CHAPTER - 5

JUDICIAL APPROACH TO CHILD LABOUR

5.1 Introduction

Our written constitution guarantees social justice, liberty and equality to all its citizens. For achieving these objectives, we have three organs of government, viz., the legislature, the executive and the judiciary. Each of these is supreme within their sphere. 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, as the apex court has been assigned with a very important role, and acts as a guardian of the constitution and protector of human rights of the citizens. It is the yardstick of ground norms for other legislations.

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 eradication. 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.

In this chapter an attempt has been made to assess the judicial response to the child labour welfare as an effective instrument to improve the status of children in accordance with the spirit of the constitution.163

The role of judiciary in India has been quite significant in promoting child 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 Mohini 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.

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. It is in this spirit that 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.

5.2 Child labour Welfare and the Philosophy of Locus Standi

The liberalization of the concept of locus-standi to make access to the court easy, in the example of changing attitude of the courts. 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. The court has shown its wisdom by ensuring the philosophy and vindicate and promote public interests by rendering help to those people of the society who are unable to approach the court because of their poor economic conditions so to improve the conditions, the apex court explored this doctrine 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 Union for Democratic Rights vs. Union of India164, Bandhu Mukti Morcha vs. Union of India165, Neerja Chaudhary vs. State of Madhya Pradesh166.

In People Union for Democratic Right vs. Union of India, 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

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164 AIR 1982 SC 1473.
165 AIR 1984 SC 802.
166 AIR 1984 SC 1099.
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. The Supreme Court hoped 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 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Through these judgements the Apex Court explored the doctrine of Locus Standi by saying that not only aggrieved persons have a right to approach the court to redress their problems but also public spirited institution or any person affected 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 forward 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 of children below the age of 14 years in factory or mine or any other hazardous employment it is an irony that instead of giving them education they employ children in construction sites. This operates propiro vigore of Art 24 of the Constitution. So they go further extent by giving directions to the State governments for looking out the benefit of children and they take stand in the absence of Child labour legislation for the welfare of the children.
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.167

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 constitutional provisions evolved in National Policy for the welfare of children.

‘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 of not reducing in equality and ensuring social justice.’

In Bandhua Mukti Morcha vs. Union of India,168 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

168 AIR 1984 SC 802.
addressed to one of the judges of the apex court containing signatures and thumb marks of the bonded labourers. The petitioner alleged violated 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 lessees or owners 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 in a most miserable life and perhaps beasts and animals could lead more comfortable life than these helpless labourers”.169

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 workman 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 become a meaningful 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 discharge their constitutional obligation to 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

169 AIR 1984 SC at p. 809.
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.\textsuperscript{170}

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.\textsuperscript{171}

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 requirement 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.\textsuperscript{172} 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 which observed the miserable condition of the bonded labourer working in stone quarries in Faridabad approached to the apex court by sending a letter which was treated as writ petition and the apex court had considered their petition and directed the state government to implement the provisions related to the Bonded Labour System (abolition) Act 1976 i.e. to identify, release and rehabilitate the bonded labourers.

\textsuperscript{170} AIR 1984 SC at p. 811.
\textsuperscript{171} AIR 1984 SC at p. 812.
\textsuperscript{172} AIR 1984 SC at pp. 813-814.
The judgement 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*\(^{173}\) is another momentous decision of the apex court where the judiciary 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 14\(^{th}\) September, 1982 in which she set out how these bonded labourers were without land and work, facing immense hardship and 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. When the petitioner interviewed some of these bonded labourers they said that they would rather go back to the stone quarries for work than 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,

\(^{173}\) AIR 1984 SC 1099.
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 have 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.\textsuperscript{174} 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.\textsuperscript{175}

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

\textsuperscript{174} AIR 1984 SC at p. 1101.
\textsuperscript{175} AIR 1984 SC at p. 1102.
that term as laid down in the Act of 1976. But having regard to the decision of
the Bandhua Mukti Morcha case\textsuperscript{176} the court reasserted its stand in the
following words, “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.”\textsuperscript{177}

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.\textsuperscript{178}

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 any 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.

