



Public Interest Litigation: an Instrument to Protect Child Labour in India

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KEYWORDS

The opening words of the Preamble of the Constitution of India show that the people of India have solemnly committed themselves to secure to all citizens, which impliedly include the children as well, justice, social, economic and political; liberty of thought, expression, belief; faith and worship. It further provides for equality of status and of equal opportunity and to promote among them all fraternity assuring the dignity of the individual.² Despite this there are a number of constitutional provisions which speak about children and their welfare. Special provisions ensuring justice to children have been incorporated in Part III and Part IV of the Constitution which deal with Fundamental Rights and Directive Principles of State Policy respectively. Article 15(3) of the Constitution of India says that nothing in this Article shall prevent the State from making any special provision for women and children. Article 21 assures the dignity of the individual.³ Article 21 A directs the State to provide free and compulsory education to all the children of the age of 6-14 years; Article 24 prohibits the employment of children below the age of 14 years in factories, mines or any other hazardous occupations. Apart from these Part IV of the Constitution in which Directive Principles of State Policy embraces principles and policies pertaining to social security to all including children as well.

Article 39(e) of the Constitution says that health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Further 39(f) says that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

A plethora of legislations have been passed to give effect to all the Constitutional mandates and International Covenants and Recommendations, the latest being Child Labour (Prohibition and Regulation) Act, 1986. The provision to promote the welfare of children and to protect them against the exploitation which they suffer due to ignorance and other unavoidable circumstances have been added in the Concurrent list of the Constitution. Therefore, both the Centre and States may enact laws on child labour. There are 13 major enactments which provide legal and statutory protection to the children in various occupations. The Employment of Children Act was passed in 1938 and was amended as many as five times in 1939, 1948, 1949, 1951 and 1978 only to ameliorate better working conditions of such children. Several other Acts such as the Factories Act, 1948; State Shops and Commercial Establishment Acts; Plantation Labour Act, 1951; Merchant Shipping Act, 1958; Children (Pledging of Labour) Act, 1933 etc. regulates the conditions of work that affect children.⁴ Further, the Child Labour (Prohibition and Regulation) Act, 1986 prohibits the children from being employed in specified occupations and processes which are considered to be physically hazardous.

In spite of all these legislations the magnitude of child labour has been increased with time. As per Census of India, there were 10.75 million child labour in the age group 5 to 14 years in the years 1971; 13.64 millions in 1981; 11.28 millions in 1991 and 12.66 million in 2001.⁵ According to the UNICEF's, the State of the World's Children 2006, about 14 percent of children (5 to 14 years) of the total children in the age group were engaged in child labour activities in 2004, with the percentages for boys and girls almost same at 14 percent and 15 percent respectively.⁶ Unfortunately in the matter of child labour, all the legislations end up doing is window-dressing with no serious efforts being made to enforce and implement the law; Child Labour Act was passed way back in 1986 but the enforcement is lacking. Constitution was amended in 2002 to make education a fundamental right of every child between ages 6-14 but no serious effort was made to make education compulsory or child labour illegal.⁷ Even those States and Union Territories, which have enacted compulsory education laws have not made it compulsory for the children to attend school. Regarding the latest ban of the employment of the children as domestic servants and in wayside restaurants, etc. the story seems to be the same. In Delhi, the government was required to open 40 new transition education centres for rescued child labourers before the ban was to become operational. But according to a latest report in the press⁸ not even a single new centre has been opened so far and the labour department has been unable to rescue a single child from the roadside restaurants or houses since the notification banning such employment came into force.⁹ In spite of many legislations in force the children are forced to work and put many hardships. A number of Public Interest Litigations have also been filed bringing up issues affecting the children.

In *People's Union for Democratic Rights v. Union of India*,¹⁰ it was contended that the Employment of Children Act, 1938 was not applicable in case of employment of children in the construction work of Asiad Projects in Delhi since construction industry was not in the schedule of the Act. The Court held that the construction work in hazardous employment and therefore under Article 24 no child below the age of 14 years can be employed in construction work even if construction is not specified in the schedule of Employment of Children Act, 1938. This position has been reiterated in *Salal Hydro Project case*¹¹ where again the Court held the employment of children below 14 in construction work violates Article 24 of the Constitution. Public Interest Litigation came directly in the 1980s in response to a large number of news reports exposing the exploitation of children in fire works and match factories of Sivakasi in Tamil Nadu and in carpet industries in Mirzapur, Uttar Pradesh. It was the investigative journalism combined with Public Interest Litigations that led to the passing of Child Labour (Prohibition and Regulation) Act, 1986, which prohibits employment of children in hazardous industries.

