International Journal of Law
ISSN: 2455-2194, RJIF 5.12
www.lawresearchjournal.com
Volume 2; Issue 3; May 2016; Page No. 17-26

Judicial activism for combating the problem of child labour in India: A critical analysis

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Abstract
The framers of the Indian Constitution were fully aware of the problem of child labour. They incorporated some specific provisions to prohibit child labour in Part III and IV of the Constitution dealing with the Fundamental Rights and Directive Principles of State Policy. Article 24 of the Constitution prohibits the employment of children below the age of 14 years in any factories or mines or in other hazardous employment. Article 45 states that the State shall endeavor to provide free and compulsory education until they complete the age of 6 years. Not only the Constitutional provision had looked out the problem of child labour, but different Acts had been enacted to minimize the exploitation of child labour these laws have been amended, repealed and revised from time to time. By these amendments many safeguards are provided to protect children, like minimum age, working hours, health and medical examination, wage and leave, place of environment and physical conditions etc. were prescribed. But it was found that the existing legal framework for the regulation of child labour is dispersed and patchy. Even then it remains anomaly on the said above issues. To meet this gap a significant legislative attempt to prohibit and regulate child labour was made in 1986. The Child Labour (Prohibition and Regulation) Act, 1986 was enacted by the Parliament with an objective to prohibit the engagement of children in certain employment and to regulate the working conditions of work of children in certain other employment. The legislature by enacting the laws to control the problem of child labour had performed its role but the Judiciary had played an important role in this area. In addition to the legislations, the Supreme Court had shown its concern for child labour by bringing occupations or process under the Court's order by the direct applications of constitutional provisions. Some of the leading cases wherein the Apex court had enlarged the scope of their powers and had taken the issue of child labour and directed the states to implement the guidelines framed by the Apex Court for the welfare of the child labour.

Keywords: Child Labour, Art 24, Indian Constitution, Supreme Court, Art 45, Child Labour (Prohibition and Regulation) Act, 1986

Introduction

Our written constitution guarantees social justice, liberty and equality to all its citizens. For achieving these objectives, we have three organs of government, the legislature, the executive and the judiciary. Each of these 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, as the apex court has been assigned a very important role, and constituted as a guardian of the constitution which is the yardstick of ground norms for other legislation.

Our constitution accords a dignified and crucial position to the judiciary. It is the greatest unifying and integrating force of our country. The Supreme Court is at the apex of a well –ordered and well–regulated judicial structure of the 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 legislature and the executive, the first being the political check of the people themselves. The constitution puts an 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. The final burden of interpreting these elastic provisions is upon the Courts. Courts are to contribute to law's growth without overstepping the boundaries of the system; in other words, how to reconcile tradition and convenience or the claims of stability and those of changes. 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 citizens, 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.[1] Supreme Court has played an important Role to control the problem of child labour and has shown its concern for child labour by bringing occupations or processes under the courts order by the direct application of constitutional provisions. Human Rights jurisprudence in India has a constitutional status and sweep;

[1] Subha Rao, J., Social Justice and Law, Delhi: National Publishing House, 1974, p.4.

Article 21 of the Constitution can be termed as 'Magna Carta' of human rights. This Article guarantees right to life and liberty to every human being. Right to life and liberty is a cherished and prized right under the Constitution.

Supreme Court replaced the liberal concept of Article 21 taken in *Maneka Gandhi v. Union of India*[2], and *Francis Coralie Mullin v. Union Territory of Delhi*[3], held that Article 21 included protection of health and strength of workers, men, women and tender age of children against abuse. According to the court, the opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity and educational facilities are included in Article-1.

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.

In this research paper 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.

Child Labour Welfare and the Philosophy of Locus Standi

The liberalization of the concept of locus-standi, to make access to the court easy, is an example of changing attitude of the courts. It is generally seen 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 labour, the apex court has shown its generosity by relaxing the concept of locus-standi. The court has shown its wisdom by ensuring the philosophy by public interest litigation and tries to give relief in some of the cases as follows.