\textsuperscript{176} AIR 1984 SC 802.
\textsuperscript{177} AIR 1984 SC at p. 1103.
\textsuperscript{178} AIR 1984 SC at p. 1105.
5.3 Child Labour Welfare and Judicial Activism

The judiciary has taken a stand when there is no proper enactment for the welfare of the Child Labour and goes extent to look out the problems of them and some of these cases are there in which judiciary considers as poverty is the reason for the exploitation of children and other economic factor. In this situation we can leave the child in the condition of lurch and they have judgement which gives us good lesson to the society for the welfare of the children.

In Labourers Working on Salal Hydro Project vs. State of Jammu and Kashmir and others179, 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 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 the 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 can not be solved by mere legislation. Because of poverty and destitution in this country it will be difficult to eradicate child labour, so attempts should be made to reduce if not to eliminate child labour because it is essential that a child should have be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development 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 infact, 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 clearly construction work is a hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in

179 AIR 1984 SC 177.
construction work by reason of the prohibition enacted in Article 24 and this Constitutional prohibition must be enforced by the Central.

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 who are living at or near the project site should be given facilities for schooling because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. 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. So we can say that absence of literacy is a main cause of child labour.180

In *Lakshmi Kant Pandey v. Union of India*,181 the court held that it is obvious 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 breath, depth and height of its emotional intellectual and spiritual 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

180 AIR 1984 SC at p. 183.
181 1984, 2 SCC 244.
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 real prosperity because a large segment of the society would be then be left out of the developmental process.

5.4 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 is 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 judgement in the cases like M.C Mehta vs. State of Tamil Nadu and others, Mohini Jain vs. State of Karnataka, Unni Krishnan vs. State of Andhra Pradesh.

In M.C. Mehta vs. State of Tamil Nadu and others. The Honourable Supreme Court observed that working conditions in the match factories are such that they involve health hazards in normal course and apart from the special risk involved in the process of manufacturing, the adverse effect is a serious problem. Exposure of tender aged to these hazards requires special attention. We are of the view that employment of children in match factories directly connected with the manufacturing process like uplift of final production of match sticks or fireworks should not, at all, be permitted as Article 39 (f) prohibits it.

In this case, Mehta’s 1983 petition was first resolved by the Supreme Court of India in the year 1990. Mehta argued that the employment of children in the match and fireworks industry in Sivakasi was a violation of Indian’s

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182 AIR 1991 SC417
183 AIR 1992 SC 767
184 (1993) 1 SCC 645.
185 AIR 1991 SC 417.
186 AIR 1991 SC at p. 418.
Constitution, the Factories Act, 1948 the Minimum Wages Act, and the Employment of Children Act.\textsuperscript{187}

The Court, consisting of Chief Justice Ranganath Misra and Justice M.H. Kania, observed that “employment of children in the match factories directly connected with the manufacturing process upto final production of match sticks and fireworks should not at all be permitted.”\textsuperscript{188} The Court found that the employment of children in the production of matches and fireworks violated the spirit of the Constitution of India, in particular its Directive Principles of State Policy. The Supreme Court relied on articles 39(f) and 45 in making its judgment.

The judgment has five important components:

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\item 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.”\textsuperscript{189} The Apex 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.”\textsuperscript{190}
\item The Apex Court ordered that children be paid sixty percent of “prescribed minimum wage for an adult employee in the factories doing the same job.”\textsuperscript{191} The judgement further stated that if the state feels that a higher wage is viable, this decision “should not stand in the way.”\textsuperscript{192}
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\item \textit{Employment of Children Act, 1938, No. 26.}\textsuperscript{187}
\item \textit{AIR 1991 SC 417}, p. 8.\textsuperscript{188}
\item \textit{AIR 1991 SC 417.}\textsuperscript{189}
\item \textit{AIR 1991 SC p. 426.}\textsuperscript{190}
\item \textit{AIR 1991 SC p. 427.}\textsuperscript{191}
\item \textit{AIR 1991 SC p. 428.}\textsuperscript{192}
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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 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.\footnote{AIR 1991 SC p. 432.}

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.”\footnote{AIR 1991 SC p. 440.} It was recommended that the state will 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.\footnote{AIR 1991 SC p. 441.} The Court concluded its decision by awarding Mehta three thousand rupees as costs.\footnote{AIR 1991 SC p. 442.}

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.

