CHAPTER – V
JUDICIAL RESPONSE TO CHILD LABOUR

India has written constitution which guarantees social justice, liberty and equality to all its citizens. For achieving these objectives, we have three organs of government- the executive, legislature and the judiciary. Each organ is supreme within the sphere allotted to it. To interpret the spheres and enforce the rule of law, an independent authority is absolutely essential and this is furnished by the Courts of Justice. The Supreme Court of India is the apex court which has been assigned a very important role. It acts as a guardian of the constitution and protector of human rights of the citizens.

Our constitution accords a dignified and crucial position to the judiciary. It is the greatest unifying and integrating force of our country. It expounds and defines the true meaning of law. It is the ultimate interpreter of the constitution and this puts a second brake on the legislative and the executive the first being the political check of the people themselves. The constitution puts on obligation on every organ of the state, including the judiciary, to usher in a new social order in which justice-social, economic and political and equality of status and opportunity, prevail. Courts are to contribute to law’s growth without overstepping the boundaries of the system. It is the duty of the judiciary to recognize the development of the nation and to apply established principles of the positions which the nation in its progress from time to time assumes. The judicial organ would
otherwise separate itself from the progressive life of community and act as a clog upon the legislative and executive departments rather than as an interpreter. Indian judiciary is charged with the duty of holding the balance even between a state or states and the union and between the state and the citizen, and sometimes between the state and the individual. It has to hold the scales even in the legal combat between the rich and the poor, the mighty and the weak without fear or favour. The role of judiciary in India has been quite significant in promoting the child welfare. Mr. Justice Subba Rao, the former Chief Justice of India, rightly remarked.

“Social Justice must begin with child unless tender plant is properly nourished; it has little chance of growing into strong and useful tree. So, first priority in the scale of social justice should be given to the welfare of children.

The judiciary in the country has shown its great concern for the working children by bringing occupations or processes under the judicial scrutiny by directly applying the constitutional provisions relating to children.

In People’s Union for Democratic Rights Vs Union of India\(^{150}\) the court held; apart from the requirement of ILO Convention No. 59, we have Article 24 of the Constitution which even if not followed up by appropriate legislation must operate proprio vigore and construction work being plainly and undoubtedly a hazardous employment, it is

\(^{150}\) A1R 1982 SC 1480
clear that by reason of constitutional prohibition no child below fourteen years can be allowed to be engaged in construction work. There can, therefore, be no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938, no child below fourteen 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. In a civilized society, the importance of child welfare cannot be over emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said “Child show the man as morning the day” and the Study Team on Social Welfare said much to the same effect when it observed that the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow in their maturity, into fullness of physical and vital energy and the utmost breadth, depth and height of its emotional intellectual and spirituality being; otherwise there cannot be a healthy growth of a nation. Now obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look
after the usefulness. That is why there is growing realization in every part of the 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 must be able to attain full emotional, intellectual, and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of the role which they have to play in the nation-building process without which the nation cannot develop.

VISION OF CONSTITUTIONAL FRAMERS

In India this consciousness is reflected in the provisions enacted in the Constitution. Clause(3) of Article 15 enable the state to make special provisions inter alia for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clause (e) and (f) of Article 39 provide that the state shall direct its policy towards -securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter, avocations unsuited to their age and strength and that children are given facility 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.\[151\]

These constitutional provisions reflect the great anxiety of the Constitution-makers to protect and safeguard the interests and

welfare of children in the country. The government of India has also in pursuance of their constitution provision evolved in National Policy for the welfare of children. This policy with a goal oriented perambulatory introduction:

The Nation’s children are a supremely important asset; their nature and solicitude are our responsibility. Children’s welfare programme should find a prominent part in our national plan for the development of human resources, so that our children grows up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would seem our larger purpose off reducing in equality and ensuring social justice.

**CHILD LABOUR WELFARE AND THE PHILOSOPHY OF LOCUS STANDI**

It is generally seen that that all the working children come from the families which are below the poverty line and there are no means to ventilate their grievance that their fundamental rights are being breached with impunity. Keeping in view the pitiable conditions of the child workers, the apex court has shown its generosity by relaxing the concept of locus-standi. The court has shown its wisdom by ensuring the philosophy of locus standi by vindicate and public interests by rendering help to those people of the society who are unable to approach the court because of their poor economic conditions. Thus to improve the conditions of the poor people, the apex court explore
the doctrine locus standi and in number of cases, they accept a letter as public interest litigation and try to give relief in some of the cases like/People’s Union for Democratic Rights Vs Union of India \(^\text{152}\), Bandhu Mukti Morcha Vs Union of India\(^\text{153}\) Neerja Chaudhary Vs State of Madhya Pradesh\(^\text{154}\).

**People Union for Democratic Right Vs Union of India**

In this case the Supreme Court considered the meaning and scope of the phrase “hazardous employment”. In this case inter alia, the question before the Supreme Court was that whether the employment of children in the construction work amounts to employments in hazardous concerns and whether it violated the Employment of Children Act, 1938. The Union of India, the Delhi Administration and the Delhi Development Authority contended that this act is not applicable in case of employment in the construction work since construction industry is not a process specified in the Schedule and is, therefore, not within the provision of sub-section (3) of section 3 of the Act, which prohibits the employments of children under the age of 14 years in hazardous concerns.

The Supreme Court pointed out that this was a sad and deplorable omission which must be immediately set right by every State Government by amending the Schedule so as to include construction industry. This could be done in exercise of the powers conferred under Section 3A of the Employment of Children Act, 1938.

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\(^{152}\) **AIR 1982 SC1473**  
\(^{153}\) **AIR 1984 SC 802**  
\(^{154}\) **AIR 1984 SC 1099**
The Supreme Court hope that every State Government will take the necessary step in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment under the age of 14 must be prohibited in every type of construction work. That would be in consonance with Convention 59 adopted by the International Labour Organization and ratified by India. But apart altogether from the requirement of Convention No. 59, we have Article 24 of the Constitution which provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Supreme Court held that Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which, even not followed up by appropriate legislation, must operate proprio vigore.