In *People Union for Democratic Right v. Union of India*[4] known as Asiad Case. This case is an epoch-making judgment of the Supreme Court of India, which has not only made significant contribution of labour laws, but also has displayed a creative attitude of judges to protect the interests of the child workers. The court has given a new dimension to several areas, such as locus standi, public interest litigation, and enforcement of labours, minimum wages and employment of children. The Facts of the case were that the Non-Governmental Organization addressed a letter to the Supreme Court annexing the report of social activists regarding the conditions under which the workmen engaged in various Asiad projects. Pointing reference was made in that report that there was violation of Article 24 of the constitution and of the provisions of the Employments of Children Act, 1938, viz., children below the age of 14 years was employed in construction work of various projects. With regard to allegation of the provisions of Employment of Children Act, 1938, the Delhi Administration and Delhi Development Authority took the stand that no complaint in regard to the violations of the provisions of that Act at any stage received by them. They also took stand that, the Act was not applicable in case of construction work, since construction industry was not covered in the schedule of the Act. 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 hopes 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 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.

In *Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir and others* [5] 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 honorable 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, so attempts should be made to reduce if not to eliminate child labour because it is 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 in the country. They must concede that having regarded 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 such as construction work.

The Supreme Court also suggested that whenever the Central Government undertakes a construction project which is likely to last for some time, the Central Government should provide that children of construction, workers which are living it or near the project site should be give 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.

[2] AIR, 1978, SC 597

[3] (1981) I SCC. 608.

[4] AIR 1982 SC 1473.

[5] AIR 1984 SC 177.

So we can say that literacy (absence of) is a main cause of child labour.

Prohibition of Traffic in Human Beings and Forced Labour

As regards the true scope and meaning of traffic in human beings and other forms of forced labour, the court has specifically pointed out that Article 23 of the Constitution has been intended to protect the individual not against the state but also against other private persons. It prohibits traffic in human beings and beggar and other similar forms of forced labour practiced by anyone else. This stand has been taken by the court to protect the fundamental rights of the citizen in some of the cases where individual dignity is more important than other thing in life. Some of these cases behind on this statement are as follows.

In *Bandhua Mukti Morcha v. Union of India*[6] 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 lesse 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 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". The court expressed surprise by saying that if a complaint is made on the behalf of workmen that they are held in bondage and living in 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 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. 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 with 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 properly implement the provisions related to the Bonded Labour System (abolition) Act 1976 i.e. identify them, release and rehabilitate the bonded labourers.

The judgment of the Supreme 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.

In *Neerja Chaudhary v. State of Madhya Pradesh*[7] this case was on behalf of a group of bonded quarry workers in the early 1980s. A letter was sent to the Supreme Court referring to an article written by the petitioner. The reporter had visited three of the villages in Madhya Pradesh, after the court had released bonded labourers on the petition filed under Bandhua Mukti Morcha. She found that the released bonded labourers were not rehabilitated, they had neither land nor work and they were facing immense hardship at the verge of starvation, and they express their desire to return to their place of work as bonded labourerer. All the seventy-five released bonded labourers from these villages were from tribal communities and they had not been rehabilitated six months after their release. The Supreme Court stated that it was imperative that the freed bonded labourers are properly rehabilitated after their identification and release. The Supreme Court also ruled that 'it is the plainest requirements of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release they must be suitably rehabilitated. Any failure of action on the part of the State Governments in implementing the provisions of the Bonded labour System (Abolition) Act was the clearest violation of Article 21 and Article 23 of the Constitution.'

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

[6] AIR 1984 SC 802.

[7] AIR I984 SC1099.

45 is supplementary to article 24 for if the child is not being employed till the age of 14 years he must be kept in some educational institution. And the judiciary plays an important role in the making as education as a fundamental right and the Judiciary gives a good judgment on the cases as follows.

In *M.C. Mehta v. State of Tamil Nadu and others*[8] in this case the honorable 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 age to these hazards requires special attention. We are of the view that employment of children with match factories directly connected with the manufacturing process holding of final production of match sticks or fireworks should not at all be permitted as Article 39(f) prohibits it.

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.

Honorable 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.

In *J.P Unni Krishnan. v. State of Andhra Pradesh*[9] the Supreme Court was approached by the petitioners to reexamine the correctness of the decision rendered by a Division Bench comprising of Kuldip Singh and R.M.Sahai JJ in *Mohini Jain v. State of Karnataka*[10] The petitioners running medical and engineering colleges in the states of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu, contended that if Mohini Jain's verdict was implemented and followed by the State Government, they would have to close down their colleges. The Supreme Court was approached to ascertain the precise position of the decision and its implications.

