CHAPTER-4
JUDICIAL EFFORTS TOWARDS THE PROBLEM OF CHILD LABOUR
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The struggle for independence was over by 15th August 1947. But the attainment of independence was not an end itself. It was only the beginning of a struggle; the struggle to live as an independent nation and, at the same time, establish a democracy based on the ideas and need of a new Constitution forming the basic law of the land for the realisation of these ideas was paramount. Therefore, one of the first tasks undertaken by independent India was framing of a new Constitution. Accordingly new Constitution of India was adopted by the Constituent Assembly on 26th November 1949 and it came into force on 26th January 1950. There is a difference of opinion amongst the Constitutional jurists about the nature of the Indian Constitution. One view is that it is a quasi-federal Constitution and contains more unitary features than federal. The other view is that it is a federal Constitution. An analysis of the whole scheme of the
Constitution favors the idea of a federation with strong centralising tendency.

The Constitution of India is written and is supreme. The provisions of the Constitution which are concerned with federal principles cannot be altered without the consent of the majority of the States. The Constitution establishes a Supreme Court to decide disputes between the union and the states, or the state interse and interpret finally the provisions of the Constitution. In other words Judiciary has, in a federal polity, the final power to interpret the Constitution and guard the 'entrenched provisions' of the Constitution. The Indian Constitution makers defined the Indian federal structure not with an eye on theoretical but on practical considerations in designing federalism. Under the impact of world wars, international crisis, scientific and technological progress and developments and the emergence of the ideal of social welfare state, the whole concept of federalism had been undergoing a change for sometime throughout the world. There are centralising tendencies as evidence in every federation and whether it is in U.S.A. or in Australia, strong and powerful national governments have emerged in every federation. The framers of the Indian Constitution took note
of these tendencies and kept in view the practical needs of the country designed on federal structure not on the footing that it should conform to some theoretical, definite or standard, pattern, but on the basis that it should be able to subserve the need of the vast and diverse country like India. The Indian Constitution, therefore, constitutes a new bold experiment in the area of federalism.

The incorporation of a formal declaration of Fundamental Rights in part III of the Constitution is deemed to be distinguishing feature of a democratic State. These rights are prohibitions against the State. The State cannot make a law which takes away or abridges any of the rights of the citizens guaranteed in the part III of the Constitution. If it passes such a law it may be declared unconstitutional by the courts. But mere declaration of certain fundamental rights will be of no use if there is no machinery for their enforcement. Indeed, the every existence of a right depends upon the remedy for its enforcement. Unless there is remedy there is no right, goes a famous maxim. For this purpose an independent and impartial judiciary with a power of judicial review has been established under the Constitution of India. It is the custodian of the rights of citizens. Besides, in a federal
Constitution it plays another significant role of determining the limits of power of the Center and States.

In a welfare state like India the impartial judiciary is above all. Its decision are binding not only on all citizens but the Government. It could not be fair if we fail to acknowledge the role of judiciary in safeguarding, protecting and liberating the interests of the child and child labour. Specially the apex court of the country i.e. Supreme Court and the State High Courts of the different States are taking active participation in protecting and liberating the poor and the weakest of the weak viz. child labourers and child bonded labourers from being exploited, in various ways, beside it has also helped to bring in social reform and social equality.

The founding fathers of the Indian Constitution adopted the parliamentary form of government of Westminster model. But the Indian parliament and State legislatures, unlike the English parliament, owe their origin to the Constitution and derive their powers from its provisions, and therefore working within the limitations prescribed in the Constitution. Article 50 separates judiciary from executive and legislature under the Parliamentary form of government. Strict
separation between executive and legislature is quite impossible. The theory of separation of power got place in a limited sense under the Constitution. There is, thus a necessary implication that the Constitution confers on the judiciary the power of scrutiny of a law made by principal legislature to declare a law void if it is found to be in consistent with the provisions of the Constitution. Thus the Indian Constitution unlike the English Constitution, recognises the independence of the Supreme Court, though it is circumscribed by limitation put upon it by the Constitution, consequently, judicial review available in India is more or less at par with the one available in U.S.A. But in the United States, a law may also be questioned on its being unjust, arbitrary or unreasonable under the cover of the ‘due process of law’ clause; in other words the wisdom of the legislature or the policy formulated in the enactment may be subjected to scrutiny by the Supreme Court. However, the Indian Constitution, unlike the American Constitution, does not recognise the absolute supremacy of the Supreme Court over legislative authority in all respects as the Union parliament and State legislatures are supreme in their respective jurisdiction and in that wide field there is no scope for the
Indian Supreme Court to play the role of the American Supreme Court.

There is no bifurcation of the Judiciary between the Federal and State Governments. The same system of courts, headed by the Supreme Court administer both the Union laws and the State laws which are applicable to the cases coming up for adjudication. This is in contrast to the American System, where there are Federal Courts and State Courts. In case of any dispute relating to power arises between Central and State Government, Judiciary plays an important role in solving this. Thus, judiciary as are of the organs of the Government has established itself very effective to resolve the dispute between Center and State. It has got its own hierarchy and is independent from remaining organs of the government i.e. executive and legislature. The framers of Constitution have kept separate provisions in the Constitution with respect to the functions of courts. The Supreme Court and High Courts have been conferred ample power to make rules and bye laws for regulating their internal management as well as the functionings of Subordinate Courts. Supreme Court’s decision is binding on all courts in the country. Since language of the Constitution is not free from ambiguities and
its meaning is likely to be interpreted differently by different authorities at different times; it is but natural that disputes might arise between the Center and its constituent units regarding their respective powers. Therefore, in order to maintain the supremacy of the Constitution, there must be an independent and impartial authority to decide disputes between the Center and the States or the States inter se. This function can only be entrusted to a judicial body. The Supreme Court under our Constitution is such an arbiter. It is the final interpreter and guardian of the Constitution. In addition, to the above function of maintaining the supremacy of the Constitution, the Supreme Court is also the guardian of the Fundamental Rights of the people. Truly, the Supreme Court has been called upon to safeguard civil and minority rights and play the role of "guardian of the social revolution". It is the great tribunal, which has to draw the line between individual liberty and social control. It is also the highest and final interpreter of the general law of the country. It is the highest court of appeal in civil and criminal matters.

An independent and impartial Judiciary is said to be the first condition of liberty. It is the custodian of the rights of the citizen. In a federal Constitution, it plays another
important role, it determines the limits of the powers of the Center and the units. The following provisions of the Constitution are intended to secure independence and impartiality of the Supreme Court and the High Courts:

a) The President appoints the judges after consultation with judicial authorities. In the case of appointment of the Chief justice of India, the president must consult such judges of the Supreme Court and High Courts as he may deem necessary. For the selection of other Judges of the Supreme Court, he must consult the Chief Justice of India. The appointment of the judges of a High Court will be made by the president after consultation with the Chief Justice of India and the Governor of the State. In the case of appointment of a judge other than the Chief Justice, the chief justice of the High Court concerned must be consulted. Thus, in the appointment of judges, the Constitution does not give absolute discretion to the Executive.

b) Security of tenure is guaranteed to every judge. A judge of the Supreme Court or of a High Court can
be removed on the ground of proved misbehavior or incapacity. The President can remove a judge only when an address has been presented against him by each House of Parliament.

c) Salaries of the judges have been fixed by the Constitution and cannot be varied by the legislature except during the period of proclaimed emergency.

d) Once appointed, their privileges, rights and allowances cannot be altered to their disadvantages.

e) The Supreme Court and the High Courts have been given authority to recruit their staff and frame rules regarding condition of service.

f) Expenditure in respect of the salaries and allowance of the judges is not put to the vote of the Legislature.

g) The administrative expenses of the Supreme Court, including salaries, allowances, and pensions payable to its officers, are charged on the Consolidated Fund of India. Similarly, administrative expenses of the
High Court are charged on the Consolidated Fund of the State.

h) The Constitution debars the Supreme Court Judges from pleading or appearing before any court or judicial authority in India even after retirement.

i) No discussion shall take place in the legislature of a State or in Parliament with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.