Further The Apex Court observed that “there can be, no doubt that notwithstanding the absence of specification of construction industry in the Schedule to the employment of Children Act, 1938, no child below the age of 14 years can be employed in construction and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country.

Through this judgment, the Apex Court explore the doctrine of Locus Standi by saying that not only aggrieved persons have a right to
approach the court for redress their problems but also public spirited institution or any person affect by the interest of the some persons can approach the court on behalf of the aggrieved persons who are not in a position to come for relief. In that case, the Apex Court took notice on this point that no doubt constructive industry did not come into the Category of Schedule of Section 3 of the Employment of Children Act, 1938 but it violates the fundamental rights of the children by engaging them in a construction site which is considered to be hazardous one and Article 24 of the Constitution also prohibits the employment. It of children below the age of 14 years in factory or mine or any other hazardous employment it is very irony that instead of giving them education, they of children in construction sites. This operates propiro vigore of Art 24 of the Constitution. The Supreme Court further gave directions to the State Governments to protect the interest of the children and they should take stand in the absence of Child labour legislation for the welfare of the children.

**Bandhua Mukti Morcha Vs Union of India**

In this case, the petitioner was an organization solely devoted to the cause of bonded labourers in the country. The petitioner made a survey of some of stone quarries in Faridabad District near Delhi and discovered that a number of labourers from different states of the country were working in those stone quarries under inhuman and intolerable conditions and the majority of them were bonded labourers. A letter was addressed to one of the judges of the apex
court containing signatures and thumb marks of the alleged bonded labourers. The petitioner alleged violations of the provisions of the Constitution and non-implementation of the laws relating to the labourers working in these stone quarries. It was revealed that all these workers were bonded labourers who were not permitted to leave the job. Most of the labourers complained that they got very little wages from the mine lesses or owner of the stone crushers because they were required to purchase explosives with their own moneys, the report concluded by saying that these workmen, “presented a picture of helplessness, poverty and extreme exploitation at the hands of moneyed people” and “they were found living a most miserable life and perhaps beasts and animals could lead more comfortable life than these helpless labourers”

The preliminary objection raised by the respondents related to the maintainability of the petition under Article 32 of the Constitution. The court expressed surprise over the manner in which the State Government showed its urgency to raise this objection so as to avoid an enquiry by the court as to whether the workmen are living in bondage and under inhuman condition. Sounding a note of caution, Justice Bhagwati observed, “The Government and its officers must welcome Public Interest Litigation, because it would provide them an occasion to examine whether the poor and down trodden are getting their social and economic entitlements or whether they can continue to remain victims of deception and exploitation at the hands of strong
and powerful sections of the community” and whether a social and economic justice has became a meaning-full reality for them or it has remained merely a teasing illusion and a promote of unreality, so that in case the complaint in Public Interest litigation is found to be, true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the court entertains public interest litigation, it does not do so in a caviling spirit or in a confront national mood or with a view to titling at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programme, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objective.

The court expressed surprise by saying that if a complaint is made on behalf of workmen that they are held in bondage and living in a miserable condition, it is difficult to understand how such a complaint can be thrown out on the ground that it is not violative of the fundamental right of the workmen.

Giving a new interpretation to the term “appropriate proceeding” contained in Article 32(1), Justice Bhagwati observed that, “there is no limitation in regard to the kind of proceeding envisaged in clause (1) of Article 32 except that the proceeding must be, ‘appropriate’ and this
requirements of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken namely, enforcement of a fundamental right. The learned Judge continued by saying that the framers of the Constitution did not lay down any particular form of proceeding for enforcement of a fundamental right. They also did not stipulate that such proceeding should confirm to any rigid pattern or formula because they knew that in a country like India where there is so much poverty, ignorance, illiteracy, deprivation and exploitation, any instance on a rigid formula of proceeding for enforcement of a fundamental right would become self defeating. In view of this position, the court observed that a simple letter by a member of the public acting bonafide can be legitimately regarded as appropriate proceedings.

From the above observation, it is concluded that a social organization who observed the miserable condition of the bonded labourer working in stone quarries in Faridabad approach to the apex court in the form of sending a letter which was treated as writ petition and the apex court had considered their petition and directed the state government to proper by implement the provisions related to the Bonded Labour System (Abolition) Act, 1976.

The judgment of the Apex Court shows that the public interest litigation is acquiring new dimensions for ensuring accountability of the public authorities towards the poor and deprived. In fact, the state or public authority should welcome this move because it is primarily
intended to correct wrong or to redress injustice done to the poor and weaker sections of the community where welfare should be paramount considerations of the state or public policy.

**Neerja Chaudhary Vs State of Madhya Pradesh**

In this case the apex court has taken a serious note of the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating the bonded labourers in the country. The present case is based on a letter of September 20, 1982 addressed to one of the judges of the apex court by a petitioner who is a civil rights correspondent of Statesman in an article written by her and published in the issue of Statesman dated September 14, 1982 in which she set out how these bonded labourers were without land and work, facing immense hardship and near starvation in the absence of any rehabilitation assistance by the State Government. It seems that once these freed bonded labourers were brought back to their villages, the administration of the State Government thought they had discharged their duty and then they conveniently forgot about the existence of this unfortunate specimen of humanity. That is why when the petitioner interviewed some of these bonded labourers they said that they would rather go back to the stone quarries for work then starve and added “we might have been killed there, but we are also dying here”. The petitioner pointed out this statement in the leading newspaper in the country. The petitioner stated that 135 bonded labourers who were working in the stone quarries in Faridabad had
been released from bondage by an order made by this court in the first week of March, 1982 since they were found to be bonded labourers with in the meaning of the Bonded Labour System (Abolition) Act, 1976 and on release, they had been brought back to their respective village in Bilaspur District of the State of Madhya Pradesh with a promise of rehabilitation by the Chief Minister of that State. But when she visited three villages namely, Kunda, Pandhari and Bhairavapura in Mungeli Taluka of Bilaspur District in September 1982, with a view to ascertain whether or not the process of rehabilitation as promised by the Chief Minister had commenced, she found that most of the released bonded labourers belonged to these three village had not yet been rehabilitated though six months has passed since their release and they are living almost on the verge of starvation. It may be pointed out that out of 135 released bonded labourers, about 75 belonged to these three villages and 45 out of them were from village Kunda.

