled beyond its traditional job. In fact the court has played a parental role while directing the central government to persuade the workmen to send their children to a nearby school and arrange not only for school fee but also provide for free of charge books and other facilities. Further, the court suggested that whenever, the central government undertakes a construction project which is likely to last for some time, the Central government should provide that the children of construction labourers who are living at or near the project sites should be given facilities for schooling and this may be done either by the Central government itself or if the government entrust 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 effort of Supreme Court to combat child labour immediately or in a phased manner is reflected in case of Rajangam, Secretary, District Beedi Workers' Union v. State of Tamil Nadu & others with Chandra Segaram v. State of Tamil Nadu & others,\textsuperscript{34} in this case a letter from the District Beedi Workers' Union in the State of Tamil Nadu was treated as a writ petition under article 32 of the

\textsuperscript{33} Supra note 28 at 191

\textsuperscript{34} (1992) 1 SCC 221.
constitution. In the letter, complaint was made about non-payment of appropriate
dues for work taken, failure to implement the provision of labour laws, prevalence
of contract labour system etc. there is a connected petition also relating to the same
subject matter with different ancillary relief covering employment of child labour
and non-implementations of the Beedi and Cigar Workers (Conditions of
Employment) Act, 1966. Both the applications are considered together.

The Supreme Court opined 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 that is to be decided by the state
governments but it should be within the period not exceeding three years".35

Contrary to these judgments, however, the apex court could not maintain
its rhythm, dynamism and championship for rights of the child in M.C. Mehta v. State of Tamil Nadu and Others;36 when it went out of tune with the
constitutional spirit and aspirations envisaging a fair deal for children.

The petitioner by way of PIL before the Supreme Court highlighted the
problems of employment of children in match factories in Svakasi, Kamraj
district of Tamil Nadu. Judicial notice of frequent accidents occurring in match
factories was taken. Considering the health hazards involved in the
employment of children in match factories, the Court held: "we are of the view
that employment of children within the match factories directly connected with
the manufacturing process up to final production of match sticks or fireworks
should not at all be permitted. Article 39 (f) of the constitution provides that the
State should direct its policy towards securing that children are given
opportunities and facilities to develop in a healthy manner and in conditions of
freedom and dignity and that childhood and youth are protected against
exploitation and against moral and material abandonment".37

35 Id. at 224
37 Id. at 284
The Court further observed: “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 Article 45 they are meant to be subjected to free and compulsory education until they complete the age of 14 years”.

Regarding the welfare of child labour, the Court held that a compulsory insurance scheme should be provided for both the adult and child employees taking into consideration the hazardous nature of employment. The State of Tamil Nadu was directed to ensure that every employee working in a match factory is insured for a sum of Rs.50,000 and the Insurance Corporation, if contacted, should come forward with a viable group insurance schemes to cover these employees in the match factories of Sivakasi area. However, taking into consideration the reality of child labour, the Court held that children can, therefore, be employed in the process of packing which should be done in an area away from place of manufacturing to avoid exposure to accident. The minimum wages for child labour should be fixed and ruled that at least 60 per cent of the prescribed minimum wages for an adult worker doing the same work should be given to child worker.

Thus, it is a matter of surprise that after appreciating the problem of child labour and admitting hazardous nature of work, the court sanctified the practice by saying that children can be employed in the process of packing, and 60 percent of the minimum wages paid to an adult may be given to the children. It may have been a positive step towards improving their conditions. But it was definitely not that was expected of the court in a case for protection of children working in dangerous and exploitative conditions.

There was an accident in one of the cracker factories in Sivakasi, a few days after the judgment was passed. The suo moto cognizance was taken and case of M.C Mehta was revived. A committee was set up to examine the area and make a comprehensive report. The committee made various recommendations.

38 Ibid.
39 Id. at 285
In *M.C.Mehta v. State of Tamil Nadu*; 41 analyzing the problem of child labour, the Supreme Court held: “we are, however, of the view that till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o’-wisp. Now, if the employment of child below the age of 14 is constitutional indication in so far as work in any factory or mine or engagement in other hazardous work, and it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39 (e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a health manner and childhood is to be protected against exploitation as visualized by Article 39 (f), it seems to us that the least we ought to do is to see to the fulfillment of legislature intendment behind enactment of the Child Labour (Prohibition and Regulation) Act, 1986” 42

Further, the Court directed setting up of Child Labour Rehabilitation-cum-Welfare Fund and asked the offending employer to pay for each child a compensation of Rs.20, 000 to be deposited in the Fund and suggested a number of measures to rehabilitate them in the phased manner. The Court also made it clear that the liability of employer would not cease even if he would desire to disengage the child presently employed and asked the government to ensure that an adult member of child’s family get a job in a factory or anywhere in lieu of the child 43

However, the court did not issue directions to the States or Central government to ensure alternative job in every case covered by Article 24, as Article 41 speaks about the right to work, “within the limits of the economic capacity and development of the State”, as it will strain the resources of the State. Instead the Court said that the matter has to be sorted out by the

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42 Id. at 709
43 Ibid.
appropriate government. In those cases where it would not be possible to provide jobs, the appropriate government would have to, as its contribution, deposit Rs. 5000 in the Fund for each child employed in a factory or mine or any hazardous employment. Thus, the authority concerned has two options, either it should ensure alternative employment for the adult whose name would be suggested by the child concerned, or it should deposit a sum of Rs. 25,000 in the Fund. The fund so generated shall form corpus whose income shall be used only for the child concerned, till he continues his studies up to the age of 14 years.