Thus, our Constitution has done everything possible to make the Supreme Court and the High Courts independent of the influence of the executive. An attempt is made in the Constitution to make even the subordinate judiciary independent of extraneous influences. One of the articles namely Article 237 of the Constitution makes it easy for the State government to bring about separation of the executive from the judiciary and place the magistracy which deals with criminal cases on the same footing as civil courts.
4.1. Judicial Review

Judicial review in India is based on the assumption that the Constitution is the supreme law of the land, and all governmental organs, which owe their origin to the Constitution and derive their powers from its provisions, must function within the framework of the Constitution, and must not do anything which is inconsistent with the provisions of the Constitution. In a federal system it is a necessary consequence to have an impartial and independent judiciary whose basic function is to act as an arbiter in a dispute arising between the Center and its constituent units. Under the Indian Constitution, there is a specific provision in Article 13(2) which says that the State shall not make any law which takes away or abridges the fundamental rights enshrined in the Constitution, and any law made in contravention of this provision shall, to the extent of inconsistency, be void. The inclusion of this provision appears to be due to abundant caution, as, in the absence of such a provision, the Supreme Court would still have the power to examine the Constitutionality of a law on grounds of infringement of fundamental rights. This is so because Article 124 (6) enjoins a judge of the Supreme Court to faithfully abide by an oath or
affirmation to uphold the Constitution. It is, therefore, the duty of the Supreme Court to protect the fundamental rights against any encroachment or infringement by the State. One of the unique features of the Constitution is that a person may approach the Supreme Court directly by appropriate proceedings for the enforcement of his fundamental rights (Article 32). Even otherwise under Article 132, the Supreme Court has an appellate jurisdiction in appeals from the High Courts in a case which involves a substantial question of law as to the interpretations of the Constitution. In addition, Article 136 confers on the Supreme Court a wide Jurisdiction in its discretion to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal. Any cause or matter may include any question of law as to the interpretation of the Constitution.

Although the Fundamental Rights under the Indian Constitution bear some resemblance to the Bill of Rights under American Constitution, the deliberate rejection of the 'due process of law' clause from its incorporation in the Indian Constitution has made all the difference in the nature of judicial review as it operates in India. Early in the Gopalan
case, the power of judicial review was firmly established and the limitations for its exercise were clearly enunciated. The Constitution contains express provisions for judicial review of legislation as to its conformity with the Constitutional provisions. For example, the words “procedure established by law” in Article 21 means procedure established by an enacted law other-wise valid although the procedure should not be arbitrary capricious or fanciful. Certain fundamental rights are guaranteed simultaneously with permissible reasonable restrictions which may be imposed by law on the enjoyment of these rights for certain purposes or in public interest. The determination by the legislature of what constitutes ‘reasonable’ is not final. It is subject to supervision by courts. However, in evaluating such elusive factors and forming their own conception of what is reasonable, that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their inference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for the people of their way of thinking but for all, and that the majority of the elected representatives have in authorising imposition of the restriction, considered them
to be reasonable. Nevertheless, the Supreme Court has laid down some broad generalisation for determining the reasonableness of restrictions, e.g. the court will apply the objective standards, the restriction should not be greater than what is required by the circumstances or there should be proximate connection between the restriction and the object sought to be achieved. In this process, the power of judicial review does not make the judiciary supreme in any sense of the word. There is ample evidence in the Constitution itself to indicate that it creates a system of checks and balances as a result of which none of the three governmental organs can usurp the functions of the other or disable the other from discharging the functions entrusted to it by the Constitution.

In India, the exercise of the power of judicial review is itself made subject to limitations which are expressly provided in the Constitution. The Supreme Court has, however also evolved certain limitations which may be called as self-imposed on its power of Judicial review, such as found in res-Judicata, laches, proceedings in camera, standing, waiver etc.
It seems to have been a common understanding that the fundamental features of the Constitution, namely, secularism, democracy and the freedom of the individual would always subsist in the welfare state. In view of the above reason, a necessary implication arises on the power of parliament that the expression “amendment of this Constitution” has consequently a limited meaning in our Constitution. The expression “amendment of this Constitution” in Article 368 means any addition or change in any of the provisions of the Constitution within the broad contours of the preamble and the Constitution to carryout the objectives in the preamble and the Directive principles applied to fundamental rights, it would mean that while Fundamental rights, cannot be abrogated reasonable abridgements of fundamental rights can be effected in the public interest.

Although the Judges enumerated certain essentials of the basic structure of the Constitution, but they also made it clear that they were only illustrative and not exhaustive. According to Sikri C.J. the basic structure of the Constitution consists of the following features:-

\[ \text{a. Supremacy of the Constitution} \]
b. Republican and democratic forms of the Government

c. Secular character of the Constitution

d. Separation of power between the legislature, the executive and the Judiciary

e. Federal character of the Constitution.

The Supreme Court has thus added the following features as basic features of the Constitution to the list of basic features laid down in the Keshavanenda Bharti's Case\(^1\).

a. Rule of law

b. Judicial Review

c. Democracy which implies free and fair Election. It has held that the jurisdiction of the court under Article 32, is the basic feature of the Constitution.

In Minerava Mills Ltd. Vs. Union of India\(^2\), Supreme court has held that the following are the basic features of the Constitution.

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\(^1\) Indira Gandhi Nehru Vs. Raj Narayan, AIR 1975
\(^2\) AIR, 1980 SC, 1789.
a. Limited power of parliament to amend the Constitution\(^3\).

b. Independence of judiciary.

The doctrine of basic structure has been vehemently criticised. It has been said that the Court has not precisely defined as to what are the essential features of the basic structure and if this doctrine is accepted every amendment is likely to be challenged on the ground that it effects some or the other essential features of the basic structure.

It is submitted that the criticism of the doctrine of basic structure cannot be justified on the ground that it lays down a vague and uncertain test. The basic structure of the Constitution is not a vague concept. The fact that a complete list of the essential elements constituting the basic structure cannot be enumerated is no ground for denying that these do not exist.

\(^3\) Shri Kr. Padma Prasad Vs. Union of India, AIR 1992 SCC, 428
4.1.1. PIL (Public Interest Litigation)

The timeless issues of the role of Judiciary have recently been the subject of much discussion in the developing world. The growing awareness of the need for human rights protection has focused the limelight squarely on the judiciary. Judges are increasingly finding it difficult to hide behind the doctrines of judicial self-restraint and 'passive' interpretation. Their judgments in the area of fundamental rights are scrutinized by a growing international audience interested in the need to implement social justice. The prestige and legitimacy of the judiciary is being constantly called into question as an increasing number of citizens and citizens group bring their grievances directly to the portals of the Supreme Court.

The human rights movement has in many ways made the judiciary a most dynamic and important government institution. Standing between individual citizens and the wielders of power, the judiciary has become the ultimate arbiter in the area of democratic politics. This sudden thrust on to the center stage has made judging a difficult and complex exercise, especially in the developing world. The
court often finds that it has moral responsibility without the necessary safeguards of institutional integrity. Nevertheless, a growing number of judges are gradually beginning to realise that there is really no escape from this increasing responsibility and that the time may be ripe to develop a fresh, innovative and principled approach to the role that the judiciary can play in a changing society.

One important aspect of the methodology of judging, which tests the creativity of Supreme Court judges is in the formulation of Constitutional remedies which effectively meet the issues of controversy before the court. It is this aspect in the final result which will determine whether a strong judgment of the court is empty rhetoric. Increasingly Constitutional remedies are constructed in terms of on-going judicial review as to whether the State is implementing the decision of the court. In the United States this has resulted in large scale i.e., judicial intervention in the desegregation policies of State schools. As one of Judiciary’s special roles is to ensure the effective implementation of government policy in the case of individual citizens, the necessary corollary is that it devises the mechanisms to ensure that such implementation is taking place. And yet, the mechanisms
should not result in the judiciary acquiring a coercive executive role.