The petitioner also pointed out that some of the released bonded labourers owned land at one time but they had lost it to the money lender and some of them had pledged their jewellery and other small belonging to raise money for their subsistence. Therefore, the petitioner argued that it was statutory obligation of the State Government to ensure rehabilitation of the free bonded labourers and failure to do the same amounted to violation of the fundamental right of the freed bonded labourers under Article 21 of the Constitution. The petitioner prayed for a direction to the State Government to take
steps for the economic and social rehabilitation of the freed bonded labourers released in March, 1982.

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

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

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

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

The judiciary has almost brought a revolution in the life of child workers in India. It has always expanded and developed laws so as to respond to the hopes and aspirations of people who are looking to the judiciary to give life and content to law. The judicial institutions in India have played a significant role not only for resolving inter-disputes but also act as a balancing mechanism between the conflicting pulls and pressure in the society. It has virtually played a vital role in the task of providing political, social and economic justice to the poor child workers in this country. The judiciary has taken a stand when there is no proper enactment for the welfare of the Child Labour. There are many historical judgments of Supreme Court in which judiciary consider poverty as the main reason for the exploitation of children. In this situation, we can leave the child in the condition of lurch. For protecting the children against exploitation, the Supreme Court gave Judgments which gave good lessons to the society for the welfare of the children. Some of the cases are like Labourers working on *Salal Hydro Project Vs State of Jammu and Kashmir* 155. *In Labourers Working on Salal Hydro – Project Vs State of Jammu and Kashmir and others.*

Justice Bhagwati observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in

155 *AIR 1984 SC  177*
construction works by reason of the prohibition, enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government.

In this case, honourable Supreme Court also agreed that child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed to augment their meager earnings. And child labour is an economic problem, which cannot be solved by mere legislation. Because of poverty and destitution in this country; it will be difficult to eradicate child labour. Thus attempts should be made to reduce if not to eliminate child labour. It is essential for a child to receive proper education so as to equip himself to become a useful member of the society and to play a constructive role in the socio-economic development in the country. They must concede that having regard to the prevailing socio-economic conditions, it is not possible to prohibit the child labour altogether and in fact, any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments. Construction work is also a hazardous employment and no child below the age of 14 years can, therefore, be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this constitutional prohibition must be enforced by both Union and State Government.
The Supreme Court also suggested that ‘whenever the Central Government undertakes a construction project which is likely to last for sometime, the Central Government should provide that children of construction workers which are living it or near the project site should be given the facilities for schooling.

**CHILD LABOUR WELFARE AND RIGHT TO EDUCATION**

The abolition of the child labour is preceded by the introduction of compulsory education. Compulsory education and child labour are interlinked. Article 24 of the constitution bars employments of child below the age of 14 years. Article 45 which are incorporated by the 86th amendment in 2002 which gives the direction to the state to provide education to the child below the age of six years. And the judiciary plays an important role in the making as education as a fundamental right and the Judiciary gives a good judgment in the cases like *MC Mehta Vs State of Tamil Nadu and others*\(^{156}\), Mohini Jain Vs State of Karnataja\(^{157}\), Unni Krishnan Vs *State of Andhra Pradesh*.\(^{158}\)

**The Situation in Sivakasi**

Sivakasi is the home of India’s match and fireworks industries. Almost all of the region’s fireworks factories and seventy-five percent of the district’s match factories are located in Sivakasi.\(^{159}\)

There are two industry-associations namely the All India Chamber of Match Industries (AICMI) and the Tamil Nadu Fireworks

\(^{156}\) *AIR 1991 SC 417*
\(^{157}\) *AIR 1992 SC 767*
\(^{158}\) *(1993) SCC 645*
and Amorces Manufacturers Association (TFAA) regulating the manufacture of matches and fireworks in Sivakasi.

- The All India Chamber of Match Industries (AICMI) has 135 members, though it is estimated that there are at least one thousand match-producers in Sivakasi alone.\textsuperscript{160}

- The Tamil Nadu Fireworks and Amorces Manufacturers Association (TFAA) have 152 members.\textsuperscript{161} Estimates suggest that there are at least 450 fireworks manufacturers in Sivakasi. Child labour has been a continuing problem in both industries; the NCLP identifies the match industry in Sivakasi as one of nine industries for priority action.\textsuperscript{162}

The 1991 census estimates thirty thousand child labourers between the ages of six and fourteen in Sivakasi.\textsuperscript{163} In 1994-95, the State of Tamil Nadu and UNICEF jointly sponsored a study on child labour, this study revealed thirty-three thousand child labourers—three thousand in the fireworks industry and thirty thousand in the match industry.\textsuperscript{164}

In 1976, a Government Committee, chaired by Harbans Singh, recommended the amelioration, rather than abolition of child labour. The Committee argued that abolition would negatively affect the families of child labourers and the welfare of the match and fireworks industries. In 1983, Land Reforms Commission chaired by N.

\textsuperscript{160} Ibid
\textsuperscript{161} Ibid
\textsuperscript{162} Ibid
\textsuperscript{164} Ibid
Haribhasker gave recommendations similar to that of Harbans Singh Committee.