In Mohini, Jain the Supreme Court held that every citizen has a right to education under the Constitution. The State is under the constitutional obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligations through state owned or State recognized educational institutions. When the State Government grants recognition to the private educational institution it creates an agency to fulfill its obligation under the Constitution. The students are given admission in recognition to their right to education under the Constitution. Charging capitation fee in consideration of admission to educational institutions was thus held to be patent denial of a citizen's right to education under the Constitution.

The Supreme Court Observed:

"The Preamble promises and the directive principles are mandate to the State to eradicate poverty so that the poor of this country can enjoy the right to life guaranteed under the Constitution. The State Action or inaction which defeats the constitutional mandates is per se arbitrary and cannot be sustained. Capitalization fee makes the availability of education beyond the reach of the poor. The State Action in permitting capitation fee to be charged by State recognized educational institution is wholly arbitrary and as such violation of Article 14 of the Constitution"

In Unni Krishan Case the right to education came to be more elaborately explained and engrafted to Article 21 of the Constitution. The first question in this case was whether right to education is a fundamental right under Article 21 of the Constitution. The Supreme Court declared Article 21 as the heart of fundamental right which has received expanded meaning from time to time and there is no justification as to why it cannot be interpreted in the light of Article 45 wherein the State is obligated to provide education upto 14 years of age. The education brings excellence; it enriches the mind and illuminates the spirit. It prepares a child for a good citizenship. It liberates from ignorance, superstitious, prejudices and ultimately unfolds the vision and truth. Justice Mohan Observed:

"….in educational institutions which are the seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up statesman and soldiers, patriots and philosophers, who will determine the progress of the land."

While declaring the children's right to education as fundamental right under Article 21 of the Constitution the apex Court clarified that the fundamental rights and directive principles are supplementary to each other. Supreme Court reiterated its previous views that fundamental rights are empty vessels into which generation must pool its contents in the light of experience. Directive Principles supply life and blood to fundamental rights.

Another question to be determined by the apex court was whether a citizen has a right to establish educational institution as a part of his right guaranteed to him by Article 19(1) (g) of the Constitution. The Supreme Court held that a citizen of this country may have a right to establish an educational institution but no citizen, person, or institution has a right much less than fundamental right, to affiliation or recognition, or to grant-in-aid from the State. Therefore, there is no fundamental right under Article 19(1) (g) to establish an educational institution. The establishment of educational institutions is not a trade, business or a profession or occupation as stipulated in Article 19(1) (g) of the Constitution.

Child Labour Welfare and Judicial Activism

The judiciary has almost brought a revolution in the life of child workers in India. It has always to endeavor to expand and develop the law so as to respond to the hope 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 to 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. No efforts seem to have

[8] AIR 1991 SC 417.
[9] AIR 1993 SC 2178.
[10] AIR 1992 SC 1858.

been spared by the Indian judiciary to uphold the cause of the poor workers. The courts have always interpreted and applied the law so as to promote the cause of justice and to meet the hope and aspiration of the children as per the mandates of the constitution. Some of the cases are as follows.

In *Rangangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu and others*[11] in this case the Supreme Court opined that tobacco manufacturing was indeed hazardous to health. Child Labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner that is to be decided by the State Government but it should be within a period not exceeding three years.

In *M.C Mehta v. State of Tamil Nadu*[12] is a landmark ruling relating to abolition of child labour. In this case, the court exhaustively reviewed the relevant constitutional provisions, I.L.O. Conventions and various legislative provisions on child labour. While upholding its earlier stand to consider primary education as a fundamental right as desired by the Article 45 in J.P. Unni Krishnan v. State of Andhra Pradesh the Court also recognized the importance of Article 41 which speaks about right to work within the lights of the economic capacity and development of the State, with reference to employment to adult members in the family of child labourers.