The task in these sensitive cases is to devise mechanisms which will aim at a consensus and protect minorities without violating majority rule. The courts should avoid partisanship and attempt to formulate remedies which have the support of all parties. This would of course require them to go beyond the general judicial remedies of damages and punishment. To be creative in this regard is therefore the fundamental challenge.

On the other hand, for flagrant situations of injustice, remedies presented by the court would of course have to be different. They would not aim at a consensus but attempt to ensure effective implementation of government policy. In such a context, the judiciary must define effective mechanisms which will ensure government compliance and implementation having meaningful impact on the lives of those who have brought their grievances before the courts.

Public interest litigation is not in the nature of adversary litigation. The purpose of PIL is to promote the
public interest which mandates that violation of legal or Constitutional rights of a large number of persons, poor, down-trodden, ignorant, socially or economically disadvantaged should not go underdressed. The Court can take cognizance in PIL when there are complains which shock the judicial conscience. PIL is pro bono publico and should not be used for any ulterior motive and no person has a right to achieve any ulterior purpose through such litigation.

Thus it is the solemn duty of the Court to protect the society from the so-called protectors of the society and, thus, while entertaining PIL, the Court should be conscious and try to ascertain the bonafides of the petitioner and further, find out whether he is really a public spirited person or he has approached the court to settle his ulterior score through the legal process.

It is settled law that a person approaches the Court of equity in exercise of it is extraordinary jurisdiction under Article 226 of the Constitution of India, he should approach the Court not only with clean hands but with clean mind, clean heart and with clean objectives.
The courts must do justice by promotion of good faith and prevent the law from craftly evasions. Court must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. [ vide State of Maharastra Vs. Prabhu, 1994 (2) SCC 481 and Andhra State Financial Corporation Vs. Gar Re: Rolling Mills, 1994 (2) SCC 647:

AIR 1994 SC 2151]
No litigant has a right to unlimited drought on the court’s time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a license to file misconceived and frivolous petitions [Dr. B.K.Subbarao vs. Mr. K.Prasaran 1996 (7) JT 265 : 1996 Cri L. J. 3983, Rajesh Rathi vs. State of Rajasthan, 1998 Cr. L. J. 1524 (Raj)].

The present position as emerges from a consideration of cases after 1982 is that a uniform rule of standing is applied for all remedies and the rule is whether the applicant has sufficient interest. The question of what is a ‘sufficient interest’ in the matter to which the application relates appears to be a mixed question of fact and law. It is a question of fact and degree and is the relationship between the applicant and the matter to which the application relates, having regard to all the circumstances of the case. The locus-standi requirement today is that any body may apply, for example a member of the public who has been inconvenienced, or a particular grievance of his own. If the application is made by a stranger (third party), the remedy is purely discretionary. Where, however, it is made by person who has a particular
grievance of his own, whether as a party or otherwise, then the remedy lies ex debito justitiae.

4.1.2. Labour Jurisprudence and PIL

*In Fertilizer Corporation Kamgar Union vs. Union of India (AIR 1981 SC 344)*, a Constitutional Bench of the court recognised the 'locus-standi' of worker to challenge the legality of sale of certain plants of Sindri Fertilizer Factory. The Court established the principle that decision taken by the management affecting their rights directly, the workers of a factory have the 'locus-standi' to challenge major decision of management.

*In P.U.D.R Vs. Union of India (AIR 1982 SC 1473)*, the Court treated a letter written by petitioner organisation as public interest litigation. The Court declared that right to minimum wages is a fundamental right of workers under Article 21 of the Constitution.

*In Bandhua Mukti Morcha Vs. Union of India (AIR 1984 SC 802)*, the three Judges bench of the court entertained a petition filed by an organisation dedicated to the cause of release of bonded labourers from Maharashtra, Madhya
Pradesh, Uttar Pradesh and Rajasthan working in inhuman and intolerable condition in stone quarries situated in Faridabad and some of them were bonded labourers. The Court issued a number of direction to Central and State Governments to free the bonded labourers.

_In Shiela Barse Vs. Union of India (AIR 1983 SC 378)_

the Court issued the direction to lockup female prisoners only in female lockups guarded by female constables and to interrogate female accused only in the presence of female officials.

_In Gaurav Jain Vs. Union of India (AIR 1990 SC 292)_

the Supreme Court took cognizance of the problem of the children born to prostitutes and constituted a committee of lawyers and social activists to look into the matter. The Court also issued number of directions for the rescue and rehabilitation of child prostitute and established Juvenile Homes for them.

_In Visakahaka Vs. State of Rajasthan (AIR 1997 SCC 241)_

the Court issued number of guidelines and norms to protect and to enforce the fundamental and human rights of working women against the sexual harassment.
In Lakshmikant Pandey Vs. Union of India (AIR 1992 SC 118), the Supreme Court laid down various principles and norms which should be followed in determining whether child should be allowed to be adopted by the foreign parents.

One example of innovation in recent times has been the experimentation in the Indian Supreme Court of ‘open letter jurisdiction’ where any individual or group with bona fide intention can by open letter activate the fundamental rights jurisdiction of the Court. In addition, the Court has made provisions for setting up of commissions to inquire into the violations of group rights, especially with regard to social exploitation. These innovations point to the need for creativity on the part of third world legal systems to cope with the actual problems which confront it. Such innovations will infact turn out to be the most important and effective areas of legal change.

For the present and the near future, however, there is little prospect of the Court reverting to its traditional adjudicatory posture, where people’s causes appear merely as issues, argued by lawyers, and decided in the mystery and mystique of the inherited common-law-like judicial process.
People now know that the Court has Constitutional power of intervention, which can be invoked to arrest their miseries arising from repression, governmental lawlessness or administrative deviance. Under trial as well as convicted prisoners, women in protective custody, children in juvenile institutions, bonded and migrant labourers, unorganised labourers, untouchables and scheduled tribes, landless agricultural labourers who fall prey to faulty mechanization, women who are bought and sold, slum dwellers and pavement dwellers, kin of victims of extra judicial executions – these and many other groups – now flock to the Supreme Court seeking justice. They come with unusual problems, never before confronted so directly by the Supreme Court. They can seek now extraordinary remedies, transcending the received notions of separation of powers and the inherited distinctions between adjudication and legislation on the one hand and administrator and adjudication on the other. They bring, too, a new kind of lawyer and a novel kind of judging. They add a poignant twist to the docket explosion which was previously merely a routine product of the Bar committed only to justice according to the fees. They also bring a new kind of dialogue on the judicial role in a changed society. The medium through which all this has happened, and is
happening is Social action litigation, a distinctive by-product of the catharsis of the 1975-6 emergency. What emerged as an expiatory syndrome is now a catalytic component of a movement for judicial democracy, through innovative uses of judicial power.

A striking factor of SAL is that it is primarily judge-led and even judge-induced and it is in turn related to juristic and judicial activism, an active assertion of judicial power to avert the miseries of the masses. Although there was an almost explosive assertion that judicial populism had become pronounced even before the emergency, particularly in the great decisions in Golaknath and Kesavananda Bharti but Bombay Kamgar Union Vs. Abdul Bhai, 1976 is probably the first case in which justice V.R.Krishna Iyer sowed the seed of public interest litigation in most formidable manner. In subsequent cases e.g. Judges transfer case, PUDR Vs. Union of India, (1984), Fertilizer Corporation Kamgar Union Vs. Union of India (AIR 1981), Justice Y.V.Chandrachud and P.N.Bhagwati joined the movement and clearly laid down the contors and procedural aspects and their consequences for mitigating the miseries of general person at the hands of Government. In these decisions, judges who wished
parliament to have unbridled power to amend the Constitution invariably sought to justify it in the name of and for the sake of, general masses in India. They sought to mould constitutional interpretation with doctrine in surcharged people-oriented ways.