The Court further observed that the spirit of the Constitution perhaps is that children should not be employed in factories as childhood is the formative period and in terms of Article 45 they are meant to be subjected to free and compulsory education, until they complete the age of 14 years. 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.

The Honourable Supreme Court further observed that the state (in this case Tamil Nadu) is directed to enforce provisions relating to facilities for recreation and medical and attention may be given to ensure provision of a basic diet during the working period to workers including children and medical care with a view to sound physical growth.

The Court also opined that compulsory insurance scheme should be provided for both adult and children employees for a sum of Rs. 50000 by taking into consideration the hazardous nature of this employment.

It is submitted that The Factories Act 1948, states that “No child who has not completed his fourteenth year shall be required or allowed to work in any factory.” Hence, 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.

197 The Government of India passed the Right to Education Act in 2009 making education compulsory and free up to the Age of 14 years and also included Art. 21A making Right to Education upto 14 years of age as Fundamental Right.
198 AIR 1991 SC at p. 419.
199 Sec. 67 Factories Act 1948.
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 disclose 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.).\textsuperscript{200} 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.”\textsuperscript{201}

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

\textsuperscript{200} Based upon a fixed-term deposit at the State Bank of India, paying 6.25% interest annually.

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.

In *Mohini Jain vs. State of Karnataka*203 Kuldip Singh J. held that the right to education was part of the fundamental right to life and personal liberty guaranteed by Article 21. This 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 college challenged the correctness of that proposition and the matter came before a larger bench consisting of Justices Jeevan Reddy, Pandian, Mohan, Sharma and Barucha JJ in *Unni Krishnan vs. State of Andhra Pradesh*.204 In this case three questions were raised for the court’s determination namely (i) whether the Constitution of India guaranteed a fundamental right to education to its citizen; (ii) whether a citizen of India had the fundamental right to establish and run an educational institution under article 19(1)(g) of the Constitution; (iii) 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 delivered by Jeevan Reddy J, on behalf of Pandian J. and himself. Two concurring judgment were written by Sharma J. and Mohan J.

Jeevan Reddi Justice, speaking on behalf of Pandian J. and himself, agreed with the dicta of *Mohini Jain* 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 Jain 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:205

“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 article 45 and 41 means (a) every child/citizen of this country has a right to free education until he completes the age of 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.”

In Bandhua Mukti Morcha v. Union of India Ors., (1984) 2 SCR 67, this Court held as under” -

“This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the 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 any State Government - has the right to take any action which will deprive a person of the enjoyment of these basic essential.”

The “right to education”, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the

205 1993, 1 SCC at pp. 732-733.
benefit of the citizens. The educational institutions must function to the best advantage of the citizens.

“We hold that every citizen has a ‘right to education’ under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. Indian civilisation recognizes education as one of the pious obligations of the human society”.

The court, therefore, declared that “a child (citizen) has a fundamental right to free education up to the age of 14 years.”206 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.”207

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.”208 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.”209 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.”210 It is respectfully 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.

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206 1993, 1 SCC at p. 735.
208 1993, 1 SCC at p. 738.
209 1993, 1 SCC at p. 663.
210 1993, 1 SCC at p. 684.
Further, to say that the right to education beyond primary was subject to the economic capacity of the state was to 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 a defence against violation or disregard of a fundamental right. If once economic capacity becomes a defence against violation or disregard of a fundamental right. If once economic capacity becomes a defence for formulating the scope of a fundamental right so many other aspects of article 21 would be in jeopardy.

This was the thin end of the wedge. 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 “imparting 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 be no stretch of imagination be treated as “practicing any profession”.

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.

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211 1993, 1 SCC Supra 21, at p. 750.
212 1993, 1 SCC at p. 753.
213 1993, 1 SCC at p. 755.
In this case, Chief Justice of India Y.K Sabharwal, observed that Article 45 of our Constitution stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. In this case the Apex Court also laid down a guidelines for the education and recreation for children of female prisoners.

