

## Upholding and Defending the Right to Education and Freedom from Child Labour –A Journey through the Indian Judicial Interventions

Dr. Nitesh Saraswat

### Abstract

Right to education and Freedom from Child Labour though internationally viewed in the perspective of Best Interest of the Child theory often gets relegated to charity rights in the social and political discourses for quite evident reasons that they are less visible and they are not the vote banks. Given the context that India has a large number of laws to protect and promote the rights of children the pro-active role played by the judiciary assume significance. The paper attempts to outline the prominent decisions rendered by the Apex Court relating to right to education and freedom from child labour paving a way forward to espouse the cause of the child rights.

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace”.

### Kofi Annan

The legal protection of the right to education has its foundation in national, regional and international legislation and standards, and the State obligations that its laws lay down. The role of adjudication is to ensure that the right to education as an internationally recognized right as established by numerous treaties and legislation is respected, protected and fulfilled. Education is a crucial component of any effective effort to eliminate child labour. Poverty and social exclusion, labour mobility, discrimination and lack of adequate social protection and educational opportunity all come into play in influencing child labour outcomes. Child labour is a stubborn problem that, even if overcome in certain places or sectors, will seek out opportunities to reappear in new and often unanticipated ways. The response to the problem must be as versatile and adaptable as child labour itself. There is no simple, quick fix for child labour, nor a universal blueprint for action. The role of the India Judiciary and the scope of judicial interpretation have expanded remarkable in recent times, partly because of the tremendous growth of statutory intervention in the present era. A human rights perspective is necessary for a fuller understanding of child labour, as it focuses on discrimination and exclusion as contributing factors. In this modern era Judicial Activism emerged as tool for protecting Rights of the Children guaranteeing the much needed right to education and opening up vistas to combat child labour in the Indian Social Setting.

Article 45 of the Directive Principles of State Policy, which corresponds to Article 13(1) of the ICESCR, states, “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.” Thus, while the right of a child not to be employed in hazardous industries was, by virtue of article 24, recognized to be a fundamental right, the child's right to education was put into the DPSP in part IV and deferred for a period of ten years.

In 1992, The question that came up before the Apex Court was whether the right to education was a fundamental right and enforceable as such was answered by the Supreme Court in the affirmative in *Mohini Jain v. State of Karnataka* wherein it held that right to professional education is a fundamental right. The occasion was the challenge, by private medical and engineering colleges, to state legislation regulating the charging of “capitation” fees from students seeking admission. The college management was seeking enforcement of their right to business. The court expressly denied this claim and proceeded to examine the nature of the right to education. The court refused to accept the non-enforceability of the DPSP. This was followed by a series of cases filed by private and state aided medical and engineering colleges seeking review of this decision. Obviously, their main source of income, capitation fees, were being threatened. The Supreme Court was constrained to constitute a special bench to hear the case of the private colleges. After four weeks of arguments, the apex court passed the judgment in *Unnikrishnan and others v. State of Andhra Pradesh and others* One of the three questions that the court framed for consideration in this case was whether the Constitution of India guarantees a fundamental right to education to its citizens.

### **The Apex Court held that :**

"Right to education, understood in the context of Article 45 and 41 means (a) every child citizen of this country has a right to free education until he completes 14 years, his right to free education until he completes the age of fourteen years and (b) after a child/citizen complete 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

In India, the right to free and compulsory education was recognised in the Constitution in 2002 following an historic decision by the Supreme Court in *Unni Krishnan, J.P. v. State of A.P.* which ruled that the right to education was an integral part of the right to life, rendering the right to education indirectly justiciable. The decision in *Unnikrishnan* has been applied by the court in formulating broad parameters for compliance by the government in the matter of eradication of child labor.

*Unnikrishnan* was followed in *N. Kumbichekku Haji (Dead) by LRS. V. State of Kerala and others* when the court in a case pertaining to question of providing upgradation of a school held that children have a fundamental right to education and therefore larger interest of young children should be taken into consideration in meeting the procedural cobweb, This was acknowledged

again in *State of Orissa v. Dipti Paul* when the court while deciding on the case salaries of teachers appreciated the importance of universalisation of primary education.

In *L. Muthukumar and another v. State of Tamil Nadu and others*, the Court held that there was a responsibility on the State to ensure that before teachers are allowed to teach innocent children, they must receive appropriate and adequate training in a recognized training institute satisfying the prescribed norms, other the standard of education and careers of children will be jeopardized. It further held that interest of individuals cannot be placed above or preferred to the larger public interest.