However the Court realized the very large number of child force in the fireworks and matchsticks, carpet weaving, glass, slate, diamond polishing and precious stones polishing industry etc., would strain the resources of the State and declined to issue any directions to the State to provide compulsory employment to adult members of the family in lieu of the child workers. In case the adult member i.e., parent /guardian get employment he shall withdraw his child from employment. For the operation of its on child labour philosophy the Supreme Court has issued 'Ten Commandments' to the States concerned, which may be summed up as follows:

(1) To conduct a survey on child labour in the hazardous industries which has to be completed within six months from the day of delivering the instant judgment? (The judgment was delivered on 10th Dec. 1996).

(2) To start with work could be taken regarding the most hazardous employment to rank its first priority to be followed by comparatively less hazardous and so on. For this the court has identified some industries for priority action.

(3) The employment to be given as per directions could be detailed to other assured employment which would not require generation of much additional employment.

(4) The employment so given could as well as industry where the child is employed a public undertaking and would be manual in future, shall be one which is nearest to the place of residence of the family.

(5) Where alternative employment is not possible as aforesaid the parent/guardian of the laid off child be paid Rs 25000/-(i.e. Rs20000 by the employer and Rs 5000 by the appropriate government towards Child Labour Rehabilitation-cum Welfare Fund) and entitled for income on the fund every month. The employment given to the adult or payment made would become inoperative if the child is not sent for education.

(6) On discontinuation of the employment of the child, his education would be assured in suitable institution with a view to make a better citizen. It is an obligation under Article 45 of the Constitution and it is the duty of the Inspectors (appointed under Section 17 of the Act, 1986) to see that this call of the Constitution is carried out.

(7) It was also directed to create a separate cell in the Labour Department of the appropriate Government. The executive head of the District was asked to keep a watchful eye on the Inspectors to implement this 'Judicial Scheme' apart from monitoring by the higher officials at Secretary Level in the Government.

(8) The Secretary, Ministry of Labour, Government of India was asked to appraise the Supreme Court within one year about the compliance of the said direction.

(9) It was also directed to implement the penal provisions of the 1986 Act, where employment of child labour prohibited by the Act is found.

(10) In the case of non-hazardous jobs the Inspectors shall have to see that the working hours of the children are not more than four to six hours a day and the child should receive education at least two hours each day and the cost of education should be borne by the employer.

In *Bandhua Mukti Morcha v. Union of India*[13] while reiterating the above directions as feasible inevitable' in this case, the Court realized that poverty is the mother of child labour and held that 'the child labour, therefore, must be eradicated through well planned, poverty focused alleviation, development and imposing trade sanctions in employment of children etc. The Court emphatically expressed that the financial implication would be such as to provide a damper, because the money after all would be used to build up a better India. In this context it is worth pointing out that poverty as such has not stood in the way of other developing countries from taking care of child labour. The Court rightly reminded the policy makers that" As many countries of Africa like Zambia, Ghana, ivory Coast, Libya, Zimbabwe, with income levels lower than India have done better in these matters (removed children from labour force and establishment of compulsory education).

This shows that cause of child labour problems to persist is really not dearth of resources, but lack of real zeal". It is submitted that the judiciary in India within its limits directed the State, what to do for the abolition of child labour through its scheme. The judicial wisdom reflects the anxiety and anguish for their restoration of childhood to the children which is their natural right.

In *People's Union for Civil Liberties v Union of India and others*[14] in this case some children procured for labour were subsequently killed or caused to be missing by the Procurer. On filing 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 that the parents of the children are entitled to compensation and the counsel in support of his contention relied on Justice Verma's observation in Nilabati Behara v. State of Orissa 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

[11] (1992) 1SCC 221.
[12] (1996) 6 SCC 756.
[13] AIR 1997 SC 2218.
[14] (1998) 8 SCC 485.

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 Rights. The defense 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.

In *Raj Kumar Tiwari v. State and ors*[15] 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 who has not completed 14 years of age. According to the court the impugned order itself in dictated that the child was of 14 years old and not belong 14 years of age. The petition was, thus allowed on this ground and the impugned order was set aside.