In this case the Apex Court observed, for the care, welfare and development of the children, special and specific provisions have been made both in Part III and IV of the Constitution of India, besides other provisions in these parts which are also significant. The best interest of the child has been regarded as a primary consideration in our Constitution. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children. Article 21A inserted by 86th Constitutional Amendment provides for free and compulsory education to all children of the age of six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment.

The condition of not permitting new school within the radius of 5 kms. of Goisting School is not mandatory, held in Shikshan Prasarak Mandal, Pune vs. State of Maharastra AIR 2010 Bom 39 Right to Education includes right to safe education, held in Avinash Mehrotra vs. Union of India 2009 6 SCC 398.

5.5 Supreme Court’s “TEN COMMANDMENTS”

In M.C. Mehta vs. State of Tamil Nadu, the Supreme Court gave certain directions on the issue of elimination of child labour, otherwise the court issued “Ten Commandments” to the States concerned.

1. A survey would be made of the aforesaid type of child labour which would be completed within six months from today (10th Dec. 1996).
2. Every employer offending in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 (Central Act, 61 of 1986) must be asked to pay Rs. 20,000/- as compensation for every child employed, as the liability of employer would not cease even if he would desire to disengage the child presently employed.

3. The Inspectors appointed under section 17 of the said Act would see that the said sum of Rs. 20,000/- in respect of each child is paid by the delinquent employer and the same amount is deposited in “Child Labour Rehabilitation-cum-Welfare Fund”.

4. The Child Labour Rehabilitation-cum-Welfare Fund shall be district-wise to form a corpus of the income out of which shall be used only for the concerned child. The amount can be deposited in a high yielding scheme of any nationalized bank or other public body so as to generate higher income.

5. As this income will not suffice to dissuade the parent / guardians from seeking employment of the child, it would be avowed obligation of the State to provide employment to any of the adult member of the family whose child is withdrawn from hazardous employment. As it would practically strain the resources of the State, where it is not possible to provide job to the adult members of such families which would be in large numbers, the appropriate Government would, as its contribution/grant, deposit in the aforesaid fund a sum of Rs. 5,000/- per each child employed in hazardous occupation. This would either see an adult of such family getting job in lieu of the child or deposit of a sum Rs. 25,000/- in the said fund so as to enable the family to withdraw its child from hazardous occupation.

6. A survey should be conduced to identify the existence of child labour in these employments mentioned in Article 24 of the Constitution of India on priority basis giving first rank to the most hazardous employment to be followed by comparatively less hazardous employment.
7. In cases where alternative employment could not be provided, the parent / guardian of the concerned child would be paid every month the interest earned on the corpus of Rs. 25,000/-, to meet the educational expenses of the child so withdrawn. The employment given or the payment made would cease to be operative, if the child is not sent for education by the parent / guardian.

8. On discontinuation of the employment of the child, his education would be assured as directed in Article 45 of the Constitution of India that compulsory and free education should be provided to all children till they attain the age of 14 years. The aforesaid Inspectors should see that this direction is complied with.

9. The Collector of the District as a unit of collection should be the overseeing authority of the collection of funds. A separate Child Labour Cell in the Labour Department shall monitor the operational development of these units under the Collectors and the Secretary of Labour Department shall be the monitor to make the functioning of this scheme beneficial and worthwhile.

10. On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make him 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.216

5.6 Supreme Court’s view on the Employment of Children

In Bandhu Mukti Morcha vs. Union of India217 in this case a writ petition Under Article 32 has been filed by way of Public Interest Litigation seeking issue of a writ of mandamus directing the government to take a steps to stop employment of children in carpet industry in the State of Uttar Pradesh; to

216 AIR 1997 SC at p. 783.
217 AIR 1997 SC 2218.
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 respondent to give them facilities like education, health, sanitation, nutritious food etc.

The main contention by the petitioner group is that employment of the children in any industry or in hazardous industry, is violative of Article 24 of the Constitution and derogatory to the mandates contained in Article 39(e) and (f) and 45 of the Constitution read with preamble. Pursuant to the filing of the writ petition the apex court appointed a commissioner to visit factories, manufacturing carpets and submit their findings as to whether any numbers of children below the age of 14 years are working in the carpet industry. The commissioner submitted his report on 1st August 1991 stating that violation of Article 24 along with Article 39(e) and (f).