In order to implement above directions, the Supreme Court require the concerned States to do the following:

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

2. To start with, work could be taken up regarding those employments which have been mentioned in Article 24, which may be regarded as core sector, to determine which the hazardous aspect of the employment would be taken as criterion. The most hazardous employment may rank first in priority, to be followed by comparatively less hazardous and so on. It may be mentioned here that the National Child Labour Policy as announced by the Government of India has already identified some industries for priority action and the industries so identified are: the match industry in Sivakasi, Tamil Nadu; the Diamond Polishing industry in Surat, Gujarat; the Precious Stone Polishing Industry in Jaipur, Rajasthan; the Glass Industry in Ferozabad, the Hand-made Carpet Industry, Mirzapur, Bhadohi, the Brass-ware Industry, Moradabad, and the Lock-making Industry, Aligarh, all in Uttar Pradesh; the Slate Industry in Markapur, Andhra Pradesh; and the Slate Industry, in Mandsaur, Madhya Pradesh.

44 Id. at 710
3. The employment to be given as per our direction could be dovetailed to other assured employment. On this being done, it is apparent that our direction would not require generation of much additional employment.

4. The employment so given could as well be the industry where the child is employed, a public sector undertaking, and would be manual in nature in as much as the child in question must be engaged in doing manual work. The undertaking chosen for employment shall be one which is nearest to the place of residence of the family.

5. In those cases where alternative employment would not be made available as aforesaid, the parent/guardian of the concerned child would be paid the income which would be earned on the corpus, which would be a sum of Rs.25,000 for each child, every month. The employment given or payment made would be ceased to be operative if the child would not be sent by the parent/guardian for education.

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

7. A district could be the unit of collection so that executive head of the district keeps a watchful eye on the work of Inspectors. Further, in view of the magnitude of the task, a separate cell in the labour department of the appropriate Government would be created. Monitoring of the scheme would also be necessary and the Secretary of the department could perhaps do this work. Overall monitoring by the Ministry of Labour, Government of India would be beneficial and worthwhile.
8. The Secretary of the Ministry of Labour, Government of India would apprise this court within one year of today about the compliance of aforesaid directions. If the petitioner would need any further or other order in the light of the compliance report, it would be open to him to do so.

9. We would also like to observe that on the directions given being carried out, penal provisions contained in the aforesaid 1986 Act would be used where the employment of child labour, prohibited by the Act.

10. In so far as non-hazardous jobs are concerned, the Inspector shall have to see that working hours of the child are not more than four to 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 education shall be borne by the employer”.

However, *M.C. Mehata* case (supra) is regarding hazardous industries only. This clarification is made by the Hon’ble Supreme Court in its second order passed barely a week after the historic decision. On 18 December, 1996, the court clarified its earlier order delivered on 10 December, 1996. The Court after hearing Labour Commissioner adopted a sliding scale of compensation. The quantum of compensation was based on whether the child was employed in a hazardous or non-hazardous industry, whether the establishment where the child was employed was handicapped or whether the young person found working in a factory without obtaining a medical fitness certificate was between the ages of 14 and 18 years, among other factors. In fact Labour Commissioner had suggested compensation ranging from Rs.2000 to 50,000 depending upon where the child was found working, the nature of employment and the age of the child/ young person. It is important to note that the Supreme Court clarified in its later order that: “After examining various

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45 Id. at 710 & 11
affidavits filed by the Labour Commissioner, the criteria adopted by him and also after hearing the owners of the establishments we are of the view that the compensation suggested by the Labour Commissioner in each case is just and fair. We accept the recommendations of the Labour Commissioner. We may mention that before determining the suggested compensation the Labour Commissioner also heard all the owners of the establishments". Thus it is clear that the penalty imposed on the employers of children in petty shops, hotels, small restaurants, and cycle repair shop etc. — all establishments usually in the informal sector, are for violation of the regulatory provisions of the Child Labour Act rather than for employing prohibited child labour in hazardous industries.

Till date, this is one of the few judgments of the apex court which laid down guidelines on the implementation of Child Labour Act, 1986. The welfare scheme visualized by the Supreme Court enshrined in the judgment is really the need of the time. It is result-oriented in spirit and practicable in its function. It is hoped that in Twenty first century promises made to our children in the constitution may be fulfilled. Therefore, it is clear that children should not be deprived of their fundamental rights. In this regard, the decision and direction of the apex Court dated 10 December, 1996 and dated 18 December,1996 in M. C. Mehta v. Union of India; has become a milestone for the well being of child labour and for the rehabilitation of their families. For the first time the exploitation of child and breach of the rights enshrined under Articles 21, 23 and 24 of the Constitution of India have been treated as ‘tort’ and accordingly the Court through above mentioned historical decisions has imposed civil liability on the offenders employing child labour in hazardous occupations and processes, over and above the criminal liability under the Act, 1986.