The Social Action litigation may be viewed as relatively minor exercises in class-transcendence, subject to all the frailties of struggles. Back sidings are bound to occur, but it is doubtful whether the evolution of the Court as a people-oriented institution can be arrested substantially. Of Course, nothing is irreversible, at least in legal history. It would require considerable mobilization of regressive forces, to return the Court to its club-house cloistering. In fact, the SAL movement is well under way to institutionalization. Hopeful signs for the growth of the SAL-type professional competence is abound. The National Legal-Aid movement is rapidly acquiring SAL orientation, and more and more High Court judges are becoming SAL-prone. The response to the administration of SAL has also been mixed. The top bureaucrats seem to resent the mini-takeover of administration through creeping Jurisdiction. Their resentment is shown in indifferent compliance with the courts
interim directions in many proceeding but in some cases, the tenacity of SAL petitioners and of the Bench have overborne their resistance. For those who take people’s sufferings seriously, there is no rejoicing but even revolutions provide occasions of celebration. The SAL is at best an establishment revolution. Still, it nourishes hope in an otherwise darkening landscape of Indian law and jurisprudence.

4.1.3. Social Interpretation

Social Action Litigation symbolizes the politics of liberation of the ruled under the Constitutionalism with their struggle against the myriad excesses of power. The Supreme Court is thereby slowly marshalling a new kind of social legitimation which neither the legislature nor the executive nor political parties can contest without appearing to justify injustice and tyranny. In this process, the litigation does not disturb the pattern of institutional comity between the Supreme Court and the executive. Rather, it appears to lend a new kind of intensity to the model of judicial state-manship which has since Independence steadily enhanced political
accommodation and Constitutional compromise in certain vital areas.

Not merely in the style and process of generation of the SAL in the contemporary Indian experience is unique rather the substance of the SAL in India is also distinctive to its contemporary condition. In essence, much of SAL focuses on exposure of repression by the agencies of the State, notably the police, prison and other custodial authorities. Close to this category are the cases which seek to ensure that authorities of the State fulfill the obligations of law under which they exist and function. In other words, much of SAL is concerned with combating repression and governmental lawlessness. Thus, the process to arrest the government lawlessness by the apex Court is basically done under Article 32 which provides fundamental right to the petitioners for filing writ petitions and Supreme Court is under an obligation to act upon them.

These features lend a special complexity to the SAL in India. On the one hand, they impart high visibility and exalted status to the cause, on the other hand, they present some specific problems for the Court. Since all the complaints on governmental apathy and lawlessness raise
disputed questions of fact which the Court does not as a matter of practice normally handle and also which cannot satisfactorily deal with by affidavit evidence.

As law is a social science, its growth and development is co-related with the society. It has a creative force also and specially, in modern times, law is a powerful instrument of social development. The welfare legislations correlated with new values, new thought and philosophy are meant for the attainment of new national objective. It is necessary that laws should breathe the welfare spirit and resolve the social problems in a more positive and helpful way. The traditional rules of interpretation are not suited to this purpose. Literal or grammatical interpretation of welfare legislations are bound to fail and to produce the desired results.

It was held by Supreme Court⁴ that beneficial legislation must be given liberal interpretation. If a Section is capable of two constructions that construction should be preferred which furthers the policy of the Act and is more beneficial to the employees in whose interest the Act has been passed, rather than the one which would defeat the same and render the Section illusory.

In interpreting the legislation the broad social economic objective should also be kept in view. In *B.Banerji V/s Smt. Anita Pan*, while interpreting the provisions of the *West Bengal Premises Tenancy Act, 1956* as amended by *West Bengal Premises Tenancy (Amendment) Act, 1969*. Justice Krishna Iyer expressed the following view:

"Calcutta or Cochin, for the urban people of India, the shocking scarcity of a roof to rest one's tired bones in an unhappy problem of social justice that compels control of rent and eviction laws. In the case now before us, attacking the Constitutionality of the legislation, hand cuffing the landlord-proprietor's right of eviction, the law has to be tested not merely by the cold print of the Article 19(1) (f) but also by the public concern of Article 19(5) and the compassionate animus of Article 39. Part III and IV of the Constitution together constitute a complex of promises the nation has to keep and the legislation challenged before us is in partial fulfillments of the trust with the people. These observations become necessary in limine since counsel for the respondent dismissed the concept of the social justice as

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5 A.I.R 1975 S.C. 1146
extraneous to an insightful understanding of the section invalidated by the High Court.

In giving full effect to a beneficial legislation, if hardship is caused to certain individuals that may be ignored. The Court should adopt the interpretation of a statute which will obviate purposeless proliferation of litigation, without whittling down the effectiveness of protection for the parties sought to be helped by the legislation and same should be preferred to any literal, Pedantic, legalistic or technically correct alternative.

Though social legislation should receive a liberal and beneficent construction from the Courts, at the same time the Courts can not overlook the fact that liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions which are shown patently to assist the achievement of the object of the Act, the Court would be justified in preferring that construction to the other which may not be able to further the object of the Act. On the other hand, if the words used in the section are reasonably capable of only one construction the doctrine of liberal construction can be of no assistance. In
other words, if the language is plain and unambiguous, effect must be given to it whatever may be the consequences, for in that case the words of the statute speak of the intention of the legislature.

4.2. **Judiciary And Child Protection**

The Supreme Court of India, as stated has been assigned an important role, as a guardian of the Constitution and protector and guarantor of Fundamental rights.

Our Constitution accords a dignified position to the judiciary. It is the greatest unifying and integrating force of our country. The Supreme Court is at the apex the well-oriented 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.\(^6\) The Constitution puts an obligation on every organ of the State, including the judiciary, to ashlar in a new social order in which justice-social, economic, political and equality of status and

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opportunity prevails. The final burden of interpreting these 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 change. It is the duty of the judiciary to recognize the development of the nation and to apply established principles of the positions which the nation in its progress from time to time assumes. The judicial organ would otherwise separate itself from the progressive life of community and act as a clog upon the legislative and executive departments rather than as an interpreter. Indian Judiciary is charged with the duty of holding the balance even between a state or states and the union and between the state and the citizen, and sometimes between the state and the individual. It has to hold the scales even in the legal combat between the rich and the poor, the mighty and the weak without fear or favour. The role of Judiciary in India has been quite significant in promoting the child welfare. Mr. Justice Suba Rao, the former Chief justice of India, rightly remarked:

7 The preamble of the Constitution of India.
"Social justice must begin with child unless tender plant in 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."\(^8\)

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 the future of the nation.

The Constitution is a document of social revolution which imposes an obligation on every instrumentality including the judiciary to transform the status-quo ante into a new human order in which there will be equality of status and opportunity for all including children. The judiciary has, therefore, a socio-economic destination and a creative function.

4.2.1. Child Labour 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 employment of children below the age of 14

\(^8\) Suba Rao, social justice and law. (1974), P-110
years. Article 45 is supplementary to Article 24 for if the child is not to be employed below the age of 14 years he must be kept occupied in some educational institution.9

The Court in a series of cases has unequivocally declared that right to receive education by the child workers is an integral part of right of personal liberty embodied in Article 21 of the Constitution.10 These Judicial decisions clearly demonstrate that right to education is necessary for the proper flowering of man, his mind and personality. Hence the right to education is one of the facets of right to personal liberty. Further Delhi High Court in a famous case of Anandvardhan Chandel Vs University of Delhi11 has held that education is a fundamental right under our Constitution. The court observed that:-

"The law is, therefore, now settled that the expression of life and personal liberty in Article 21 of the Constitution includes a variety of rights though they are not enumerated in part III of the Constitution provided that they are necessary for the full development of the personality of the individual

9 S. Roy, "Constitutional Rights of the child in India" Social change, sept. 1990 vol. 20, No. 3
10 M.C. Mehta Vs State of Tamil Nadu & other AIR 1991 SC 417
11 AIR 1978, Delhi, 308
and can be included in the various aspects of the liberty of the individual. The right to education is therefore, included in Article 21 of the Constitution."