It is submitted that there is a lot of difference between the expression" a person who has not completed 14 years of age "and "a person who is 14 years old". While the former would mean a person who has completed 14 years of age and is in his 15th year, the latter phrase would mean a person who has completed 13 years of age and is in his 14th year. In the absence of exact date of birth to calculate whether the person has completed 14 years of his age, the court could have upheld the order of the lower court being the fact finding court. It is may 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 v State of Chattisgarh*[16] 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 without taking cognizance of the offence alleged against him criminal proceeding which did not have any reasonable cause and therefore he prayed that the criminal 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 *D. Lakshminarayan's v. Narayana*[17] the apex court held that the expression "taking cognizance by the magistrate has not been defined in the code. The ways in which such cognizance can be taken are set out in clause (a), (b) and (c) of the Section 190(1). Whether the magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which case is sought to be instituted, and the nature of the preliminary action, if any taken by the magistrate. Broadly speaking, when on receiving a complaint, the magistrate applies his mind for the purpose of criminal proceeding under Section 200 the succeeding Sections in Chapter XV of the Code of Criminal Procedure, 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1) (a). If instead of proceeding under chapter IX he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the Police under Section 256 (3), he cannot said to have taken cognizance of any offence.

In *Pepsi food Ltd and another v. Special Judicial Magistrate and others*[18] the apex court held that, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into notion as a matter of course is not the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set in to motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law appropriate thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would not that be sufficient for the complainant to succeed in bringing charge to the accused. It is not that the magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the evidence before of the accused. The magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witness to elicit answers to find out the truthfulness of the allegations or to otherwise and then examine if any offence is prima-facie committed by all or any of the accused.

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.

The next contention raised by the learned counsel of the petitioner is that Section 3 of the Act is not applicable to the facts and circumstances of the present case and no case under Section 3 of the Act is made out against the petitioner.

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

[15] 2003 III LLJ 1045.
[16] 2003 II LLJ 645.
[17] AIR 1976 SC 672.
[18] AIR 1998 SC 128.

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 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 ands Section 3 of the Act has not been contravened by the firm.

The High Court has given their judgment that petitioner impugned in this petition. Criminal proceeding against him pending before the trial magistrate and initiated under Section 14 of Child Labour (Prohibition and Regulation) Act, 1986. The High Court allowed the petition quashing the said proceedings for several reasons. The first was that the trial magistrate has not applied his mind to the facts and the law applicable to the present case.

Second was that the firm had not employed the child as labourer in any workshop where its Bidi making was carried on. The workers were supplied raw materials and they rolled Bidis in their respective houses taking assistance of their children. The firm had no control or supervision over the work of those workers.

In *Narender Malav v. State of Gujarat* [19] 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 organization, SEWA, to enquire and investigate the issue of child labour, the welfare and well-being of salt mine workers and their families in the Saurashtra and Kutch areas of the State of Gujarat, particularly with reference to education facilities for their children and availability of an adequate /proper housing and medical facilities and to report to the court within three months.

The court requested the amicus curiae and the representative of the Non –Governmental Organisation to interact with the empowered committee for the purpose of ascertain 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.

In *Anant Construction Co v. Govt Labour Officer and Inspector*[20] 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.

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 about 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.

Aggrieved with this order, the appellant had filed before the High Court a 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 appeal 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 employ.

"10 Dispute as to age –If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall in the absence of a certificate as to the age of such a child granted by the prescribed medical authority, be referred by the inspector for decision to the prescribed medical authority.

Relied on the Rule 17 of the Child Labour (Prohibition and Regulation) Rules, 1988 the respondent provides that:

Rule 17(1) deal with the obligation on the part of young person's to produce the certificate of age from the appropriate medical authority and does not pertain to the obligation of the employer. If the employer may, on reasonable material, raise a dispute before the Inspector regarding a child's age, the Inspector can only refer the dispute to the prescribed medical authority under Section 10 of the Act. Therefore, the impugned order of the Inspector being without jurisdiction, his order and the order of the High Court are set aside and the appeal is allowed. The appellant set free at liberty without any cost.

In *Bachpan Bachao Andolan vs. Union of India and others*[21] in this case the Petitioner filed this petition following a series of incidents where the Petitioner came in contact with many children who were trafficked into performing in circuses. The activities that are undertaken in these circuses deprive the

[19] 2004 (10) SCALE 12.

[20] (2006) 9 SCC 225.