47 1999 (82) F.L.R. at page 271.
In *People's Union for Civil Liberties v. Union of India*\(^{48}\); a case which was about trafficking of children for labour, the Supreme Court ordered a compensation of Rs.200,000 to be paid to the brother of a child who was trafficked for labour and later beaten to death by the trafficker. The Court also ordered Rs. 75,000 to be paid to each of three boys who were trafficked. It is interesting that even though the traffickers were private individuals, the court ordered the respective States to pay compensation. The court, thus upheld the claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed by the constitution.\(^{49}\)

In *Bandhua Mukti Morcha v. Union of India*\(^{50}\); the petitioner contended that 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 Article 39 (e) and (f) and 45 read with the preamble. Accordingly, petitioner sought issue of a writ of mandamus directing the government to take step to stop employment of children in carpet industry in the State of Uttar Pradesh, appoint a committee to investigate into their conditions of employment, and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years, and directing the respondents to give them facilities like education, health, sanitation, nutritious food etc.

In response to this writ petition, the court appointed a committee to investigate and report to the court on the engagement and exploitation of children below 14 years by carpet manufacturers. A detailed and comprehensive report was submitted by the committee, confirmed the forced employment of children, exploitation and hazardous nature of child labour.

\(^{48}\) (1998) 8 SCC 485.


\(^{50}\) AIR 1997 SC 2218; (1997) 10 SCC 549.
The Court explaining the importance of child and childhood observed that "every nation developed or developing link its future with the status of the child. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood – socially, economically, physically and mentally – the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order.\(^{51}\)

According to the court, "the bane of poverty is the root (cause) of child labour\(^{52}\) due to poverty children and youth are subjected to many visible and invisible sufferings and disabilities, in particular, health, intellectual and social degradation and deprivation. However, total banishment of child labour “may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and prone to social risks”. Thus, “immediate ban of child labour would be both unrealistic and counter productive”. Therefore, ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous form of labour and the like.\(^{53}\)

The court while ‘respectfully’ agreeing with the directions given in \textit{M.C. Mehta v. State of Tamil Nadu}\(^{54}\); as feasible and inevitable reiterated the need for their speedy implementation. Further, the court directed the Government of India to convene a meeting of ministers of the State governments and their principal secretaries for evolving principles for progressive elimination of child labour and periodical reports to be submitted to the court.

However, various recent judgments of the courts are testimony of the fact that the court is very much serious about the agony of child labour. In \textit{Oriental Insurance Co. Ltd. V. Rathnamma};\(^{55}\) it was contended that when a child is prohibited from being employed under the Child Labour (Prohibition

\[^{51}\text{Id. at 2220}\]
\[^{52}\text{Id. at 2221}\]
\[^{53}\text{Id. at 2222}\]
\[^{54}\text{Supra note 38.}\]
\[^{55}\text{2000 LLR 854.}\]
and Regulation) Act, 1986 he could not be considered as workman and hence not entitled to compensation. This argument was countered by the court by stating that the Act prohibits employment of child labour only in certain hazardous occupations and processes as specified in the schedule, and in rest of the employments they are permitted to be employed. Any employer who violates the provisions of the Act is liable to be punished. The right to compensation is under the Workmen’s Compensation Act and not under the Child Labour Act and the same is not controlled by it. Despite the prohibition, an employer employs child labour he would be liable not merely to pay compensation but would also be subject to penalty under the Act.

In the same rhythm it is said that a magistrate can not impose lesser punishment in contravention of the statutory provisions of CLA. In State of Gujrat v. Bhupendra Kumar Jagjivandas Patel, the commission of offence under section 67 of the Factories Act is accepted and hence the penalty prescribe under section 14 (1) of Child Labour Act has to be imposed, which provides a minimum punishment of imprisonment for three months, extending to one year or a fine of Rs.10,000, extendable to Rs. 20,000 or both. In the instant case, the trial court has imposed a fine of Rs.200 only. The Gujrat High Court therefore, held that the trial court has no jurisdiction to impose penalty less than the minimum prescribed by the statute and hence, ordered to enhance to the minimum prescribed in the statute.

The employment of child labour in construction (one of the prohibited occupations) was at issue in Raj homes Pvt. Ltd. V. State of Madhya Pradesh; the petitioner company impugned before the M.P High Court, the show cause order passed by the assistant labour commissioner, Bhopal for violation of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986 and directing it to pay a sum of Rs.20,000 per child labour and their release forthwith. The petitioner challenged the validity of the order on three grounds.

57 2003 III LLJ 626.
viz, proper enquiry was not conducted before passing the impugned order; evidence was not recorded; and the order was not passed within six months.