Though these reports were well received by child labour opponents and government officials, the state failed to act on their recommendations. This inaction prompted a writ petition by Indian lawyer and social activist M.C. Mehta in 1983. The Supreme Court of India has responded to M.C Mehta twice, in 1990 and again in 1993. On both occasions, the Court has sympathized with the plight of child labourers in Sivakasi and attempted to craft a remedy to protect their rights and livelihood.

**The Supreme Court Judgement, 1991**

Mehta’s 1983 petition was first resolved by the Supreme Court of India in 1990. Mehta argued that the employment of children in the match and fireworks industry in Sivakasi was a violation of India’s Constitution, the Factories Act, the Minimum Wages Act, and the Employment of Children Act.

The Court, consisting of Chief Justice Ranganath Misra and Justice M.H, Kania, held that “employment of children within the match factories directly connected with the manufacturing process upto final production of match sticks and fireworks sordid not at all be permitted.” The Court found that the employment of children in the production of matches and fireworks violated the spirit of the

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165 Factories Act, 1938
166 Minimum Wages, Act, 1948
167 Employment of Children Act, 1938, No. 26
168 AIR 1996 SSC 756, para 8
Constitution of India, in particular its Directive Principles of State Policy. The Directive Principles of State Policy cannot be enforced in any court of law. The Supreme Court relied on articles 39(f) and 45 in making its judgment.

The judgment has five important components

• In line with the Constitution’s prohibition on the employment of children in hazardous employment, the Supreme Court said that “children can, therefore, be employed in the process of packing but packing should be done in an area away from the place of manufacture to avoid exposure to accident.” ¹⁶⁹ The Court acknowledged that the Directive Principles of State Policy recommend that children should be in school until the age of fourteen, but “economic necessity forces grown up children to seek employment.” ¹⁷⁰

• The Court ordered that children be paid sixty percent of “prescribed minimum wage for an adult employee in the factories doing the same job.” ¹⁷¹ The Court stated that if the state feels that a higher wage is viable, this decision “should not stand in the way.” ¹⁷²

• The Court believes that special education facilities (both formal and job training), recreation and specialization should be made to provide for the quality of life of working children. To pay for

¹⁶⁹ Ibid
¹⁷⁰ Ibid, para 6
¹⁷¹ Ibid, para 7
¹⁷² Ibid, para 8
these facilities, the Court ordered the creation of a welfare fund, to which registered match factories would be made to contribute. Upon the recommendation of the counsel for the State of Tamil Nadu, the Court also ordered that the Government should make a matching grant to the fund.\textsuperscript{173}

- The Supreme Court ordered the State of Tamil Nadu to provide “facilities for recreation and medical attention.” These facilities were to include “provision of a basic diet during the working period and medical care with a view to ensuring sound physical growth.”\textsuperscript{174} It was recommended that the state work with UNICEF in making these facilities available.

- The Court ordered the creation of a compulsory insurance scheme for both adults and children employed in the Sivakasi match factories. All employees were to be insured for fifty thousand rupees, and the premiums were to be paid for by the employer.\textsuperscript{175} The Court concluded its decision by awarding Mehta three thousand rupees in costs.\textsuperscript{176}

The Factories Act states: “No child who has not completed his fourteenth year shall be required or allowed to work in any factory.” It is very strange how the Supreme Court reconciled this prohibition on work “in any factory” with its decision to allow children to work in factories, provided they are packing matches, and not manufacturing them.

\textsuperscript{173} Ibid
\textsuperscript{174} Ibid
\textsuperscript{175} Ibid
\textsuperscript{176} Ibid

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The other concern is that the Court appeared to give credence to the “nimble fingers” theory of children’s work. It stated: “We take note of the fact that the tender hands of the young workers are more suited to sorting out the manufactured product and process it for the purposes of packing.” This nimble fingers theory has been criticized by a number of human rights organizations, including Human Rights Watch: “In this view, child labor is not an evil, but a production necessity. This rationalization is a lie. In fact, children make the cheaper goods; only master weavers make the best quality carpets and saris.”

The Court did not create a disincentive for employers violating the law or its order. Though the Court emphasized that employers must play a role in maintaining the well-being of children at work, either through an insurance scheme or contributing to the welfare fund, it did not even mention the possible penalties they might incur for either failing to pay children a minimum wage or employing children in the manufacturing process.

**Reaction of Judicial Judgment**

The Court’s decision was criticized on many accounts by number of human rights organizations. The judgments is not progressive and, in fact, incorrect at law. It is alleged that the Court again sought to balance the child’s economic needs against his or her fundamental rights rather than prohibiting child labour. This decision, unlike the Court’s previous order, directly targeted the problem of poverty. It involved the state, employers, families, and
working children in a scheme to help reduce the causes of child labour. The Court determined that if poverty is eradicated, child labour will cease to exist. To this end, it hopes that state governments will replace child workers with adult workers. The reasoning is that if there is a low unemployment rate, then children will be less likely to have to work and more likely to attend school. Alternatively, if no other employment is available, then the hope is that the Welfare Fund will provide some income to the family.

In this decision, the Court was restrained in its policy-making role. It did not close any of the loopholes in the Child Labour Act, though it did acknowledge that such loopholes exist. This deference to the legislature is in keeping with the Court’s previous PIL decisions. On the other hand, the Court did make substantial policy through the expansion of the Welfare Fund. Though its aim appeared to be good, there have been some problems with the scheme it has suggested. To begin, the income generated from twenty-five thousand rupees is not enough to prevent parents from putting their children to work. At current State Bank of India interest rates, the annual income generated from the Fund will be 1562.50 rupees or $35.50 (U.S.).

The Court recognized this fact in its decision: “As the aforesaid income could not be enough to dissuade the parent/guardian to seek employment of the child, the State owes a duty to come forward to discharge its obligation in this regard.”