This right can be denied only by means of 'procedure established by the law' as contemplated in Article 21 of the Constitution, the procedure to be fair, just and reasonable must conform a test under Article 14, 19 and 21 of the Constitution.  

Similarly, the Andhra Pradesh High Court in its momentous decision in Murali Krishna Public School case pronounced that:

"Right to education to Dalits is a fundamental right and it is the mandatory duty of the State to provide adequate opportunities to advance educational interests by establishing schools".

Child labour can not be abolished unless and until the education is made compulsory. So the relation of child labour is closely related to the child education. The Court has played a parental role while directing the Central Government to

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12 Smt. Maneka Gandhi Vs Union of India AIR 1978. SC 597
13 AIR 1968, A.P 204
persuade the workmen to send their children to nearby schools and arrange not only for the school but also provide free of charge, books and other facilities such as transportation etc. The court also put forth the suggestion that whenever the Central Government undertakes time it should provide that the children of the construction workers who are living at or near the project site be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor.\(^{14}\)

The Court took a realistic view of the position of children and was in agreement with the prevailing conditions of Indian society. The Court agreed that so long as there was poverty and destitutions in this country, it was difficult to eradicate child labour. The court, however pleaded for the positive role to be played by the government and desired that attempt must be made to reduce, if not eliminate the incidence of child labour, because it was, absolutely essential that child should be able to receive proper education with a

\(^{14}\) Labourers working on salal Hydro-project V/s state of J& K. A.I.R 1984, SC 177 at P-183
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.

The Supreme Court in *M.C. Mehta V/s State of Tamil Nadu*\(^{15}\) has held that the children are means under Article 45 of the Constitution to be subjected to free and compulsory education until they completed the age of 14 years. The Court has, however observed that the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in school, economic necessity forces grown up children to seek employment.

4.2.2.1. **Child Labour Welfare And The Philosophy Of Locus- Standi**

The traditional syntax of law in regard to locus-standi for a specific judicial redress, sought by an individual person or determinate class or identifiable group of persons, is available only to that person or class or group of persons who has or have suffered a legal injury by reasons of violations of

\(^{15}\) AIR 1991 SC 147
his or their legal right or a right legally protected, the invasion of which gives rise to actionability within the categories of law. In a private action, the litigation is bipolar, two opposite parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action. The character of such litigation is essentially that of vindicating private rights, proceedings being brought by the persons in whom the right personally inhere or their legally constituted representatives who are thus obviously most competent to commence the litigation.

In contrast, the strict rule of locus-standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus-standi to any member of the public acting bonafide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or meddlesome interloper. The dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any
other oblique consideration but acting bonafide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popularis of Roman law whereby any citizen could bring such an action in respect of a public delict.

Though in our country, courts have recognised a departure from the strict rule of locus-standi as applicable to a person in private action and broadened and liberalized the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the Constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress. As yet no precise and inflexible working definition has been evolved in respect of locus-standi of an individual seeking judicial remedy in the field of PIL. Truly, in defining the rule of locus-standi, no rigid litmus test can be applied since the broad contours of PIL, are still developing apace seemingly with divergent views on several aspects of the concept of this philosophy.
The liberalisation 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 are from the families which are below the poverty line having no means to ventilate their grievance regarding infringement of their fundamental rights. Keeping in view the pitiable conditions of the child workers, the apex Court has shown its generosity by relaxing the concept of locus-standi. The Court has shown its wisdom by injecting the philosophy of public interest litigation. The judiciary is intended to vindicate and promote public interest by rendering help to those people of the society who are unable to approach the Court because of their poor-economic conditions.

This issue of locus-standi has arisen in number of cases before the Supreme Court. The Supreme Court has very daringly held in a case\(^\text{16}\):

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any Constitutional or legal right or any burden is imposed in contravention of any Constitutional or legal provisions or without authority of law or any such legal

\(^{16}\text{AIR 1981 SC, 344, ibid}\)
wrong or legal injury or illegal burden is threatened, and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction or writ or order”.

Similarly Krishna Iyer, J. in Fertilizer corporation Kamgar Union V/s Union of India, also stated:

“In simple term locus standi must be liberalized to meet the challenge of time”.

The liberalized rule of locus standi has further been reflected in various Supreme Court’s decisions including Ratlam Municipality Case, K.R. Shenoy V/s Udipi Municipality, Ram Kumar Mishra V/s State of Bihar and Bandhua Mukti Morcha V/s Union of India.

Keeping in mind the recent development of the doctrine of PIL, and the judicial exposition of the rule governing
locus-standi, Supreme Court should revert to the facts and examine each case brought before it and determine (1) whether the petitioner has locus-standi to file this litigation, and (2) whether this litigation will fall within the ambit and scope of PIL seeking declaratory as well as injunctive reliefs. Indeed, the true public interest litigation is one in which a selfless citizen having no personal motive or any kind except either, compassion for the weak and disabled or deep concern for stopping serious public injury, approaches the Court either for (i) enforcement of fundamental right of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the statutory provisions incorporated in the directive principles of state policy for amelioration of their condition or (ii) preventing or annulling executive acts and omissions violative of Constitution or law resulting in substantial injury to public interest. The newly developed law and discovered jurisdiction leading to a rapid transformation of judicial activism with a far reaching change is the nature and form of the judicial process.

So it is quite clear that the Court has widely enlarged the scope of PIL by relaxing and liberalising the rule of standing by treating letters or petitions sent by any person or
association complaining violation of any fundamental rights and also entertaining writ petitions filed under Article 32 of the Constitution by public spirited and policy oriented activist person or journalists or of any organisation rejecting serious challenges made with regard to the maintainability of such petitions. It has rendered many effective pronouncement and issued manifold directions to the Central and State Governments, all local and other authorities within the territory of India or under the control of the Government of India for the betterment of the public at large in many fields in conformity with the Constitutional prescriptions. The newly invented proposition of law laid down by many learned judges of Supreme Court in the arena of PIL, irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no means less than those of other activist judicial system in other part of the world. Recently in Jantadal Vs. H. Choudhury\textsuperscript{22}, it has been held that Supreme Court in defining the rule of locus-standi has not applied any rigid litmus test as the law is still developing. In addition to above, some PIL cases decided by various High Courts and Supreme Court where the traditional rule locus-standi has been relaxed

\textsuperscript{22} AIR 1993
are namely B.L. Wadhera Vs. Union of India\textsuperscript{23}, B.L. Wadhera Vs. Union of India\textsuperscript{24}, B.L. Wadhera Vs. Union of India\textsuperscript{25}, B.L. Wadhera Vs. Union of India\textsuperscript{26}, B.L. Wadhera Vs. Union of India\textsuperscript{27}

As regards to the welfare of child labour the Court opined that \textit{Compulsory Insurance Scheme} should be provided for both adult and child employees taking into consideration the hazardous nature of employment.\textsuperscript{28}

4.2.3. \textbf{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 only against the State but also against other private citizens. It prohibits traffic in human beings and begar and other similar forms of forced labour practised by anyone else.

\begin{itemize}
\item \textsuperscript{23} HC CWP 1796/1999
\item \textsuperscript{24} HC CWP 266/2000
\item \textsuperscript{25} HC CWP 3774/2001
\item \textsuperscript{26} AIR 2002(2) SC 350 Para 75
\item \textsuperscript{27} HC (Ranchi) WPC (PIL) No. 3482/2002
\item \textsuperscript{28} AIR 1991, SC 419
\end{itemize}
In *Lakshmi Kant V/s Union of India*,\(^{29}\) the Court took active steps to abolish bonded domestic service and slavery of poor children which had been in practice. But violation of various protective provisions have been pertinently pointed out by the highest judicial tribunal in the country. For such violations related to the provisions of the *Minimum Wages Act, 1948*, and the *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, the Supreme Court has issued directions to safeguard the interests of large number of child workers in Salal Hydro Project *V/s Jammu & Kashmir*.\(^ {30}\)

Despite judicial activism, there are still many cases where the vicious poverty has compelled the parents to sell their children hoping that the children would be engaged only in household duties. But there are persons, who purchase female children for the purpose of forcing them to brothel keepers. Once these unfortunate children are sold to brothel keepers, they are brutally treated, until they succumb to the desire of the brothel keepers and enter into the unethical and squalid business of prostitution. Some such cases were brought to the notice of the Supreme Court in *Vishal Jeet V/s*

\(^{29}\) AIR 1984, SC 469  
\(^{30}\) AIR 1987 SC 177
Union of India. The Supreme Court referred to Article 23 of the Constitution which prohibits traffic in human beings and clause (e) of Article 39, which interalia, provides that the tender age of children is not abused and the citizens are not forced by economic necessity to enter into work unsuited to their age or strength. The Supreme Court also referred to clause (f) of Article 39, which interalia, provides that childhood and youth are protected against exploitation and against moral and mental abandonment. These provisions show that the framers of the Constitution were anxious to protect and safeguard the welfare of children.