Dismissing the petition the court held that in the instant case report of the inspector was available and that was a piece of evidence and was based on actual inspection. There was nothing to doubt about the correctness of the report. Notice to inspect had also been given in relation to the establishment wherein the child labour was found employed. Age of the child labour was also not in dispute. The decision, therefore, is in accordance with the law laid down by apex court in M.C.Mehta v. State of Tamil Nadu.  

In fact, this case is one of the exceptional cases wherein the court has upheld the punishment imposed on employer of child labour by disallowing all the contentions raised by the employer’s counsel. In appeal, before the division bench of the high court, while dismissing the appeal, the court ordered the appellant to pay an additional amount of Rs.5000 by way of cost to be deposited in the fund opened and maintained under the Child Labour (Prohibition and Regulation) Act.

It is heartening to note the promptness with which the court disposed of this issue. The case was initiated on 20.10.2001 and final order was passed on 1.7.2002 after about nine months. This promptness of disposal of a social issue like that of child labour is really commendable and worthy of emulation by other high courts as well.

In Narender Malav v. State of Gujrat, a PIL which was brought to the notice of the apex court the issue of child labour in the salt mines of Gujrat. The court requested the amicus curiae and a non-governmental organization SEWA, to enquire and investigate the issue of child labour, the welfare and well being of salt mine workers and their families in the Saurastra and Kutch areas of the State of Gujrat, particularly with reference to education facilities.

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58 Supra 38, M.C. Mehta’s case.
60 2004 (10) SCALE 12.
for their children and availability of adequate/proper housing and medical facilities and to report to the court within three months.

The Court requested the *amicus curiae* and the representative of the NGO to interact with the empowered committee for the purpose of ascertaining the measure taken by various agencies for the welfare of salt workers and their families and to suggest ways and means to improve their conditions. The court also directed the state government through the Assistant Labour Commissioner to provide all the assistance for this purpose.61

Further, the Supreme Court has taken seriously the delay in implementation of scheme for welfare of child labour in *M.C. Mehta v. State of Tamil Nadu and others*;62 wherein, the Court reiterating the importance of child welfare held that, “we have no doubt that the Finance Ministry would remain busy for ensuring budget session as well as the Prime Minister of the country is busy with several affairs, but at the same time we would like to impress upon both the Finance Ministry and the Planning Commission that their obligation towards child welfare is no less than any other matter and our records reveal that a sad story with several adjournments being given to the different ministries to enable them to prepare and submit a scheme for our perusal and for passing appropriate directions therein”. The Court directed that a copy of this order be sent to the Hon’ble Minister of Finance as well as the Hon’ble Prime Minister for appropriate action.

There are catena of cases in which employer could not be held liable because of the weaknesses in prosecution case or due to some technicality. In *Raj Kumar Tiwari v. State*;63 the petitioner-employer was imposed Rs.20, 000 as penalty for employing a child alleged to be below 14 years of age. He challenged this order contending that before imposing penalty no enquiry was held. The High Court, although found that an enquiry was indeed held, set aside this impugned order on the ground that for the applicability of Section 14

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61 Id. at 13
63 2003 III LLJ 1045.
of the Act is *sine qua non* that the person/child employed must be one who has not completed 14 years of age. According to the court the impugned order itself indicated that child employed was of 14 years old and not below 14 years of age. The petition was, thus, allowed on this ground and the impugned order was set aside.

It is submitted that there is a lot of difference between the expressions “a person who has not completed 14 years of his age” and “a person who is 14 years old”. While the former would mean a person who has completed 14 years of age and is in his 15th year and the latter phrase would mean a person who has completed 13 years of age and is in his 14th year. In the absence of exact date of birth to calculate whether the person has completed 14 years of his age, the court could have upheld the order of the lower court being the fact finding court. It is very rarely that an employer is punished by the court for employing a child. And this is a major contributing factor for the continued employment of children by unscrupulous employers.

*Hemendra v. State of Chhattisgarh*, is another case of a prosecution under the Child Labour (Prohibition and Regulation) Act, has become unsuccessful. The case of prosecution was so shoddy that the Chhattisgarh High Court had no hesitation in quashing the proceedings on several counts and allowing the petition of the employer. What look strange is that the prosecution had no stand or arguments to make to sustain the prosecution. According to the court, the trial magistrate had not applied his mind to the facts and the law applicable to the present case. The employer had neither employed in the beedi making workshop nor permitted her to work in any workshop where the process of beedi making was carried on. The child was found rolling beedi at her residence and for that the firm could not be proceeded against in view of the proviso to Section 3 which exempts family enterprises from the application

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64 Id. at 1047
65 2003 II LLJ 645.
of the Act. Besides, no evidence was produced to prove that the girl was below 14 years of age.

This case highlights how a beneficial social legislation like Child Labor Act, 1986 can be legally circumvented by the employer. While it may be true that this Act may have reduced the number of children employed in organized sector, it is equally true that their number has gone up in informal sector where no labour laws apply. The result is that children continue to be exploited by employers legally in the garb of family employment notwithstanding the existence of a law prohibiting child labour.