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177 Based upon a fixed-term deposit at the State Bank of India, paying 6.25% annually
178 n. 19, para 8
The Court’s solution was its recommendation regarding alternative employment for the child’s family members. However, that recommendation is not binding on the state. The Court stated: “We are not issuing any direction to do so presently. Instead, we leave the matter to be sorted out by the appropriate government.”\textsuperscript{179} In Tamil Nadu, this recommendation has not been implemented. The cost of doing so is likely prohibitive. Employers do not want to employ adults, in part because adult workers are subject to minimum wage and safety laws and they are probably better versed in their rights as compared to children.

The Court Revisits the Issue of Child Labour

Not surprisingly, the Supreme Court of India revisited the issue of child labour in 1997.\textsuperscript{180} In 1991, after an accident at a Sivakasi firecracker factory, the Supreme Court took suo moto cognizance of the issue of child labour.\textsuperscript{181} It ordered that compensation be paid to the victims of the accident and created a Three Member Committee to investigate and make recommendations regarding child labour in Sivakasi.

The Committee made ten recommendations. To quote a few

- Establishment of a National Commission for Children’s Welfare
- Creation of a Welfare Fund
- An Insurance Scheme for working children
- Enforcement of Minimum wage laws.

\textsuperscript{179} Ibid, para. 29
\textsuperscript{180} AIR 1997 SSC 699, p.701.
\textsuperscript{181} Ibid. p.702
The TFAA and the AICMI disputed the findings of the Committee.\textsuperscript{182} The Court also heard evidence, by way of affidavit, from NGOs, the State of Tamil Nadu, and the Government of India.

Before making its order regarding the Committee’s recommendations, the Court reviewed the problem of child labour in India. Its summary is the most comprehensive evaluation of this issue. Most importantly, it expanded its order to include not only the fireworks and match factories in Sivakasi, but also all industries in India employing children. It held: “We have, therefore, thought it fit to travel beyond the confines of Sivakasi to which place this petition initially related. In our view, it would be more appropriate to deal with the issue in wider spectrum and broader perspective taking it as a national problem and not appertaining to any one region of the country.”\textsuperscript{183} Unlike Supreme Court Judgement of 1991, this order was meant to apply to all employers across India.

The Court relied on Indian Constitution and India’s international commitments, and domestic legislation as the basis for its decision. Article 24 of India’s Constitution, which prohibits the employment of children in hazardous employment, is a fundamental right. The Court also found that Article 45, the provision for free and compulsory education, “has been raised to a high pedestal.”\textsuperscript{184} In addition, the Court also relied upon Article 39(e) (protection of the health and strength of workers), Article 41 (right to work, to education

\textsuperscript{182} Ibid
\textsuperscript{183} Ibid, p. 705
\textsuperscript{184} AIR 1993 SC 2178
and to public assistance in certain cases) and Article 47 (duty of the state to raise the level of nutrition and the standard of living and to improve public health) in making its decision. These provisions relate to Directive Principles of State Policy and “it is the duty of all the organs of the state to apply these principles.”\textsuperscript{185}

In regards to international commitments, the Court noted that India is a party to the Convention on the Rights of the Child.\textsuperscript{186} In its instrument of accession to the Convention, India undertook: “to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party.”\textsuperscript{187} Article 32 of the Convention states that state parties shall take action to provide for a minimum age for admission to employment, as well as to regulate the hours and conditions of employment and sanction employers that violate such provisions.

The Supreme Court then detailed the legislative history regarding the issue of child labour. It concluded: “The legislature has strongly desired prohibition of child labour.”\textsuperscript{188} In particular, it analyzed the Child Labour Act. The Court noted that the Act provides for punishments up to one year or a fine of up to twenty thousand rupees. Nonetheless, the Court said, “it is common experience that child labour continues to be employed.”\textsuperscript{189} It took note of the loopholes

\textsuperscript{185} Ibid
\textsuperscript{186} Convention on the Rights of Child, 1989
\textsuperscript{187} Ibid
\textsuperscript{188} n. 31, p. 707
\textsuperscript{189} Ibid. p. 708
in the Act, including that children can work if they are part of a family of labour. The Court also noted that the Act, unlike the Constitution or other labour laws, does not use the word “hazardous” anywhere. To the Court, the implication is that “children may continue to work in those processes not involving chemicals.”

Beyond failures in the Act, the Court also identified causes of child labour. To the Court, poverty is the “basic reason which compels parents of a child, despite their unwillingness, to get it employed.... Otherwise, no parents, especially no mother, would like that a tender aged child should toil in a factory in a difficult condition, instead of it enjoying its childhood at home under the paternal gaze.” This concern about poverty informed the Court’s ultimate order. Rather than absolutely prohibiting child labour, the Court sought to regulate it so as to protect the dignity and the standard of living of working children. It stated: “. . .till an alternative income is assured to the family, the question of abolition of child labour would really remain a will-o-the wisp.”

In terms of policy, the Court expanded the role of the Welfare Fund established after its 1991 decision. All employers contravening the Act must now pay twenty thousand rupees per child to the Child Rehabilitation-cum-Welfare Fund, regardless of whether the employer wishes to terminate the child’s employment or not. It is unclear from

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190 Ibid
191 Ibid
192 Ibid
193 n. 31, p. 709
194 Ibid
the decision whether this contribution is an addition to the penalties provided for in the Act. The objective of the Fund is to provide an income for the child previously employed in a prohibited occupation. The twenty thousand rupees contribution can even be invested in a “high yielding scheme of any nationalized bank or other public body” so as to generate a greater return for the child.\(^{195}\) The Court also considered the possibility of a policy whereby the state would be required to find alternative employment for a family member of every child removed from employment in a hazardous industry. In the end, it held that doing so “would strain the resources of the State.”\(^{196}\) It did recommend that this policy be adopted and, if the state cannot find alternative employment, that an additional five thousand rupees be deposited in the child’s name in the Fund.

To give shape to this new policy, the Supreme Court also made a number of administrative orders. For example,

- It demanded a survey of child labour to be completed within six months of its decision.
- That survey should be conducted in the most hazardous industries first.
- Income generated by the Fund should be paid monthly to the child and will not be paid if the child is not enrolled in an educational program.