In response to a Public Interest Litigation in *Bandhua Mukti Morcha v. Union of India*¹² appointed a Commission of

Inquiry on child labour in carpet industries in Uttar Pradesh. With the help of local administration these children were released. The Court speaking through Justice K. Ramaswamy issued directions for elimination of child labour and emphasized the importance of education so as to empower the children to retrieve them from poverty and develop basic abilities, skills and capabilities to live a meaningful life for social and economic empowerment.

In **M.C. Mehta v. State of Tamil Nadu**,¹³ it was contended that the children were exposed to fatal accidents occurring frequently in manufacturing process of matches and fire works, a major Public Interest Litigation was brought in 1986, before the Supreme Court complaining that, thousands of children were employed in match factories in Sivakasi, Tamil Nadu. The Court directed the State Government to enforce Factories Act and provide facilities for recreation, medical care and basic diet to children during working hours and facilities for education. The Court also advocated a scheme of compulsory insurance for both adults and children employed in hazardous industries. Every employee had to be insured for a sum of Rs.50,000/-.

In **Rajangam, Secretary, District Beedi Worker's Union v. State of Tamil Nadu**,¹⁴ letter from District Beedi Worker's Union was treated as PIL. In the said letter numerous complaints regarding manipulation of records pertaining to employees, non-payment of dues of work done, defiance of provisions of labour laws, prevalence of contract labour system, employment of child labour and non-compliance of The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 in the Beedi factories were made.

The Court appointed a social organization to make investigation. Thereafter, the State Government of Tamil Nadu was directed to implement the scheme formulated. The Court further directed the Tamil Nadu State Legal Aid and Advisory Board to undertake supervision for implementation of the directions for three years and the State government was directed to co-ordinate in the implementation.

A Public Interest Litigation before the Supreme Court pointed out that in violation of the constitutional mandate under Article 24, children were being employed in several hazardous industries. In a landmark judgment,¹⁵ the Court directed that for each child employed in violation of the provisions of the Act, the offending employer will pay Rs. 20,000/- which would then get deposited in child labour Rehabilitation-cum-Welfare Fund regarding providing jobs to the adult members of the family, the Court left the issue to the government without issuing directions. In lieu of the job the government would deposit in the fund a sum of Rs. 5000/- for each child employed in a factory or other hazardous industry. Thus, either the adult would get a job, or a sum which would be earned every month on the corpus of Rs. 25,000/- per child would form an alternative source of income. In non-hazardous Industries, the child would receive education at least two hours a day with the cost to be borne by the employer.¹⁶

In Public Interest Litigation involving the relocation of Delhi Industries, the problem of rehabilitation of child labour employed in the industries in Delhi was brought before the Court. Initially notices were issued to seven such industries to show cause why proceedings in accordance with law including compensating the minors be not initiated against them. This led to a further order¹⁷ where the Court noticed that despite its specific orders the Labour Commissioner had not carried out the verification of the electroplating units employing child labour. However, the Delhi police conducted the inspection and found seven industries having employed child labour; the Court ordered various amounts to be paid in compensation to each of the children employed in the industries. Thereafter, the enquiry was extended to cover all the industries in Delhi employing child labour.

In another Public Interest Litigation,¹⁸ where the employment

of the Children below 14 years in a carpet industry was alleged, the Supreme Court appointed a Committee to investigate the issue. The Committee confirmed that there was forced employment of large number of children in the carpet weaving centres in the State of Uttar Pradesh. The Court noted that the various welfare enactments made by the Parliament and the appropriate State legislatures 'are only teasing-illusions and a promise of unreality unless they are effectively implemented'. The Court directed the Government of India to convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries 'to evolve the principles of policies for progressive elimination of employment of children below the age of 14 years.'¹⁹

In a long standing litigation²⁰ before the Supreme Court, an application was filed by the Union of India placing on record a scheme of the Union of India for rehabilitation of the child labour and seeking orders of the Court for the implementation of the said scheme. Expressing surprise over the fact that the Court intervention is sought even for implementation of such a scheme, the Court was constrained to clarify that:

"We do not think that for the implementation of the scheme framed by the government any orders of the Court are needed at this stage. Let the government proceed ahead with the implementation. In case any deficiencies are found and any further directions are called for the same can, however, be made by this court."