A welcome development of M.C.Mehta case (supra) has been the increased awareness about the issue of child labour which has been generated throughout India. The labour administration too has strengthened its enforcement of the CLA. In several States the numbers of inspections carried out under CLA have increased. Attempts to bring enforcement machinery into action, detect and put an end to child labour in hazardous industries, have suffered setbacks. Employers wanting to avoid depositing fines imposed by the Supreme Court have attacked the quality of the surveys conducted following the M.C.Mehta decision. In a number of cases, the manner in which the survey was carried out (in a hurried manner, using under trained government officials) was successfully cited to set-aside the validity of the survey and the instances of child labour recorded by such a survey. In one case involving the State of Uttar Pradesh, the High Court condemned such survey exercises, and stated, “all these circumstances, put together render the state of the record in such a state that it does not inspire confidence, regard being had to the circumstances that the survey was being conducted on the directions of the Supreme Court, which, under the constitution (re: Article144) obliges all authorities, civil and

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67 Ibid.
judicial in the territory of India to act in the aid of the Supreme Court. When the exercise was put in to execution, it was one of mediocrity.68

The High Courts have also said that the authorities could not directly ask the employers found to be engaging child labour to deposit the money, as directed by the Supreme Court, without issuing show cause notice to the employer and providing him/her with an opportunity to file objections and exemptions.69 The survey conducted by the State of Uttar Pradesh was also faulted on the ground that those conducting the survey had not taken into account that the CLA permits exemption when the child is engaged in family labour. In the words of High Court, the exemption granted to family labour because “regard being had to the conditions in the country, an inter-generation occupation may be passed on from father to son and to grand son. The Act provides for this plainly. It does not need any further explanation”.70 Therefore the High Court has held that the child labour survey could not be directly relied upon to put an end to the employment of child labour in hazardous industries. Such orders of the court have made surveys carried out by different State governments less credible and thus contributed to the low-key follow-up to the M.C. Mehta case.

Right to Education and Child Labour:

It is clearly evident that education plays a vital role in the life of human beings. It is truly significant in respect of child labour. If we fail to provide proper education and culture to a child, we are in real sense doing injustice to the child. There is no sense in having a child, if we can not afford or provide him proper and adequate education. Education brings a revolutionary change in the ideology, thinking and vision of a person. In the skilled and unskilled job,

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68 For Chhota Bhai Munnu Bhai v. State of Uttar Pradesh, see Shrivastava, M.P (2006) “Child Labour Laws in India”, LPH, Allahabad, pp-198-223. see also Chhota Bhai Munnu Bhai v. State of U.P; I LLJ 1171 (2000), where the High Court once again rejected the attempts of the Uttar Pradesh government to rely upon survey it conducted in 1997 to impose fines on employers, on the ground that the survey was defective.


70 Supra note 68, Chhota Bhai Munnu Bhai’s case (1999) Id.at p-214.
education and experience both have a great roll to play. Education makes a person very dynamic and develops in him positive thinking, creativity, confidence, talent and innovative attitude towards the work. It also enhances the work culture. It also makes him how to learn how to work, behave and make attitudinal adjustments in the organization. A person may be intelligent but he may find it utterly difficult to work in a group. Therefore, the education brings out various virtues and valuable assets in the human personality. We are living in the era of liberalization, where the private sector is dominating the field on the basis of cheap and best global products. The significance of education, therefore, can not be underestimated.\textsuperscript{71}

If among the many factor one is to be singled out as the most important factor responsible for existence and perpetuation of the child labour it is perhaps the absence of universal primary education. Millions of children in India continue to remain outside the realm of educational system. There has been a growing realization among scholars and social workers that compulsory schooling is the most effective way to abolish child labour in India. However, the goal to achieve free and compulsory education for all children up to the age of 14 has remained elusive for children in the country for over five decades now. Advocates of compulsory education believe that by shrugging of its duty to educate all its young children, the Indian State is in effect adding to the menace of child labour.

Myron Weiner, a strong advocate of compulsory education for children to combat child labour in India, argued that without the iron frame of legislation to compel at least a few years of elementary education, millions of Indian parents will never send their children to school; employer will never release their grip on a nimble fingered, easy-to-handle and cheap source of labour, and India will continue to head the international illiteracy league well.

\textsuperscript{71} Supra note 10 at p112.
into the coming century. Therefore, the law to provide compulsory education to all children is essential to eliminate or at least reduce child labour.

Despite the constitutional status provided to right to education, the harsh reality is that the mandate of the constitution remained still a dead letter as the millions of children are denied the basic right to education. The court has emphasized education as the rights given under the constitution which can only be realized by educated masses. India being a welfare state it is the responsibility of the State to provide free and compulsory education to all children, especially at the primary level. In this context, **Mohni Jain v. State of Karnataka,** popularly known as “capitation fee case” is a landmark judgment wherein the Supreme Court has held that the right to education at all level is a fundamental right of citizen under Article 21 of the constitution, which can not be denied to a citizen by charging higher fee known as capitation fee. The Court observed that: “Right to life is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to that full range of conduct which individual is free to pursue. The right to education directly flows from the right to life. The right to life under Article 21 and the dignity of an individual can not assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide education facilities at all levels to its citizens”.