[21] (2011) 5 SCC 1.

children of their basic fundamental rights. Most of them are trafficked from some poverty-stricken areas of Nepal as well as from backward districts of India. After detailed research and enquiry, the Petitioner found that organized crime of trafficking of children for Indian circuses, particularly from Nepal is rampant. Mostly, these children are sold to the circus owners either by the agents or their relatives or sometimes the poor parents are lured into the web by promising high salaries, luxurious life, etc. Children are frequently physically, emotionally and sexually abused in these places. There is violation of the Juvenile Justice Act and all International treaties and Conventions related to Human Rights and Child Rights where India is a signatory.

The employment of children in circus involves violation of several Fundamental and Statutory Rights, namely, right to education; right to freedom of expression; competency to enter into contract for working in circus; existing labour laws and legitimacy of contracts; and all statutory provisions dealing with child labour.

Solicitor General appearing for the Union of India broadened the scope of this petition and submitted a detailed report dealing with the problem of trafficking in children.

The Supreme Court discussed the issue of trafficking, factors that cause trafficking, available legislations, India's obligations under International and Regional Instruments, National Plans and Policies to combat human trafficking, and existing child protection mechanisms.

The court issued the following directions to the Central Government regarding children working in the Indian circuses:

(i) Issue suitable notifications prohibiting the employment of children in circuses within two months from the date of the order in order to implement the fundamental right of the children under Article 21A of the Constitution of India.

(ii) Conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children are to be kept in the Care and Protective Homes till they attain the age of 18 years.

(iii) Talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification.

(iv) Frame proper scheme of rehabilitation of rescued children from circuses.

In *Bachpan Bachao Andolan vs Union of India*[22] in this case Hon'ble Supreme Court while hearing a Public Interested Litigation has directed the following guidelines to Central Government in casae of missing children.

(i) In case of complaint with regard to any missing children; made in a police station, the same should be reduced into a First Information Report and appropriate steps should be taken to see that follow up investigation is taken up immediately thereafter.

(ii) In case of every missing child reported; there will be an initial presumption of either abduction or trafficking, unless, in the investigation, the same is proved otherwise.

(iii) Whenever any complaint is filed before the police authorities regarding a missing child, the same must be entertained under Section 154 Cr.P.C. However, even in respect of complaints made otherwise with regard to a child, who may come within the scope of Section 155 Cr. P.C., upon making an entry in the Book to be maintained for the purposes of Section 155 Cr. P.C., and after referring the information to the Magistrate concerned, continue with the inquiry into the complaint.

(iv) The Magistrate, upon receipt of the information recorded under Section 155 Cr. P.C., shall proceed, in the meantime, to take appropriate action under sub- section (2), especially, if the complaint relates to a child and, in particular, a girl child.

(v) Each police station should have, at least, one Police Officer, especially instructed and trained and designated as a Juvenile Welfare Officer in terms of Section 63 of the Juvenile Act. Special Juvenile Officer on duty in the police station should be present in shifts.

(vi) Para-legal volunteers, who have been recruited by the Legal Services Authorities, should be utilized, so that there is, at least, one paralegal volunteer, in shifts, in the police station to keep a watch over the manner in which the complaints regarding missing children and other offences against children are dealt with.

(vii) The State Legal Services Authorities should also work out a network of NGOs, whose services could also be availed of at all levels for the purpose of tracing and reintegrating missing children with their families which, in fact, should be the prime object, when a missing child is recovered

(viii) Every found/recovered child must be immediately photographed by the police for purposes of advertisement and to make his relatives / guardians aware of the child having been recovered / found

(ix) Photographs of the recovered child should be published on the website and through the newspapers and even on the T.V. so that the parents of the missing child could locate their missing child and recover him or her from the custody of the police.

(x) Standard Operating Procedure must be laid down to handle the cases of missing children and to invoke appropriate provisions of law where trafficking, child labour, abduction, exploitation and similar issues are disclosed during investigation or after the recovery of the child, when the information suggests the commission of such offences.

(xi) A protocol should be established by the local police with the High Courts and also with the State Legal Services Authorities for monitoring the case of a missing child.

(xii) Definition of Missing Children: Missing child has been defined as a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person who may be legally entrusted with the custody of the child, whatever may be the circumstances/causes of disappearance. The child will be considered missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well-being is established.