In *Rohit Singhal and others V. Principal, Jawahar N. Vidhyalaya and others* the Court held that :

"Children are not only the future citizens but also the future of the earth. Elders in general and parents and teachers in particular, owe a responsibility for taking care of the well- being and welfare of children. The world shall be a better or worse place to live according to how we treat the children today. Education is an investment made by the nation in its children for harvesting a further crop of responsible adults productive of a well- functioning society.

Poverty and economic shocks clearly play an important if not a key role in determining the market for child labour. Child labour in turn contributes to the perpetuation of poverty. Considerable differences exist between the many kinds of work children do. Some are difficult and demanding, others are more hazardous and even morally reprehensible. The term "child labour" is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that: is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.

*M. C. Mehta v. State of Tamil Nadu* a writ petition filed by an activist lawyer claiming violations of Art.24 of the Constitution of India in the firecracker industries at Sivakasi, a popular market for the firecrackers remains the landmark judgment on the issue of child labour in India. The Court emphasizing on the relevant provisions from the International Conventions including the Convention on the Rights of the Child exhorted that the Indian government is required to ensure that children do not engage in hazardous work. Court took cognizance of the fact of poverty as the real cause behind the parents relying on child labour to augment the families meager income and noted the fact that fine imposed on the employers were not sufficient enough to prevent a poor parent from having to put their child to work. The government owes such parents a duty of assistance to help remove their children from hazardous employment. Taking into account the vulnerabilities of the Indian child into labour issued certain directions as to how the quality of life of children employed in factories in Sivakasi could be improved. The court ordered that employers illegally employing children must pay Rs.20,000 into a fund known as the "Child Labour Rehabilitation-cum-Welfare Fund" to be used only for the benefit of that child.

The court also ordered the government to either (a) provide employment for an adult member of every family with a child who is employed in a factory or mine or other hazardous work or, if not possible to provide an adult family member with a job, (b) contribute Rs. 5,000 to the Child Labour Rehabilitation-cum-Welfare Fund for each child employed in a factory or mine or other hazardous employment. Adults who are offered jobs in this way would also have a duty to ensure that their children entered full-time education and did not continue to work.

*P. U. D. R. v. Union of India* was yet another landmark judicial delineation on the issue of child labourers in construction industry. The court took cognizance among other issues relating to the contract labourers and migrant workers the issue of child labour rampant in the Indian construction sector. Accordingly Supreme Court while opining that that construction industry does not find a place on the schedule to the Employment of Children Act, 1938 and the Prohibition enacted in section 3 sub-section (3) of that Act against the employment of a child who has not completed his fourteenth year cannot apply to employment in construction industry took support from Convention No. 59 of the International Labour organization ratified by India, Article 24 of the Constitution of India to justify the ban on child labour in construction industry holding it out as indubitably a hazardous employment. Hence the apex court prioritised the need for ban on child labour not with standing the absence of specification of construction industry in the Schedule to the Employment of Children Act 1938 and directed the the Union of India as also the State Government to amend the schedule of the employment of children Act, 1938 incorporating the construction industry.

A high water mark in the application of the Article 24 of the Constitution was reached in the decision of the Court in *Salal Hydro Project v. Jammu and Kashmir. Labourers working on Salal Hydro Project v. State of J & K* was one of those cases by way of public interest litigation where positive results have been achieved for the benefit of the workmen employed on the Salal Hydro Electric Project as a result of judicial intervention. The apex court interfered proactively into the issue of children of the workers who belonged to a highly mobile community. Court acknowledged child labour as a difficult problem and that it was purely reflected as economic problem which cannot be solved by mere legislation. The Court directed that in compliance with the requirements of Article 24 of the Constitution no child below the age of 14 years should be allowed to be employed in the work of the project. It was also pointed out in the interim judgment that the Central Government should take care to see that necessary facilities for schooling were provided to the children of construction workers, whenever any construction project was taken up which was likely to last for some time.