\(^{195}\) \textit{Ibid}\n
\(^{196}\) \textit{Ibid}, p.710
• Responsibility for ensuring that contributions are made to the Fund and that the child is enrolled in an educational program is the duty of local labour inspectors.

• Recognizing the fact that labour Inspectors are not enforcing laws, the Court also ordered the creation of a Separate Cell in the Labour Department of each state to monitor this scheme.

• The Court also recommended that in the case of non-hazardous employment, children should not work more than four to six hours per day and they should be in school at least two hours per day.

• The cost of this schooling should be the responsibility of the employer.\textsuperscript{197}

It is allseed that the Supreme Court of India’s decision in this case was aimed at alleviating poverty as the motivation for children to work. It felt that if families have a steady income, then there would be no need for children to work. Further, by having employers contribute to the Welfare Fund, the Court attempted to ensure that at least some of the penalty collected from an offender would be paid to benefit the child and would not go directly into government coffers. In its conclusion, the Court hinted that poverty is not the only factor in the rise of child labour: “...India is significant a exception to the global trend toward the removal of children from the labour force. This shows that the problem of child labour is persisting in India not due

\textsuperscript{197} \textit{Ibid}
to persisting in India not due dearth of resources, but due to lack of real zeal. 198

The Supreme Court felt that local labour Inspectors would enforce its decision. But it is alleged that labour inspectors are overworked and susceptible to corruption and bribery. They are not performing their jobs honestly. More importantly, if labour inspectors were doing their jobs, more employers would be facing prosecution and the need for a court order would probably not exist. As noted in The Hindu: “The apex court presumes that all the labour inspectors will discharge their duty honestly. This you will agree is a fairytale where money speaks, bends and silences.” 199

It should be noted that in neither decision, did the Court focus on the social causes of child labour. The Court identified poverty as the reason why children work in India. The Supreme Court ignored other factors, such as caste discrimination, a lack of educational opportunities and myths about the nature of children’s work. By ignoring these other factors, especially in the drafting of its judgement, the Court reinforces poverty as the only cause of child labour. For child labour to be effectively attacked in India, all other factors which contribute to the problem of child labour must be addressed.

199 Goutam Ghosh, "An Endless Tunnel?" Hindu, February 7, 1999
The most problematic aspect of these decisions is that they did not afford relief for children employed outside of the enumerated hazardous industries. India’s legislative regime revolves around protecting children from the dangers associated with working in an unsafe environment. On the other hand, there is no comparable regulation for children working in so-called non-hazardous employment. Though the state might be successful in ending child labour in hazardous industries, there is always the concern that that labour will either go underground or those children will seek employment in jobs outside the purview of the Act or the Court’s order. In short, the Court gave tacit approval to child labour, provided it is conducted in non-hazardous industries, in a family enterprise or in a government-training centre.

**Mohini Jain Vs State of Karnataka**

The court held that the Right to Education was part of the Fundamental Right to life and Personal liberty guaranteed by Article 21. The sudden elevation of the Right to Education to the high constitutional pedestal created a controversy. Aggrieved by this judgement, some private educational institutions, which run medical and engineering colleges, challenged the correctness of that proposition and the matter came before a larger Bench consisting of Justice Jeevan Reddy, Justice Pandian, Justice Mohan Sharma and Justice Barucha Unni Krishnan Vs State of Andhra Pradesh.
**Unni Krishnan Vs State of Andhra Pradesh**

In this case, three questions were raised for the court’s determination namely

- whether the Constitution of India guaranteed a fundamental right to education to its citizen?
- whether a citizen of India had the fundamental right to establish and run an educational institution under article 19(1)(g) of the Constitution?
- whether the grant of permission to establish and the grant of affiliation by a university imposed an obligation upon an educational institution to act fairly in the matter of admission of students?

The court’s judgment was delivered by Jeevan Reddy J, on behalf of Pandhan J. and himself. Two concurring judgment were written by Sharma J. and Mohan J.

(a) Is Right to Education a Fundamental Right?

Jeevan Reddi J, speaking on behalf of Pandian J. and himself, agreed with the dicta of Mohini Jam that the Right to Education flowed directly from the Right to life guaranteed by article 21 of the Constitution. The judge, however, differed with the view adopted by Kuldip Singh J, in that case on the content and sweep of that right. Mohini Jam seemed to suggest that the citizens could demand that the state must provide adequate number of Medical College, Engineering Colleges and other educational institutions to satisfy all
their educational needs. Differing with this formulation, the judge observed:

The Right to Education which is implicit in the Right to life and Personal liberty guaranteed by Article 21 must be construed in the light of the Directive Principle in Part IV of the Constitution.... The three articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of Right to Education have to be determined, Right to Education, understood in the context of 45 and 41 means

(a) every child/citizen of this country has a right to free education until he completes the age fourteen 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.

The court, therefore, declared that “a child (citizen) has a Fundamental Right to free Education up to the age of 14 years.”__ Beyond 14 years, the Right to Education was subject to the limits of the economic capacity of the state. The judge concede that “the limits of economic satisfaction of the State.” He hastened to add that just because they relied upon some of the Directive Principle to locate the parameters of the Right to Education implied in article 21, it did not follow that “each and every obligation referred to in Part IV gets automatically included within the purview of Article 21. “ Sharma, J. (for Barucha and himself) concurring, observed that whether the Right
to Primary Education provided in article 45 could an enforceable right needed ‘a thorough consideration “if necessary by a larger Bench in a case where the question would squarely rise. Mohan J. concurring concluded on the basis of his empirical finding that “the Right to Free Education up to 14 years is a fundamental right”. It is submitted that the majority was virtually rewriting the Constitution by converting adjective principle into a fundamental right. The proposition that every one should get free and compulsory primary education is undisputed. But making it a justiciable right would create a number of problems.