The apex Court very rightly held that Article 19 can not be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individual dignity. The right to education is therefore, a concomitant to the fundamental rights enshrined under Part III of the constitution. Gajendragadkar J; in **University of Delhi v. Ram Nath,** rightly said that education is the one that lends dignity to a man. He observed, “Education seeks to build up the

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73 AIR 1992 SC 1858.
74 Id. at 1864
75 AIR1963 SC1873.
personality of the pupil by assisting his physical, intellectual, moral and emotional development".76

In pursuant to the decision of the court in Mohini Jain's case,77 there were a series of cases filed by private and state-aided medical and engineering colleges seeking to review this decision. They contended that if this decision is correct and followed by the respective governments, they will have to close down their colleges because their main source of income was being threatened. After four weeks of arguments, came another landmark judgment of the Supreme Court in Unnikrishnan and others v. State of Andhra Pradesh;78 one of the three questions that the court framed for consideration was: whether the constitution of India guarantees a fundamental right to education to its citizens? It was held that the right to education up to the primary stage alone is a fundamental right. The court while interpreting Article 21 of the constitution further held that right to education is implicit in and flows from the right to life guaranteed by Article 21".79

The Court while reading Articles 45 and 41 observed that: “right to education, understood in the context of Articles 45 and 41 means (a) every child/citizen of this country has a right to free education until he completes the age of 14 years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development".80

Therefore, it is evident that the Supreme Court is very much concerned about the free and compulsory education for all, up to the age of 14 years. The court has posed the question to itself the importance of Article 45 and interpreted in the light of intention of the founding father of the constitution. It is noteworthy that among the several Articles in Part IV, only Article 45 speaks of a time-limit; no other Article does. Has it no significance? Is it a mere pious

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76 Id.at1875
77 Supra note 73, Mohni Jain s case.
78 (1993) 1 SCC 645.
79 Id. at 730
80 Id. at 733
wish, even after 44 years of the constitution? Can the State flout the said
direction even after 44 years on the ground that the Article merely calls up on it
to “endeavour to provide” the same and on the further ground that the said
Article is not enforceable by virtue of the declaration in Article 37. Does not
the passage of 44 years – more than four times the period stipulated in Article
45 – convert the obligation created by the Article, into an enforceable right? In
this context we feel constrained to say that allocation of available funds to
different sectors of education in India discloses an inversion of priorities
indicated by the constitution. The constitution contemplated a crash programme
being undertaken by the State to achieve the goal set out in the Article 45. It is
relevant to notice that Article 45 does not speak of the “limits of its economic
capacity and development” as does Article 41, which inter alia speaks the right
to education. What has actually happened is – more money is spent and more
attention is directed to higher education than to – and at the cost of – primary
education.81

The apex court while emphasizing the constitutional policy as disclosed
by Articles 45, 46 and 41, observed that “at least now the State should honour
the command of Article 45. It must be made a reality – at least now. Indeed, the
National Education Policy, 1986 says that the promise of Article 45 will be
redeemed before the end of this century. Be that it may, we hold that a child
(citizen) has a fundamental right to education up to the age of 14 years”.82

The Supreme Court in Mohni Jain and Unni Krishnan cases make it
imperative that education is brought into the ambit of the fundamental rights
rather urgently. The logic of the Unni Krishnan case is that the priorities in
terms of allocation of available funds have so far been inverted, or in other
words, the funds have not been deployed for attainment of universal elementary
education to the extent of desirability. They also leave ample scope for the state
to devise various delivery mechanisms such as schools, non formal education

81 Id. at 733,34
82 Ibid.
centre, alternative schooling system, open school or any other mechanism to achieve the goal. It is very clear that Judges are thinking of the alternative modes of delivery and their intention was to achieve the standard as determined by the State. But unfortunately, the judgment has not indicated any time limit to enable the State to make arrangements for providing such facilities as may be required under the law. In spite of it, the state can legitimately implement the apex court's judgment within reasonable period of time. These two cases of the Supreme Court imposed various obligations on the state and in favour of the citizens including the children. Therefore, it is clear that the compulsory primary education should be inter-linked with child labour laws.

Article 24 of the Constitution\(^{83}\) prohibits the employment of child below the age of 14 years. Article 45 provides the free and compulsory education for children. Article 45 is supplementary of Article 24 for if the child is not to be employed below the age of 14 years he must be kept occupied in some educational institution.