The Apex court observed that child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed and developing link its future with the status of the Child. Childhood holds the potential of the society. Children are the greater gift to the humanity. Mankind has been hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide and better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood –socially, economically, physical and mentally- the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.

The founding fathers of the Constitution, therefore, have bestowed the importance of the role of the child in its best for development. Dr. Bhim Rao

218 AIR 1997 SC at p. 2219.
Ambedkar was in forefront of his time in his wisdom and projected these rights in the Directive Principle including the children as beneficiaries. Their deprivation has deleterious effect on the efficacy of the democracy and the rule of law.\(^{219}\)

In *People's Union for Civil Liberties vs. Union of India and Others*,\(^ {220}\) in this case some children procured for labour subsequently killed or caused to be missing by the Procurer. On a filing of Public Interest Litigation by a Non-Governmental Organization, the Supreme Court observed that after accepting enforcement of Mr. Rajinder Sachar, a learned counsel appearing for the petitioner pleaded that the parents of the children were entitled to compensation and the counsel in support of his contention relied on Verma J’s observation in *Nilabati Behara vs. State of Orissa*\(^ {221}\) that a claim in public law for compensation for contravention of Human Rights and fundamental freedoms, the protection of which is guaranteed in the Indian Constitution is an acknowledged remedy for the enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of Fundamental Rights is distinct from and in addition to the remedy in private law for tort resulting from contravention of Fundamental Right. The defence of sovereign immunity being in-applicable and alien to the concept of guarantee of Fundamental rights, there can be no question of such a defence being available in the Constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of Fundamental Rights guaranteed under the Constitution, when that is the only practicable mode of redress to the contravention made by the state or its servants in the purported exercise of their powers and enforcement of the Fundamental Right is claimed by resort to the remedy in public law under the Constitution by recourse to Article 32 and 226 of the Constitution.\(^ {222}\)

In *Brown vs. Board of Education*\(^ {223}\) today education is perhaps the most important function of the state and local governments. It is required in the

\(^{219}\) AIR 1997 SC at p. 2220.

\(^{220}\) (1998) 8 SCC 485.

\(^{221}\) (1993) 2 SCC 746.

\(^{222}\) (1993) 2 SCC at 486.

performance of our most basic responsibilities, for service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

In Raj Kumar Tiwari vs. State, in this case the petitioner-employer was imposed Rs. 20000 as penalty for employing a child alleged to be below the 14 years of age. He challenged this order contending that before imposing penalty no enquiry was held. The High Court, although found that an inquiry was indeed held, set aside this impugned order on the ground that for the applicability of section 14 of the Act it is sine qua non that the person/child employed must be one. According to the court the impugned order itself in indicated that the child was set side.

It is submitted that there is a lot of difference between the expression “a person who has not completed 14 years of age” and “a person who is 14 years old”. While the latter would mean a person who has completed 14 years of age and is in his 15th year, the former 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 may be seldom 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.

In Hemendera Bhai vs. State of Chattisgarh in this case the petitioner facing a criminal proceeding under Section 482 of the Criminal Procedure Code and Section 14 of the Child Labour (Prohibition and Regulation) Act 1986. The learned counsel of the petitioner submitted that the learned magistrate with out taking cognizance of the offence alleged against him criminal proceeding which did not have any reasonable cause and therefore he pray that the criminal

224 2003 III LLJ 1045.
225 2003 II LLJ 645.
proceeding should be quashed. For supporting his argument the learned counsel of the petitioner relied on the two decision of the apex court in which cognizance taken by magistrate has been analyzed.

In *Pepsi Food Ltd., and another vs. Special Judicial Magistrate and others*, the apex court held that, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into Motion as a matter of course.

In the present case, it is clear from the order sheet maintained by the learned magistrate that he has not applied his mind to the facts of the case and the law appropriate to the present case. He has not even stated that he had perused, or read the charge sheets, which, which has to be treated as a complaint filed by the Inspector under Section 16 of the Act. The apex court had held that in the aforesaid two judgments that the magistrate has to apply his mind to the facts of the case and the law applicable to the case, which the learned magistrate has failed to do so in this case. Thus, he has not taken cognizance against the petitioners and therefore, the criminal proceedings initiated against the petitioner are liable to be quashed.