Firstly, the constitutional text does not support such a proposition. The fact that the Constitution makers put it in a Part IV of the constitution meant that it was not intended to be a justiciable right. The Government was required to endeavour to provide free and compulsory education within ten years from the commencement of the Constitution This clearly meant that it as not to be a fundamental right at least till the lapse of ten years from the commencement of the constitution, Since when does it become a fundamental right? Obviously from the date of this decision. Will the state be held liable to pay compensation for its failure to provide free and compulsory education if such a failure has resulted in a manifest injury or loss to any person? If right to be educated becomes a fundamental right, is there not a right not to be located? It is one thing to say that the state must achieve the goal of universal education so that everybody will get
an access to education which is what is intended by articles 45 of the constitution. The right is not to education but to access to education. Is poverty not offending the right to live with dignity which the Supreme Court has held to be included with in article 21? Does one have a fundamental right to be not poor? To incorporate the Directive Principles of State Policy within the fundamental rights is doubtless and very exciting and romantic but it can be articulated through judicial process? Do we not trivialise the right under article 21 by overstretched it? It is argued that the Right to Primary Education ought to be considered as a fundamental right; but making it a fundamental right would require tremendous change in the political level. A mere judicial declaration of it being fundamental without the necessary changes in the social and economic policies would merely tokenize that right.

Further, to say that the Right to Education beyond primary was subject to the economic capacity of the state which make it almost redundant? If a Right to Education is part of the right to live, how can it be made dependent on the economic capacity of the state? If it is a fundamental right, it has got to be enforced irrespective of the economic capacity of the state. It is submitted that the economic incapacity ought not to be defence against violation or disregard of a fundamental right. If once economic capacity becomes a defence against violation or disregard of a fundamental right, then so many other aspects of article 21 of the constitution would be in jeopardy.
Treatment of prisoners in jails or protective homes will depend upon the economic capacity of the states. Juveniles Justice would also depend upon the economic capacity of the states. It is submitted that what is a fundamental right is not the Right to Education but access to education and equal access is the fundamental right. The human rights incorporated in the Directive Principles have to be achieved through suitable legislative and administrative policies. Compulsion of democratic politics is bound to force the governments to go towards such egalitarianism. The judicial process ought to refrain from its benevolent activism because such activism is likely to benumb the public effort towards the articulation of these human rights.

(b) Do Citizens have the Right to Establish Educational Institutions under Article 19(1) (g)?

If private institutions have the right to establish educational institutions as part of the fundamental rights to carry out on any trade or business guaranteed by article 19(1) (g), they will naturally have the right to make profit and in order to be able to make profit, they must have the freedom to charge such fees or even capitation fees as the commodity called “education” can fetch, Jeevan Reddy J. observed that “commercialization of education cannot and should not be permitted.. He emphatically stated that “impacting education cannot be trade, business or profession”. The said activity could also not be called a profession within the meaning of article 19(1) (g). Establishment educational institutions could not be treated as “practicing any profession”, the judge, however, conceded that “a
person or body of persons have a right to establish an educational institution in this country”. But such a right, said the judge, could not be an absolute right. It was subject to such a law as might be made by the state in the interests of the general public. There was in fact no need to say all this because the Constitution itself makes it very clear that the rights guaranteed by any of the six sub-clauses of clause (1) of article 19 are not absolute and are subject to reasonable restrictions in the interests mentioned in those sub-clauses. If every citizen has a fundamental right to establish an educational institution, wherefrom does such a right emanate? Does it emanate from the right to carry on trade or business or profession or trade guaranteed under article 19(1) (g)? Does one establish an educational institution for profit by considering it as a gainful activity? Since the judge observed that education not be considered as trade or business or even profession, the answer to the question whether one has a fundamental right to establish an educational institution by virtue of the right guaranteed by article 19(1)9g) ought to have been in the negative. If the constitution – makers wanted to include the right to establish an educational institution within the right to carry on any occupation, trade or business, would they have provided specifically for the right of the minorities to establish educational institutions of their choice in article 30(1).

The court having conceded for the time being, without deciding conclusively that the right to establish an educational institution was located in article 19(1) (g), however, cautioned that such a right would
not carry with it right to recognition or the right to affiliation. The bodies which gave the recognition and or affiliation were the authorities of the State. Such an authority could, therefore, insist upon the fulfillment of such conditions as were appropriate to ensure not only education of the requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing’ affiliating authority was the State, it was under an obligation to impose such conditions as were part of its duty enjoined by article 14 of the Constitution. The court, therefore, evolved a scheme which every authority granting recognition/affiliation shall impose upon the institution seeking such recognition/affiliation.

Jeevan Reddi J observed:

The idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission. It is the discretion in the matter of admission that is the root of the several ills. It is the discretion that has mainly led to commercialization of education. We must strive to bring about a situation where there is no room or occasion for the management or anyone on its behalf to demand or collect any amount beyond what is permitted.

The salient features of the scheme laid down by the court are as follows:

- At least 50 percent of the seats in every professional college shall be filled by the nominees of the government or the university, as the case may be. These seats would be called ‘free
seats’, The students for such free seats shall be selected on merit determined on the basis of a common entrance test where such a test is held, or in the absence of such a test, by criteria as might be determined by the competent authority or appropriate authority, as the case may be.

- The remaining 50 percent seats called the ‘payment seats’ shall be filled by those candidates who would be prepared to pay the fees prescribed therefore. The allotment of students against payment seats shall also be done on the basis of inter se merit determined on the same basis as in the case of free seats.

- There shall be no quota reserved for the management or for any family, caste or community which might have established such a college.

- It shall be competent for the state to provide reservation of seats for constitutionally permissible categories (SCs STs and BCs) with the approval of the affiliating university.

- The number of seats available in the professional colleges shall be fixed by the appropriate authority. No professional college shall be permitted to increase its strength.