It may therefore be summed up here that judiciary has always worked hard to discourage the practice of traffic in human beings and forced labour. The Courts in India are always quite sensitive to the problems of child workers who are oftenly made victim by their mighty employers. The judiciary has always fought for the cause of child workers with a zeal to raise them to higher level of achievement and bring about their total advancement and welfare so that they are converted into good citizen of the country.

31 AIR 1990 SC 1412
4.2.4. Child Labour Welfare And Judicial Activism

The judiciary has almost brought a revolution in the life of child workers in India. It has always endeavored 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 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. The concern of the courts for the underprivileged poor section of the society is aptly reflected in *Bihar Legal Support Vs The Chief Justice of India and others*\(^{32}\).

\(^{32}\) AIR 1987, SC 38
Thus the forgoing paragraphs disclose that judiciary has always given a lead to save the child workers from exploitation and improve their working conditions. Judicial mandate clearly demonstrate that right to education is necessary for the proper flowering of children.

Further the Judiciary has shown a generosity towards poor child workers by relaxing the rules of locus-standi. It has always made efforts to benefit the poor child workers by entertaining their problems and giving 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. The Judiciary has always made concrete efforts to safeguard them against the exploitative tendencies of their employers by regularising 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 Constitution.
4.2.5. The Problem Of Child Labour And Judicial Response

Judiciary has been active to the welfare and protection of child labour. The role of judiciary in solving the problems of child labour is evident from following case laws decided by supreme court from time to time :-

I. **People’s Union for Democratic Rights and Others Vs. Union of India and others**\(^ {33} \)

This writ petition was brought in the form of public interest litigation to ensure observance of the provisions of various labour laws, in relation to workmen employed in the construction work of different projects relating to Asian Games. The matter was brought to the knowledge of the Court by an organisation formed for the purpose of protecting democratic rights by means of a letter addressed to justice Bhagwati. The letter was based on a report prepared by a team of three social scientists, who were commissioned by the first petitioner for the purpose of investigating and inquiring into the conditions under which the workmen engaged in the different Asiad projects. Since the letter addressed by the 1\(^ {st} \) petitioner was based on the report made by three social scientists after personal investigation and study, it was treated as a writ petition on the judicial side and notice was issued

\(^{33} \text{A.I.R. 1982 SC/1473} \)
upon it inter alia to the Union of India, Delhi Development Authority and Delhi Administration which were arrayed as respondents.

The Court held that Asian Games take place periodically in different parts of Asia and this time India is hosting the Asian Games. It is a highly prestigious undertaking and in order to accomplish it successfully according to international standards, the Government of India has to embark upon various construction projects. This construction work was farmed out by the Government of India among various authorities, such as the Delhi Administration, the Delhi Development Authority and the New Delhi Municipal Committee. The writ was filed to ensure that the labour laws are implemented and the rights of the workers under the labour laws are not violated. These various authorities to whom the execution of the different projects was entrusted engaged contractors for the purpose of carrying out the construction work of the projects and they were registered as principal employers under Sec-7 of the Contract Labour (Regulation and Abolition) Act, 1970. The contractors started the construction work of the project and for the purpose of carrying out the construction work they engaged workers through the Union of India. Clearly
admitted in its affidavit in reply that the Jamadars were deducting rupee one per day per workers from the wage payable to the workers and as a result the workers did not get the minimum wage of Rs. 9.25 per day and there was violation of the provisions of the Minimum Wages Act 1948.

So far as the Employment of Children Act, 1938, is concerned, the plea of the Union of India, the Delhi Administration and the Delhi Development Authority was that no complaint in regard to the violation of the provisions of that Act was at any time received by them and they had doubt that there was any violation of these provisions by the contractors. It was also contended on behalf of these Authorities that the Employment of Children Act, 1938, was not applicable in case of employment in the construction work of these projects, since construction industry is not a process specified in the Schedule and is, therefore, not within the provisions of sub sec-(3) of Sec-3 of the Act. Obviously the contention urged on behalf of the respondents is well founded, because construction industry does not find a place in the Schedule to the Employment of Children, Act 1938, and the prohibition enacted in S-3(3) of the Act against the employment of a child who has not completed his fourteenth
year can not apply to employment in construction industry. This is a sad and deplorable omission which, we think, must be immediately set right by every State Government by amending the Schedule so as to include construction industry in it, in exercise of the power conferred under S-3A of the Employment of Children Act 1938. It is clear from the contents of Convention No. 59 adopted by International Labour Organization and Article 24 of the Indian Constitution that no child below the age of fourteenth years can be allowed, to be engaged in construction work. There can, therefore be no doubt that notwithstanding the absence of specification of Construction industry in the Schedule to the Employment of Children Act 1938, no child below the age of 14 years can be employed in construction work and the Union of India, and also every State government must ensure that this Constitutional mandate is not violated in any part of the country. Here, of course the plea of the Union of India, the Delhi Administration and the Delhi Development Authority was that no child below the age of 14 years was at any time employed in the construction work of these projects and in any event no complaint in that behalf was received by any of these authorities and hence there was no violation of the Constitutional prohibition enacted in Article 24. It was
further held that the rights and benefits conferred on the workmen employed by a contractor under the provisions of the *Contract labour (Regulation and Abolition) Act, 1970* and the *Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979* are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 of the Constitution because Union of India, the Delhi Administration and the Delhi Development Authority which, as principal employers, are made statutorily responsible for securing such rights and benefits to the workmen. That leaves for consideration of the complaint in regard to non-payment of minimum wages to the workmen under the *Minimum Wages Act, 1948*.

Thus Supreme Court held that Delhi Administration and the Delhi Development Authority must be held to be under an obligation to ensure observance of these various labour laws by the contractors and if the provisions of any of these labour laws are violated by the contractors, the petitioners vindicating the cause of the workmen are entitled to enforce
this obligation against the Union of India, the Delhi Administration and the Delhi Development Authority by filing the present writ petition. The preliminary objections urged on behalf of the respondents must accordingly be rejected.

Having disposed of these preliminary objections, the judges turned to consider whether there was any violation of the provisions of the Minimum Wages Act, 1948, Article 24 of the Constitution, the Equal Remuneration Act, 1976, the Contract labour (Regulation and Abolition) Act, 1970 and the Inter State Migrant workmen (Regulation of Employment Conditions of service) Act, 1979 by the contractors. The Union of India in its affidavit in reply admitted that there were certain violations committed by the contactors but hastened to add that for these violations prosecutions were initiated against the errant contractors and no violation of any of the labour laws was allowed to go unpunished.