Section 3 of the Act says that no child shall be employed or permitted to work in any of the occupations set forth in Part A of the schedule or in any workshop wherein any processes set forth in part B of the Schedule is carried on.

From the facts of the case and document produced before this court it is submitted that workers who are supplied raw materials for making Bidis taking the raw materials from the firm after giving undertaking that they themselves would make Bidis and if they roll Bidis in their respective houses taking the assistance of their children, the firm cannot be held responsible since the firm has no control or supervision over the work of those workers who take raw material to their houses for making Bidis. It is further stated that in the reply that the raw material was supplied only to those workers whose names are entered in the Register maintained by the firm. The remuneration is also given

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226 *AIR 1998 SC 128.*
only to them. It is not possible for the firm to have any control or supervision over the Bidi making job being done at the house of workers according to their convenience. The firm has no knowledge or information as to whether the workers who make the Bidis at their house take the help of any of their family members or children in the said job. If they take any such help, the firm cannot be held responsible for the same. Thus, it cannot be said that the firm is the employer of the child labourer and Section 3 of the Act has not been contravened by the firm.

In *Narender Malav vs. State of Gujarat*, 227 in this case a Public Interest Litigation was filed to the apex court related to the issues of child labour in the salt mines of Gujarat. The court requested the amicus curiae and a non-governmental organisation, SEWA, to enquire and investigate the issue of child labour, the welfare and well being of salt mine workers and their families in the Saurashtra and Kutch areas of the State of Gujarat, particularly with reference to education facilities for their children and availability of a adequate / proper housing and medical facilities and to report to the court with in three months.

The court requested the amicus curiae and the representative of the Non-Governmental Organisation to interact with the empowered committee for the purpose of ascertaining the measures taken by various agencies for the welfare of salt workers and their families and to suggest ways and means to improve these conditions. The court directed the state government through the Assistant Labour Commissioner to provide all the assistance for this purpose. 228

In *Anant Construction Co., vs. Govt Labour Officer and Inspector* 229 in this case question is whether the Inspector appointed as per Section 17 of the Child Labour (Prohibition and Regulation) Act 1986 have the power to pass an order holding that the labour employed by the appellant were below the age-limit prescribed under the Act and to also direct the appellant to pay compensation.

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227 2004 (10) SCALE 12.
228 2004 (10) SCALE at p. 13.
The appellant was carrying a construction business in 1997. The Inspector being Respondent (1) here in, visited the construction site of the appellant and issued a notice to the appellant for explanation within seven days with regard, to the employment of child labour (three persons to be exact) on the construction site. The appellant relied upon two certificates certifying that child labourers were in fact above the age of 14 years when the labour was employed. The inspector demanded the appellant to have a deposit of Rs. 20000 per child as compensation and if he failed then action will be taken against him.

Aggrieving with this order, the appellant filed before the High Court as writ petition under Article 226 of the Constitution. In his writ petition the appellant had submitted that the inspector did not have jurisdiction to decide the dispute related to the age factor of the child but was bound to refer the dispute for decision to the prescribed medical authority as per Section 10 of the Act. The High Court did not agree with the contention raised by the appellant and dismissed the petition and upheld the quantum of penalty.

Finally the appellant appealed to this court and the apex court has observed Section 16(2) of the Act which prescribes the procedures related to the offence.

“16 Procedure related to Offence-(1) any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.

(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No court to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offences under this Act.

Therefore under this section jurisdiction of the Inspector to file a complaint with regard to any offence under the Act does not extend to the trying of the complaint which as sub-section (3) of the Section 16 specifically provides
only court not inferior to the Metropolitan Magistrate or a Magistrate of the first class.

Besides, Section 16(2) does not make the production of certificate mandatory. Infact it is open to persons proceeded against under the Act to raise a dispute as to the age of the person employed.

**Jhunjhunwala vs. B.K. Patnaik**\(^{230}\)

If adolescent workers are not possessing fitness certificate are found working in factory, it is not obligatory upon the Inspector of Factories to first proceed under Section 75 before prosecuting occupier for contravening Section 69 of Factories Act.