The courts in a catena of cases declared that right to education is an integral part of right to personal liberty embodied in Article 21 of the Constitution. These judicial mandates clearly demonstrate that right to education is necessary for the proper flowering of man, his mind and personality. It means the right to education is one of the facets of right to personal liberty. In *Anand Verdhan*’s case\(^{84}\) the Delhi High Court has held that education is a fundamental right under our Constitution. The Court observed: “The law is therefore, now settled that the expression of life and personal liberty in Article 21 of the Constitution includes a variety of rights though not enumerated in part-III of the Constitution provided that they are necessary for the full development of the personality of the individual and can be included in

\(^{83}\) Article 24 of the Constitution of India says: “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”.

\(^{84}\) Anand Vardhan Chandel v. University of Delhi, AIR 1978 Delhi 306.
the various aspects of the liberty of the individual. The right to education is therefore included in Article 21 of the Constitution”.  

Similarly, the Andhra Pradesh High Court in the landmark judgment in Murlikrishna Public School case observed that: “Right to education to Dalit is a fundamental right and it is mandatory duty of the state to provide adequate opportunities to advance educational interests by establishing schools”. Thus, the court has paved the way for better educational opportunities for Dalit children. The Dalits, hitherto neglected specimens of humanity who are dragging their earthly existence under a grinding poverty, have the fundamental right to education and they can compel the state to take positive action to provide educational facilities to their children. Any failure on the part of the state to provide better and adequate education facilities, economic support and proper atmosphere to the children belonging to the lower stratas of the society is violative of not only Article 45 but also Article 21 of the Constitution. Thus, the recent judicial craftsmanship to right to education is a positive and progressive step to secure in particular for the children of the weaker sections of the society, the proclaimed socio-economic justice.

Unnikrishnan, was followed in N.Kunhichekku Haji (Dead) by LRS v. State of Kerala and others; where the court in a case pertaining to question of providing up gradation of a school held that children have a fundamental right to education and therefore, larger interest of young children should be taken into consideration in meeting the procedural cobweb and the technicalities should not subsume substance. This was again acknowledged in State of Orissa v. Dipti Paul; when the court while deciding on the case of salaries of teachers appreciated the importance of universalisation of primary education.

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85 Id.at 308.
87 Id.at 207.
88 Article 21 of the Constitution of India says: “No person shall be deprived of his life or personal liberty except according to procedure established by law”.
89 Supra note 78, Unni Krishnan’s case.
91 (2000) 10 SCC 413.
Teachers play pivotal role in molding the carrier and character of children. In order to maintain the standard of education, the Court in *L.Muthukumar and others v. State of Tamil Nadu and others*;\(^{92}\) held that there was a responsibility on the State that before teachers are allowed to teach innocent children, they must receive appropriate and adequate training in a recognized training institute satisfying the prescribed norms, otherwise the standard of education and carriers of children will be jeopardized. In most civilized and advanced countries, the job of a teacher in a primary school is considered an important and crucial one because of molding of young minds begins in primary schools. Allowing ill-trained teachers to teach ......... will be detrimental to the interest of nation itself. It further held that interest of individuals can not be placed above or preferred to the larger public interest.\(^{93}\)

The Court, while emphasizing the importance of education in the life of children and the nation, held that education is an investment made by the nation in its children for harvesting a future crop of responsible adults productive of a well functioning society.\(^{94}\)

It has been asserted that it is much easier to implement laws on compulsory education than the laws on child labour. Therefore, any strategy to eliminate child labour must include education as a critical component. According to Weiner, "Compulsory education laws usually precede child labour laws and their enforcement substantially reduces or eliminates child labour. It has been experienced that enforcing compulsory education laws, though by no means easy, has proven to be less difficult than the enforcement of child labour laws and factory laws. Local officials know their community, know who is not attending school, and have clout over poor parents. In contrast, factory inspectors make frequent rounds and can not inspect thousands of small shops, and employers, properly warned, are able to take evasive action. Businessmen can readily win favour of factory inspector while

\(^{92}\) (2000) 7 SCC 618.

\(^{93}\) Id. at 626

\(^{94}\) Supra note 13 Id. at 2090
poor parents lack the resources to win over truant officer”. In India, much of the child labour falls outside the purview of existing child labour legislations. It is a serious social problem, all the more since the girl child labour is involved. Keeping in view the size of the problem and the nature of child labour in the country, the implementation of child labour legislation even if it is done seriously will be of little help. Therefore, because of poor implementation of law and apathy of the government officials, the labour law enforcement route will be largely ineffective. Under these circumstances making education compulsory in law will be of immense value and immediate relevance.

However, the National Policy on Child Labour (NPCL) is two decades old in 2007 and the country nowhere near the elimination or mitigation of child labour. The policy was formulated with the understanding that to eliminate child labour, a gradual and sequential approach was needed with its focus first on rehabilitation of children in hazardous occupations and processes. The scheme was basically about providing special school for child workers, where formal and non-formal education would be provided along with vocational training, a small stipend, supplementary nutrition and health check-ups with the larger objective of helping them to be part of mainstream schools. This scheme was evaluated in 2001 and the elimination of child labour was linked with the scheme of Sarva Shiksha Abhiyan. But recent report of the government on the situation of Sarva Shiksha Abhiyan indicates very disappointing picture. The scheme has managed to get only 40 percent of children in the age group of six to fourteen years in school and rest continue to be out of schools.