The Supreme Court judgment in *M.C. Mehta v. State of Tamil Nadu* must be seen in the right perspective as the courts noble, contribution to the redemption of the trust with destiny for the court share and does not want the child victims to be deceived by the rhetoric of the law and pious exhortations which accomplish little to ameliorate his suffering or restore his self respect and rightful entitlements. The Court has taken a bold and innovative step to view our children's pitiable plight from the perspective of the rights centered approach. The judgment in the instant case has laid to rest all the criticism of judicial activism and also reinforced the utility of public interest litigation.²¹

CONCLUSION

In spite of all the efforts made by the government, nothing fruitful came out. There was total lack of planning and implementation of rehabilitation process of the government. A Public Interest Litigation was filed by "Save the Childhood Foundation" for the rescue and rehabilitation of child labourers in Delhi. The Public Interest Litigation was filed in the wake of a rescue of more than 400 children which had totally exposed the lack of planning and implementation of the rehabilitation process of the government. The Public Interest Litigation demanded the release of all children still trapped in the illegal Zari factories in Delhi. The Public Interest Litigation also demanded the prosecution of the culprit employers under the provisions of Indian Penal Code, the Bonded Labour Abolition Act, the Juvenile Justice Act, the Child Labour (Prohibition and Regulation) Act and various other legal provisions as the court deemed fit in the interest of the rescued child labourers as well as the closure of these illegal factories. The Delhi High Court issued directions to the government to make an elaborate action plan on the release and rehabilitation of all child labourers working in Delhi and submit the same before the Hon'ble Court within 4 weeks.

The Court also said that the government can not have a pick and choose policy with respect to rehabilitation. Rehabilitation, the Court pronounced is the responsibility of the government as it has to be done in accordance with the law and is not the prerogative or responsibility of the NGOs. The officials from the Ministry of Labour conceded that this action plan for rescue and rehabilitation would be made for all child labourers and shall not be specific to any particular sector.²²

The glaring decisions of the apex Court dealing with the issues affecting children is replete with judicial wisdom which

enable the researcher to conclude that Indian judiciary has shown a deep concern towards the protection and welfare of the child labour in India.

Reference

1. See the Preamble to the Constitution of India.
2. Article 21 of the Constitution of India.
3. Sunil Deshta and Kiran Deshta, *Law and Menace of Child Labour*, 121 (2000).
4. Thomas Paul, *Child Labour – Prohibition v. Abolition : Untangling the Constitutional Tangle*, 50(2) JILI 149 (2008).
5. There are wide conventional differences on child labour as described by various national and international organizations. For e.g., UNICEF and ILO consider a child as one in the age group of 5 to 14, whereas, the World Bank and UNDP define a child as one in the age group of 10 to 14 years. Due to this definitional differences of various organizations with respect to child labour, the data are not strictly comparable. They give some idea of the long term trends. Moreover, as a child labour is mainly employed only unorganized sector. Data are based on different surveys, which further reduce the comparability among them.
6. Ibid.
7. Nidhi Sharma, "At ground zero, ban on paper", *The Times of India*, New Delhi (26.12.2006).
8. Thomas Paul, *op.cit.*, at 175.
9. AIR 1983 SC 1473.
10. AIR 1984 SC 177.
11. 1986 (Supp.) SCC 553.
12. AIR 1991 SC 417.
13. 1992(1) SCC 221.
14. M.C. Mehta v. State of Tamil Nadu, 1996 (9) SCALE 42.
15. S. Muralidhar, *Public Interest Litigation*, 32 *Annual Survey of Indian Law*, 387 (1996).
16. Ibid. Also see : M.C. Mehta v. State of Tamil Nadu, 1996 (4) SCALE 39.
17. *Bandhua Mukti Morcha v. Union of India*, (1997) 3 SCALE 755.
18. The Central Government was further directed to convene the meeting within two months from the date of the order. After evolving the principles, a copy was directed to be forwarded to the Supreme Court. See *Bandhua Mukti Morcha v. Union of India* (1997) 3 SCALE 755, para 10. Also see, *Videh Upadhyay, Public Interest Litigation in India*, 147 (2007).
19. M.C. Mehta v. State of Tamil Nadu and Ors., (2005) 1 SCALE 620.
20. P.N. Chandurkar, *Child Labour, Judicial Activism and Public Interest Litigation : Some Reflections*, 1 *Journal of Institute of Human Rights*, 80-81 (1999).
21. News : "Rescue and Rehabilitation of Child Labourers – Governments Responsibility says High Court" dated 13th Sept., 2006, New Delhi. Visited on – HYPERLINK "<http://www.scf.org.in/news/rescue%20&%20rehabilitation%20of%20childlabourer.php3>" http://www.scf.org.in/news/rescue_&_rehabilitation_of_childlabourer.php3. dated 3.8.2007.