**Emperor vs. R.F. Misty**\(^{231}\)

Even in the case of a child of fourteen years there is a need for certificate under Section 69 of Factories Act.

(a) Sorting of groundnuts in a Courtyard near the machinery room for decorticating - *Ramanathan Vs. K.E.*

(b) To employ children less than 8 years in plating store in a workroom, the benefit of which goes to the mother, was held liable to penalty - *Beedon Vs. Parrot.*

(c) Oiling of parts of machinery of the Spinning Mill by a young person during meal time, though done without orders and for worker’s own amusement was held in *Prior Vs. Slaithwaite Spinning Co.* violation of law making the occupier liable to fine.

The UN General Assembly Special Session on children held in New York in May 2002 was attended by an Indian delegation led by Minister of Human Resource Development and consisted of Parliamentarians, NGOs and officials. It was a follow up to the world summit held in 1990. The summit


\(^{231}\) AIR (1929) Bombay 272.
adopted the declaration on the survival, protection and development of children and endorsed a plan of action for its implementation.

The Government of India is implementing various schemes and programmes for the benefit of the children. Further, a National Charter for children 2003 has been adopted to reiterate the commitment of the Government to the cause of the children in order to see that no child remains hungry, illiterate or sick.

*Association for Development and Others vs. Union of India and Others, on 7 November, 2013*

The Delhi High Court held and observed that Child Labour is a serious problem of Indian Community. Government authorities to implement rules and regulations effectively in this regard. Further the court appreciated the works of Dr. Yogesh Dube for his sustained efforts and campaign against child labour. One Yogesh Dube, liberated numbers of children’s from various hotels, small industrial units in Mumbai apart from that he liberated child labour from works of carpet in Bhadodhi Dist. of Uttar Pradesh during salvation on relief work he exposed violence and atrocities carried out on them. He organized mass campaigning against child labour and created awareness that engaging child below age of 14 years is crime and attract penalty of Rs. 20000/- with imprisonment of one year.

*Rajangam, District Secretary, Beedi Worker’s Union, Tirunelveli vs. State of TamilNadu* 232

A letter / petition received from the district Beedi worker’s, Tirunelveli in the State of Tamilnadu was treated as an application under Article 32 of our constitution and notice was ordered initially to three factories referred to in the said letter and later to other Beedi manufacturing units with in the state.

There was a connected petition also relating to the same subject matter with different ancillary relief’s covering employment of child labour and implementation of the Beedi an cigar workers Act 1966.

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232 1992 1 SCC 221.
Supreme court held that tobacco manufacturing was indeed hazardous to health child labour in this trade should be prohibited so employment of children should be stopped either immediately or in a phased manner but should be done away with in three years by the states. In view of the health hazards included in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs. 50,000/- and the incidence should not be passed on to the workman.

*Sheela Barse vs. Union of India* (AIR 1993 SC 175)

The supreme court also stressed the Indian government to implement the united nation’s conventions etc, in *Sheela Barse vs. Union of India*\(^2\) and also in *Legal Aid Committee vs. Union of India*.\(^3\) It held that international conventions relating to employment of children, if ratified by the govt. of India, would be binding on India. Art 51 of our constitution provides that India must honour its international obligations.

It is worthwhile to note the judgement of Supreme Court in *M/s. P.M. Patel and Sons vs. Union of India and Others*\(^4\) the court held that “the homeworkers” in the beedi industry are employees with in the meaning of Employers Provident Fund and Miscellaneous Provisions Act, 1952 and working in their dwelling houses is interpreted to be the premises notionally connected with factory. Based on the above, the above Act of 1952 is applicable to all home based workers.

*Bachpan Bachao Andolan vs. Union of India & Others*\(^5\)

A Public interest litigation under Article 32 of the constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses, without any access to their families under extreme inhuman conditions. There are sexual abuses on a daily basis, physical abuse as well as emotional abuse.

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\(^2\) AIR 1993 SC 175.

\(^3\) AIR 1989 SC 331.