As a result of judicial activism, the Government has announced its commitment for the elimination of child labour from all occupations and processes by incorporating right to compulsory education within the four walls of fundamental rights and imposing a duty on the part of the parents or guardians to send their children to school. In this regard Article 21-A says that:

97 Ibid.
“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”.\(^98\) At the same time Article 51-A (k) says that it shall be the duty of every citizen of India “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years”.\(^99\) However, the right to education under Article 21-A does not include the right of education of children between 0 – 6 years of age. It means pre-primary education is not made the part of fundamental right. This is a serious lacunae or omission.

The apex Court has sought response from the Government of India and all the States on the prohibition of all forms of child labour and the enforcement of the right to education of children up to 14 years of age. The Supreme Court has issued notices to the Central government and the chief secretaries of all States and union territories on a petition filed by child rights groups seeking a ban on all forms of child labour in the country. Referring to Article 21-A of the Constitution of India, the Supreme Court said: “After the amendment, there is no scope for child labour. There can not be any place for children other than school. If there is no school, the State has to provide that”.\(^100\)

The only way to prevent child labour is to recognize that the rightful place of children is in school, not in the work place or in the house. So the first step is to bring a central legislation that ensures compulsory primary education for all children. Recently, the Study Group on Women and Children of the Second National Commission on Labour appointed by the Ministry of Labour, Government of India, recommended a draft for discussion. The draft Bill is known as The Child Labour (Prohibition and Education) Bill, 2001. The Bill intend to ensure that no child would be deprived of a future by being deprived of an education and having to spend his childhood working. It recognizes every

\(^{98}\) Inserted by Constitution (93rd Amendment) Bill 2001 which is called as the Constitution (86th Amendment) Act, 2001.

\(^{99}\) Inserted by the same (86th Amendment) Act, 2001.

\(^{100}\) The Hindu, February 2, 2006
child out of school as a child labour or potential child labour. It seeks to tackle the problem of child labour by ensuring universal education. It also seeks to ensure that children do not work in situations where they are exploited and deprived of a future. The Commission was of the view that that the Child Labour Legislation should not only be regulatory but also developmental.101

But it seems that government is not all sensitive to the child’s education. Social Jurist, an organization working on child labour and the right to education says that the government has failed to enact legislation to implement the 86th Amendment to the Constitution which made education a fundamental right. The Amendment was carried out in 2002. Soon after massive efforts were initiated to get a piece of Central legislation in place. This was the minimum that was expected from the government.102 It seems that the Centre has more or less given up the idea of enacting any legislation.

The draft Bill guaranteeing free and compulsory education was hardly introduced despite going through a lot of changes and brainstorming by educationists and child rights campaigners. Instead, the government has circulated a model Bill to the State governments and that too with a caveat that the state that adopted the model Bill in toto would get 75 percent funding for the Sarva Shiksha Abhiyan while the ones that did not would have the Central allocation to be slashed to 50 percent.103 However, the proposal was rejected by most states who took the plea that right to education was a Central mandate and the Centre should not abdicate its responsibility. The centre is thus, shying away from its financial obligation which is bound to arise if a Central Bill on right to education is legislated. As per news appeared in Hindu daily, dated November 7, 2007, the Union Human Resource Development Ministry will revise the draft legislation propose to operationalise the fundamental right to education to children in the 6 – 14 years’ age group. This was decided by the

103 Ibid.
High Level Group under the Chairmanship of HRD minister, set up by the Prime Minister to iron out the rough spots concerning litigation and transfer of funds that have delayed the decision on this for over five years. Recognising children as the core of development, UPA Chairperson observed that “the issue of girl child is related to the problem like gender inequality, social injustice, poverty and hunger. Society has to work for full development of children and realize that every child is exceptional and each one has a special talent and it is for society to create a nurturing and enabling environment to help the child grow into a respectable citizen”. Education is a first step to achieve this noble goal. Therefore, if the government is serious about eradicating child labour, it should enforce the right to free and compulsory education.

The elimination of child labour therefore, requires free, compulsory and good quality education to all children. This is one of the reasons why it is so important to ensure the adoption of a ‘right to education’ law that ensures universal schooling without exceptions or caveats. It is also necessary to make such legislation effective in terms of allocating sufficient public resources for this purpose. However, child labour is a multi-dimensional problem. Its elimination needs more comprehensive and multi-pronged strategy, with universal schooling as a key element.

Therefore, it is clear from foregoing discussions that judiciary has played a pivotal role in safeguarding the interest of children. It has also given new dimension to several areas. The glaring decisions of the Supreme Court dealing with the employment of children, payment of minimum wages, protection of their fundamental rights, sexual exploitation of children in flesh trade, protection of children born to prostitute, employment of children in hazardous occupations, declaring compulsory and free education as fundamental right are replete with the judicial wisdom which enable us to conclude that judiciary in India has shown a deep concern towards the protection and welfare of working children in our country.