Child labour in India is a serious problem that has not been solved through either government regulation or international pressure. In the traditional approach to international development, problems of underdevelopment can be solved through macro economic growth and poverty reduction. By expanding the economy and reducing poverty, development theory argues that the problem of child labour can be curbed. In India, that has not happened. Since 1991, India’s economy
has grown at an unprecedented level. Nonetheless, child labour appears to be at the same levels in the 1990s as it was in the previous decades. This fact suggests that poverty alleviation alone will not end child labour.

The Indian government has attempted to respond to the problem by enacting laws that make it illegal to employ children in enumerated hazardous industries. In addition to the laws, India has implemented the National Child Labour Project. This project seeks to end child labour by encouraging children to attend school or work in non-hazardous industries or in government training centres. Even these reforms have not made a serious impact on the problem.

The role of judiciary in India has been quite significant in promoting child labour welfare. The judiciary has played important role in protecting the child workers from exploitation and improving their conditions. Judiciary has shown a generosity towards poor child workers by relaxing the rules of locus standi. Judiciary made sincere efforts to benefit the poor child workers by entertaining their problems and giving them relief despite the limitations of locus standi. The observations made by the judiciary in various decided cases show that it is always committed to the cause of the child labour. Whenever a legal wrong or legal injury is caused to the child labourers by their employers, the judiciary has come forward to help them despite the locus Standi issue. The courts have always liberalized the concept of locus to meet the challenges of time and provide justice to the child
labourers. The efforts made in this direction are quite evident from the
decisions taken by the courts in some important cases like People’s
Union For Democratic Rights (1982), Bandhu Mukti Morcha (1984),
Neeraja Chaudhary (1984) in which the apex court liberalized the rule
of Locus Standi and given their judgment that public interest litigation
can be filed by any one, not the aggrieved persons. The judiciary has
protected the interests of the working children against exploitation.
The Judiciary has played a significant role in protecting child labour
by delivering Judgments in situations where there is no proper child
labour legislation. The Apex Court has delivered Judgment in Mohni
Jain and unni krishan cases in which it held that Right to Education
is a Fundamental Right and no child can be left without providing
education.

In 1980s in an attempt the Supreme Court of India developed a
new type of human rights litigation, known as IPL to secure human
rights guarantees for India’s impoverished and disadvantaged people.
Indian advocate M.C. Mehta petitioned the court in 1983 in PIL action,
charging that the Indian Government was not enforcing its labour
laws and therefore, allowing child labour to continue unabated. In the
1990s, the Supreme Court of India finally answered his petition. In
two separate decisions, it held that the Indian government must
implement a policy aimed at reducing poverty and hopefully, affecting
child labour. It created the Welfare Fund to provide income to the
families of child labourers as an incentive for children to attend school
and not to work.
Eminent lawyers like MC Mehta, social scientist and human rights activists fought for securing minimum rights for India’s child labourers. A rights-based approach to development seeks to empower people in developing countries. Rather than making them the subject of charitable relief, the rights-based approach aims to make people in developing countries participants in the development process. It encourages a link between development processes and fundamental freedoms and rights. Further, it aims to make government institutions accountable to the people in the hope that this accountability will deliver the entitlements that these people deserve. India’s experience with PIL is an excellent example of the rights-based approach to development at work. It was encouraged by the Supreme Court of India for the express purpose of protecting people’s rights in the face of government indolence. Indians are encouraged to petition India’s courts if they believe their rights or the rights of their fellow citizens are being denied. The Supreme Court has responded by encouraging its own investigations into human rights violations, circumventing the state if need be. The result is that Indians have an avenue to voice their concerns with government policy. Moreover, this avenue has the force of the Constitution of India behind it.

The Supreme Court of India has followed an interventionist approach to PIL. It has not shied away from developing policies to aid in the protection of human rights if it believes that the state has failed in that regard. On the other hand, the Court has not assumed the role of the legislature: it will not make laws or change existing laws. To do
so would be to violate the allocation of responsibilities between the organs of government in India’s political structure. It is for this reason that its decisions on the issue of child labour have been only a partial solution problem of child labour in India. Child labour can be solved. It may not be eradicated but it can be regulated to protect Indian children from the harmful effects of working in hazardous industries or for long hours and with little pay. The Indian government should enforce its own laws in an equitable manner. The Supreme Court of India cannot do that for the government. The best that the Court can do is establishing policies in discreet areas in the hopes that those policies will have some effect on the problem. It now remains up to India’s national legislature to revise the Child Labour Act or to better enforce the Act’s provisions.

To this end, the rights-based approach to development cannot be considered a panacea. For the rights-based approach to be ultimately effective there must be an express linkage between the development objective and a particular right. In India, the Supreme Court has identified certain rights that, if enforced, might result in less child labour. For example, in Mehia No. 2, the Court grounds its order in the Constitution’s prohibition of child labour in hazardous industries, as well as the Directive Principles of State Policy aimed at securing a high standard of living and compulsory education for all Indians. On the other hand, these rights cannot be used to stop widespread poverty, informal discrimination, or increase government
resources to better effectively enforce the law. The rights-based approach does not only rely on domestic human rights instruments; it is possible to make links between international or regional human rights instruments and a development objective. Even then, India has failed to ratify key international labour instruments, including Convention No. 138 and Convention No. 182. Though the Supreme Court of India has been more willing to apply international law in its decisions than other democracies, the rights in these conventions are of no effect if India does not ratify the treaties.

Most importantly, Indian Government and its courts must stop considering child labour to be simply a problem associated with poverty. If India is to be successful in eradicating child labour of all types, it must target, both through legislation and social policy, the associated causes, including discrimination, gender-bias and a misunderstanding of the value of formal education. If India’s politicians and bureaucrats ignore those problems, child labour will continue. And if child labour continues, India will be ignoring its commitments to human rights, children rights and the commitments it made to its people at Independence.