\(^5\) 2011 5 SCC 1 judgement dated 18th April 2011.
The Juvenile Justice (Care and Protection of Children) Act 2000 was amended in 2006 by Act 33 of 2006. It is a special legislation for children and defines children as “a person up to the age of 18 years”. The Juvenile Justice Act is built upon a model which addresses both children who need care and protection and those who are in a conflict of law.

The petitioner convened a meeting with the circus owners on 18th and 19th August, 2003 where a few owners agreed to make a declaration that there shall be no further use of children in the circuses in India and a full list of children employed by them will be submitted.

The Court ordered to implement the fundamental rights of children under Article 21A of the Constitution, by the central government by issuing suitable notifications prohibiting the employment of children in Circuses with in two months.

The court has given a detailed guidelines brought out for the enforcement of the Juvenile Justice (Care and Protection) Act, 2000.237

5.7 Conclusion

The foregoing chapter reveals that the role of judiciary in India has been quite significant in promoting child labour welfare. The study discloses that judiciary has always given a lead to save the child workers from exploitation and improve their conditions. Judicial have shown a generosity towards poor child workers by relaxing the rules of locus standi. It has always been made efforts to benefit the poor child workers by entertaining their problems and giving them relief to them 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-workers. Whenever a legal wrong or legal injury is caused to the child workers by their employers, the judiciary has come forward to help them despite the locus Standi issue. Frankly speaking, the courts have always liberalized the concept of locus to meet the challenges of time and provide

237 2011 5 SCC
justice to the child workers. The efforts made in this direction are quite evident from the decisions discussed in the this chapter.

Some of the cases are like People 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 and the judiciary has shown encourage to uphold the interest of the working children and spared nothing to improve the conditions of the child workers. Not only in the concept of locus standi but also the judiciary also look out the situation of child workers where there is not proper enactment on child labour legislation then also they had given their judgement in Labourers Working on Salal Hydro project (1984) in which the apex court points out that poverty and economic factors are there for improve the problems of child labour so they pointed out that whenever the Central Government take any construction project then they have to look out the children who are living or working them then provide education to them so that their conditions will be improved. Finally the apex court has taken some cases in which they held that right to education is a fundamental right and no child can left without providing education to them like Mohini Jain, and Unnikrishan case. Similarly also the judiciary also taken some of the cases in which Convention of the Rights of the Child 1989 which is considered to be a role model for the welfare of the children rights and this was discussed in Bandhu Mukti Morcha (1997) and other cases also where the judiciary have taken stand in which violations of the Sections of the Child Labour (Prohibition and Regulation) Act, 1986 in Raj Kumari Tiwari (2003II LLJ ) in which the High Court held that there is no violation of section 14 of the Act to set aside the order of the lower court. In another case i.e. Hemendra Bhai 2003II LLJ) in which the question arose whether magistrate had a cognizance of the offence since the alleged charge had not framed out. The Court analysed the other decision which are related to this case which was pointed out by the leaned counsel of the petitioners. The High Court had given their judgement that the magistrate did not apply their minds for framing out charges and the petitioner is not liable for employing child labourer as his organization have taken out the raw material from the persons who were making beedi since they are doing
independently so the firm of the petitioners is not liable and set aside the order of the court. The judiciary has always made concetrate efforts to safeguard them against the exploitative tendencies of their employers by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consonance of the mandate of Our National Charter.

The Commission visited several villages, personally contacted the parents of the children in different places and found that the children were taken against their wishes and are wrongfully forced to work as bonded labour in the carpet industries. They have furnished the list of the children whom they contacted and the list of the carpet industries where at the children were found engaged. The question, therefore is, whether the employment of the children below the age of 14 years is violative of Article 24 and whether the omission on the part of the State to provide welfare facilities and opportunities deprives them of the constitutional mandates contained in Article 45, 39(e) and (f), 21, 14 etc.

The child labour, therefore must be eradicated through well-planned, poverty focussed alleviation, development and imposition of restrictions in employment of the children etc. Total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and social risks etc. Therefore, while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self respect and dignity of person. Immediate ban of child labour would be both unrealistic and counter, productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like. Compulsory education, therefore, to these children is one of the principal means and primary duty of the State for stability of the democracy, social integration and to eliminate social tensions.