(xiii) In case a missing child is not recovered within four months from the date of filing of the First Information Report, the matter may be forwarded to the Anti-Human Trafficking Unit in each State in order to enable the said Unit to take up more intensive investigation regarding the missing child.

(xiv) The Anti-Human Trafficking Unit shall file periodical status reports after every three months to keep the Legal Services Authorities updated.

(xv) In cases where First Information Reports have not been lodged at all and the child is still missing, an F.I.R. should be

[22]Writ Petition (Civil) no. 75 of 2012, decided by Supreme Court on 10.05.2013.

lodged within a month from the date of communication of this Order and further investigation may proceed on that basis.
(xvi) Once a child is recovered, the police authorities shall carry out further investigation to see whether there is an involvement of any trafficking in the procedure by which the child went missing and if, on investigation, such links are found, the police shall take appropriate action thereupon
(xvii) The State authorities shall arrange for adequate Shelter Homes to be provided for missing children, who are recovered and do not have any place to go to. Such Shelter Homes or After-care Homes will have to be set up by the State Government concerned and funds to run the same will also have to be provided by the State Government together with proper infrastructure. Such Homes should be put in place within three months, at the latest. Any private Home, being run for the purpose of sheltering children, shall not be entitled to receive a child, unless forwarded by the Child Welfare Committee and unless they comply with all the provisions of the Juvenile Justice Act, including registration.

Conclusion

It is borne out from discussion in the aforesaid research paper 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 working conditions. The chapter has been divided into four parts. The first part deal with the child labour welfare and philosophy of locus standi wherein the judiciary have relaxed the rule of locus standi for the benefit to the child workers by entertaining their problems and giving them relief despite the limitations of locus standi. The observation made by the judiciary in some of the cases which shows that it is always committed to the cause of the child workers. When 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. In other words the courts have always liberalized the rule of locus standi to meet the challenges of time and provide justice to the child workers. The efforts made in this direction are quite evident from the decisions discussed above. First case i.e. People For Union Democratic Rights (Asiad Case) (1982) in this case supreme court pointed out that there should be prohibition on children below the age of 14 years working in a construction site which is considered to be dangerous for their health and childhood. And they suggested it is the duty of the government to ensure the education of children of parents working in a construction site. Second case i.e. Labourer Working on Salal Hydro Project (1983) in this case the apex court had directed the Governments to provide a facilities of schooling to the children of construction workers who are going to take part in the project either undertaken by the Central Government for a considerable period of time. The crux of the judgement is that absence of literacy is the reason which the court pointed out in this case.

The second part of this chapter talks about the forced labour or traffic in human beings because it violates the dignity of the person by forcing them the person against his/her wishes or violate the right to life and liberty this point has been taken in some of the cases i.e. Bandhu Mukti Morcha Case (1984) in where court emphasized that when the allegations revealed that the workers were being held in bondage without basic amenities like shelter, drinking, water or two square meals a day, it was violation of the fundamental rights as in this country everyone has right to live with dignity and free from exploitation. In another case Neeraja Chaudhary (1984) the court point out it is very sad that the bonded labourers who were released in earlier judgement (Bandhu Mukti Morcha) has not been rehabilitated as direction given by the Court to the State Governments. Any failure of action on the part of the state government in implementing the provisions of the Bonded labour (Abolition) Act would clearly be violative of Article 21 and 23 of the Constitution and this stand taken by the judiciary for protecting the rights of the workmen (including children) working in construction project.

The third parts of the chapter talks about to provide education to children for better child hood and this is considered to be fundamental rights in some of the cases i.e. M.C Mehta's case (1991) in where the Court has observed that the children in terms of Article 45 are entitled to get free and compulsory education till they complete the age of 14 years. In another case J.P Unnikrishnan case in where the court pointed out that right to education in the context of Article 21 and says that every child has the right to receive education and the impact is of this case is that the legislature has made an amendment in Article 21 in the part III of the Constitution.

The Last part deals with the judicial activism in where the judiciary has given directed the states that it is their duty to create an environment where the child labour can have opportunities to grow and develop in a healthy manner with full dignity in consonance of the mandate of the Constitution.

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