Labourers working on Salal Hydro project

VS
State of Jammu & Kashmir and Others

The issue of Indian Express dated August 26, 1982 carried a news item that a large number of migrant workmen from different states, including the State of Orissa, were working on the Salal Hydroelectric project in difficult conditions and they were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The people’s Union for Democratic Rights thereupon addressed a letter to Mr. Justice D.A. Desai enclosing a copy of the news report and requesting him to treat the letter as a writ petition, so that justice may be done to the poor labourers working in the Salal Hydroelectric project. The letter was placed before a Bench of Supreme Court and it was treated as a writ petition and by an Order dated September 10, 1982, this court directed that the Union of India, the State of Orissa, the Labour commissioner, Orissa at New Delhi, the State of Jammu and Kashmir and the Labour commissioner (J&K) should be shown as respondents to the writ petition and issued notice to the Union of India, the State of Orissa and the Assistant Labour Commissioner, Orissa at New Delhi to show cause against the writ petition. The Supreme Court also directed the Labour commissioner,

34 1984, 3 SCC, 538
Jammu to visit the site of the Salal Hydro electric project and ascertain (i) whether there are any bonded labourers employed on this project and, if so, to furnish their names (ii) Whether there are any migrant workers who have come from other States (iii) What are the conditions in which the workers are living, and (iv) Whether the labour legislations enacted for their benefit are being observed and implemented pursuant to this order made by the Court. The Labour Commissioner, Jammu visited the site of the Salal Hydroelectric project and made an interim report on October 11, 1982. This was followed by a final report dated October 15, 1982.

It was pointed out in the final report of the Labour Commissioner (J&K) that some minors found to have been employed on the project site, but the explanation given was that “these minors accompany male members of their families on their own and insist on getting employed.” The Supreme Court has pointed out in its judgments in the ‘Asiad Workers’ case 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 work. It is known fact that the problem of child labour is a
difficult problem and it is purely on account of economic reasons that parents often want their children to be employed in order to be able to make both ends meet. The possibility of augmenting their meager earnings through employment of children is very often the reason why parents do not send their children to schools and there are large drop-outs from the schools. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country. It will be difficult to eradicate child labour. 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. 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 and no child below the age of 14 years can, therefore, be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this Constitutional prohibition must be enforced by the Central Government. The Central Government would do well to persuade the workmen to send
their children to a nearby school and arrange not only for the school fees to be paid but also provide, free of charge, books and other facilities such as transportation. It is 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 who are living at or near the project site should be given facilities for schooling and this may be done either by the Central Government itself or if the Central Government entrusts the project work or any part there of to a contractor, he should arrange for education of children.

3. *Criminal Appeal No. 300 of 1985,*

*Decided on December 20, 1986*

*Sheela Barse*  

*Vs*  

*Secretary, Children Aid Society and Others*\(^{35}\)

In this appeal by Special leave the appellant who is a freelance journalist by profession and a member of the Maharashtra State legal Aid and Advice Committee, seeks to challenge the judgment of the Bombay High Court delivered

\(^{35}\) 1986, 3 SCC, 596
on February 4, 1985 on a writ petition filed by her. In the writ petition she made grievance about the working of the New Observation Home located at Mankhurd, which is maintained and managed by the Children's Aid Society registered under the *Societies Registration Act, 1860* and has also been treated as a Public Trust under the *Bombay Public Trusts Act of 1950*. The Society was founded on May 1, 1926. The Chief Minister of Maharashtra State is the ex-officio president of the governing council of the society. The said Society received grants from the State. It has set up a Remand Home at Umerkhadi within Bombay area and it is now run as an Observation Home under the provisions of the *Bombay Children's Act 1948*. The Society runs three Observation Homes one at Umerkhadi established in 1960 and the third, the new observation home also at Mankhurd. The appellant's letter of August 22, 1984 was treated as a writ petition by the High Court.

The Court held that children are the citizens of the future era. The proper bringing up of children and giving them the proper training to turn out to be good citizens depends on the plans and policies of the country. In recent
years, the position has been well realised. In 1959, the Declaration of the Rights of the Child was adopted by the General Assembly of the United Nations and in Article 24 of the *International Covenant on Civil and Political Rights, 1966*, the importance of the child has been appropriately recognised. India as a party to these International Charters having ratified the Declaration has an obligation to implement the same in a proper way. *The Children’s Act, 1938* has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased. The problem is such that does not brook delay. There is no unanimity of the problem also, though there may be a pattern, every individual case in likely to pose a situation very often peculiar to itself. A set pattern would not meet the situation, and yield the desired results. What is therefore, necessary is to appropriately train all the functionaries under the statute, create in them the necessary bias and motivate them adequately to rise to the demand of every situation. It is clear
that this is a difficult job but an intricate situation requiring delicate handling with full understanding of the problem would definitely require appropriate manning of the machinery. The officers at the different levels called upon to performs statutory duties by exercising powers conferred under the statute have to be given the proper training and only when they will have all requisite capacity in them to handle the situation.

In recent years, children and their problems have been receiving attention both of the government as also of the society but we must say that the problems are of such enormous magnitude that all that has been done till now is not sufficient.

The Supreme Court deleted the observations made by High Court. While giving the judgment it was held that the appellant was not a lawyer and was not acquainted with the procedure followed in the court, so it was not necessary to make observation by Hon’ble High Court. The appellant was a social worker and a freelance Journalist and she brought the matter before the High Court being genuinely aggrieved on account of non-implementation of the statute and being
moved by the condition of the children in the new Observation Home.

4.  

Writ petition (civil) No. 1262 of 1987  

R.Chandra Segaram  

V/s  

State of Tamil Nadu and Others  

AND  

5.  

Writ petition (civil) No. 13064 of 1983  

District Beedi Worker's Union  

V/s  

State of Tamil Nadu and Others.

A letter petition received from the District Beedi workers Union of Tirunlveli in the State of Tamil Nadu was treated as an application under Article 32 of the Constitution and notice was ordered initially to the state, Later to the Beedi Manufacturing Units within the state. In the letter, complaint was made about non-payment of appropriate dues for work taken, failure to implement the provisions of the labour laws, prevalence of contract labour system etc. There is a connected petition also relating to the same subject
matter with different ancillary reliefs covering employment of child labour and the non-implementation of the *Beedi and Cigar Workers (Conditions of Employment) Act, 1966*. The Supreme Court by an order dated 24 October 1989 appointed a social organisation by name *Society for Community Organisation Trust* (SOCCO) for making appropriate investigation and furnish a report to the Court. After the Report was received and circulated, the state Government of Tamil Nadu and the manufacturer were given time to file their response by way of affidavits. Considering the report and response of the State Government, the Court made an order on 24 July, 1991.

The Hon'ble Court gave following directions :-

a. *The Beedi and Cigar Workers (Conditions of Employment) Rules, 1968* should be strictly implemented to arrest the evil of not furnishing the books to the home workers.

b. An establishment of the *Regional Provident Fund Commissioner* with full equipment for the purpose of implementation of the statute should be located within the area and he should have direction to enforce the Act
in all aspects. This establishment should start functioning within three months from now.

c. The labour laws as also the *Beedi and Cigar workers (Conditions of Employment) Act*, should be strictly enforced so that the workers get their legitimate dues and the conditions of employment improve.

d. Tobacco manufacturing has indeed health hazards. Child labour in this trade should, therefore, be prohibited as far as possible, and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Governments but within a period not exceeding three years from now. The provisions of Child Labour Abolition Act, 1986 should be strictly implemented.

e. Contract labour system, it is alleged, is indispensable in this trade. The Union Government is directed to look into this aspect of the matter and take its final decision, one way or the other within six months.

f. Beedi trade is flourishing one. Exploitation of labour is rampant in this trade. A Governmental labour
establishment should be located in the area with full complement to answer the requirements of the matter.

g. Since beedi manufacturing process is carried more outside the factory than, within, so, the system of maintaining the registers as a regulating practice has become necessary. Great care should, therefore, be taken to ensure the maintenance of the register system, as the bulk of the employees outside the factories can be regulated only through the record maintained in the registers.

h. *The Beedi workers welfare Cess Act, 1976* and *the Beedi workers welfare Fund Act, 1976*, which contain beneficial provisions should be implemented in the true spirit and since they are legislations of the Central Government, these should be made operational in the area.

i. Grievance has been made that the pass books are not maintained in the names of actual workers. This should be ensured.
j. The Welfare Fund should be properly administered and in the case of death of a workman appropriate assistance should be extended out of the Fund quickly.

k. In view of the health hazards involved in the manufacturing process, every worker, including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer and the incidence should not be passed on to the workman.

The Court disposed of these cases with the directions indicated above and hoped that the authorities, the employers and the employees would try to implement the directions in true spirit.

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36 1991 (1) SCC 283
This petition under Article 32 of the Constitution has been brought before the Court by way of a public Interest litigation and is connected with the problem of employment of children in match factories of Sivakasi in Kamaraj District of Tamil Nadu State. On notice the State filed its return. Sivakasi has been the traditional center for manufacture of match boxes and fire works for almost the whole country and a part of its output is even exported. From the affidavit of the State it appears that as on December 31, 1985, there were 221 registered match factories in the area employing 27,388 workmen of whom 2,941 were children.

It was held that the manufacturing process of matches and fire works is hazardous one. Judicial notice can be taken of the fact that almost every year, notwithstanding improved techniques and special care taken, accidents including fatal occur because workings 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 on health is a serious problem. Exposure of tender age to these hazards requires special attention.
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 may, therefore, be employed in the process of packing but packing should be done in an area away from place of manufacture to avoid exposure to accident.

It is necessary that special facilities for improving the quality of life of children should be provided. This would require facility for education, scope for recreation as also providing opportunity for socialisation. Facility for general education and also job oriented education should be available and the school time should be so adjusted that employment is not affected.

It was also held that there is statutory requirement for providing facilities for recreation and medical attention. The State of Tamil Nadu was directed to enforce these facilities to attend the basic requirements. The State was also directed to take immediate steps to ensure provision of additional facilities on this score. The Hon’ble Judges were of view that
there should be a committee to oversee all our directions and it should consist of the District Judge of the area, the District Magistrate of Kamraj District, a public activist of the area, a representative of the employees and local labour officer. The State of Tamil Nadu was directed to deposit Rs. 3000 in the Registry of this court within four weeks for being given to Mr. Mehta for meeting his expenses of the petition.

7.

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The appeal lies at the back of the saying that “Child is the father of Man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of men and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with mission, a man who matters so far as the society is concerned.

37 1996 (6) SCC 756
Our Constitution-makers were wise and sagacious as they had known that India of their vision would not be a reality if the children of the country are not nurtured and educated. For this, their exploitation by different profit-makers for their personal gain had to be first indicated and arrested. It is this need, which has found manifestation in Articles 24, which is one of the provisions in part III of our Constitution on the fundamental right against exploitation. The framers were aware that this prohibition alone would not permit the child to contribute its might to the nation building work unless it receives at least basic education. Article 45 was therefore inserted in our paramount parchment casting a duty on the state to endeavor to provide free and compulsory education to children. (It is known that this provision in part IV of our Constitution is, after the decision by a Constitutional Bench of this court in Unni krishnan V/s State of A.P has acquired the status of a fundamental right).

The Hon’ble Judges also gave opinion that extreme poverty, lack of opportunity for gainful employment and intermittency of income and low standards of living are the main reasons for the wide prevalence of child labour. Though it is possible to identify child labour in the organised sector,
which forms a minuscule of the total child labour, the problems relates mainly to the unorganised sector where utmost attention needs to be paid. The problem is universal but in our case it is more crucial. Thus the Hon’ble Court disposed of the writ petition giving various directions.

Child labourers are the most unfortunate children of our country. They are unfortunate, not so much because they come from a background of deprivation not so much because they are deprived of the benefits of education or are cheated of their childhood, but because their own parents who should normally be watching their interests are often instrumental in their exploitation, may be compelled by poverty, or custom or ignorance.

*People’s Union for Civil Liberties V/s Union of India* is a public interest litigation under article 32 of the Constitution based on the report of a Non-Governmental Organisation campaigning against child labour.

It was reported that one Rajput had procured five minor children from the state of Tamil Nadu by paying Rs. 500 to Rs. 1500 to their parents and took them to Maharashtra and forced them into bonded labour. One of them was beaten to
death and the remaining went missing. The trial court convicted the procurer for murder. Under the orders of the Apex Court the Maharashtra police traced three of them but the fourth, real brother of the deceased, still remained untraced. Agreeing with the contentions of the counsel appearing for the petitioner that these boys were entitled to compensation, the court directed the State of Maharashtra to pay a sum of Rs. Two lakhs to the brother of the deceased who was still untraced. Likewise the state of Tamil Nadu was directed to pay Rs. 75,000 each as compensation to the other three boys. The Court, thus, upheld the claim in public law for compensation in contravention of human rights and fundamental freedoms, the protection of which is guaranteed by the Constitution.

Another writ petition came to be disposed of by the apex Court on 21. 2. 1997. The petitioners had contended that employment of children in any industry or in any hazardous industry was violative of article 24 of the Constitution and derogatory to the mandates contained in articles 39(e), (f) and 45 read with the preamble. The petitioners, accordingly sought issue of a writ of mandamus directing the government to take steps to stop employment of children in the Carpet
industry in the state of Uttar Pradesh, appoint a committee to investigate into their conditions of employment, and to issue such welfare directives as are appropriate for total prohibition on employment of children below 14 years and to direct the respondents to give them facilities like education, health, sanitation, nutritious food, etc.

Pursuant to the filing of this writ petition the Court appointed a committee to investigate and report on the engagement and exploitation of children below 14 years by Carpet manufacturers. The committee submitted comprehensive reports detailing the incidence, exploitation and the hazardous nature of child labour.

The court in a laudable exposition of the importance of child and childhood observed that "every nation developed or developing links its future with the status of the child. If children are deprived of their childhood socially, economically, physically and mentally, the nation gets deprived of the potential human resources. According to the Court, the poverty is the root (cause) of child labour, and due to poverty children and youth are subjected to many visible and invisible sufferings and disabilities. However, total
banishment of child labour may drive the children and mess them up into destitution and other mischievous environment, making them vagrant, hard criminals and prone to social risks. Therefore, 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.

The Court while ‘respectfully’ agreeing with the directions given in *M.C.Mehata V/s State of Tamil Nadu*\(^3\) as feasible and inevitable reiterated the need for their speedy implementation. The Court further directed the Government of India to convene a meeting of Ministers of State Governments and their Principal Secretaries for evolving principles for progressive elimination of child labour and periodical reports to be submitted to the court.

It may be submitted that the assertion of the Court that poverty is the root cause of child labour is over simplification of a very complicated problem. While poverty may be one of the causes it is definitely not the main or the only cause. Also it could well be argued that poverty is because of child labour and child labour is not because of poverty.

\(^3\) 1991 (1) SCC 283
The role of judiciary in India has quite been significant in promoting the welfare of child labour. The study discloses that judiciary has always given a leading role to save the child labourers from exploitation and improve their working conditions. Judicial decisions clearly reflect the view that right to education is necessary for the proper development of children, his mind and personality. The Court has held that education is a fundamental right under our Constitution. Child labour can not be abolished unless and until the education is made compulsory. So the relation of child labour is closely related to the child education. The Supreme Court in M.C.Mehta's case 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. Further the judiciary has shown a generosity towards child worker by liberalising the rules of locus-standi. It has always made efforts to benefit the poor child worker by entertaining their problems and giving relief to them despite the limitations of locus-standi. Whenever a legal wrong or legal injury is caused to the child worker by their employers, the judiciary has come forward to help them by enlarging the scope of locus-standi. 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 the develop in a healthy manner with full dignity in consonance of the mandate of the Constitution of India. Consequently, the parliament in furtherance of judicial decisions, amended the Constitution and added Article 21A through Constitution (86th) Amendment Act, treating right to education to tender age children as a fundamental right.