Bachpan Bachao Andolan, an Indian-based movement, filed a public interest petition under Article 32 of the Constitution concerning the serious violations and abuse of children who are forcefully detained in circuses which culminated in the form of *Bachpan Bachao Andolan v Union of India*. The children were trafficked from impoverished parts of Nepal and India and forced to stay and perform in circuses without any access to their families under extreme inhuman

conditions, sexual abuse on a daily basis, physical abuse as well as emotional abuse. The children were deprived of basic human needs of food and water. The detailed research and enquiry by the Petitioner revealed that organized crime of trafficking of children for Indian circuses, particularly from Nepal is rampant and that the children were sold to the circus owners either by the agents or their relatives or sometimes the poor parents are lured into the web by promising high salaries, luxurious life, etc.. The employment of the children in circus involves many legal complications and in that respect major complications are namely, right to education; right to freedom of expression, thoughts and feelings; competency to enter into contract for working in circus; violation of existing labour laws and legitimacy of contracts of employment for children and working conditions; and all statutory provisions dealing with child labour. The Apex court discussed the issue of trafficking, factors that cause trafficking, available legislations, India's obligations under International and Regional Instruments, National Plans and Policies to combat human trafficking, and existing child protection mechanisms and ordered for implementation of suggestions which will introduce significant reforms in existing child protection regime and directed the respondents directed to frame proper scheme of rehabilitation of rescued children from circuses.

The abolition of child labour ought to be preceded by the introduction of compulsory education since compulsory education and child labour laws are interlinked. Article 24 of the Constitution bars employment of child below the age of 14 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. The Court in 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. This is, till date, one of the few judgments which has laid down guidelines on the implementation of Child Labour Act.

In *PUCL v. Union of India and others*, a case which was about trafficking of children for labour, the Court ordered a compensation of rupees two hundred thousand to be paid to the brother of a child who was trafficked for labour and later beaten to death by the trafficker. The Court also ordered Rs.75,000/- to be paid to three other boys who were trafficked. It is interesting that even though the traffickers were private individuals, the Court ordered the respective states to pay compensation.

The United Nations General Assembly Special Session on Children in 2002 endorsed a mainstreaming approach – placing child labour on the development agenda. This implied that a new ambition had to be set for the worldwide movement against child labour. In political terms this means putting child labour on the agenda of finance and planning ministries – after all, the worldwide movement has to convince governments to act to end child labour. Child labour elimination comes down to a set of political choices rather than a technocratic exercise. Rather than leaving the developmental concerns like child's right to education and freedom from child labour to political whims and fancies, it can be best viewed from a human rights perspective

promoting and guaranteeing right to education as a part and parcel of the welfare State obligations.

In India, National Commission for Protection of Child Rights along with ILO, UNICEF and UNESCO, unanimously agree that realisation of children's right to education is crucial for reaching the goal of elimination of child labour, in addition to scaling up efforts through poverty reduction, social protection and building political commitment to tackling child labour. The prominent role played by the Indian Judiciary stands out as a signal contribution to the implementation of human rights generally and that of child labourers in particular. The agenda of the state can be shaped to a considerable extent by a creative and activist judiciary. The state has to be constantly reminded of its obligations and duties. The state is duty bound to step up its game, and assert its authority in demanding greater accountability of the policies put forth by it, in due accordance with the Constitutional, legislative and judicial mandates. Hence, the need for certain non-negotiables in the field. Any Child whether be in the national or international context be deprived of education. That is the Indian experience.

Education is critical for economic and social development. It is crucial for building human capabilities and for opening opportunities. The importance of education was fully recognised by classical economist and social scientist such as Adam Smith, John Stuart Mill, Schultz, Becker and Amartya Sen. Alfred Marshall in the Principles of Economics observed as follows:

“The wisdom of expending public and private funds on education is not to be measured by its direct fruits alone. It will be profitable as a mere investment, to give the masses of the people much greater opportunities, than they can generally avail themselves of. For by this means many, who would have died unknown, are able to get the start needed for bringing out their latent abilities. The most valuable of all capital is invested in human beings.”

Associate Professor,  
Jagannath University, Jaipur

## Bibliography

1. [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.35\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.35_en.pdf) last visited on 12/3/2016
2. <http://www.ilo.org/ipec/Action/Education/lang--en/index.htm> last visited on 12/3/2016
3. Ibid
4. <https://www1.umn.edu/humanrts/edumat/IHRIP/circle/justiciability.htm> last visited on 12/3/2016
5. 1992 (3) SCC 666
6. <https://www1.umn.edu/humanrts/edumat/IHRIP/circle/justiciability.htm> last visited on 11/3/2014
7. 1993 (1) SCC
8. Supra
9. 1995 Supp(2) SCC 382
10. 2000 (10) SCC 413

11. 2003 (1) SCC 687
12. <http://www.un.org/en/events/childlabourday/background.shtml> last visited on 11/3/2016
13. <http://www.ilo.org/ipecc/facts/lang--en/index.htm> last visited on 11/3/2016
14. Writ Petition (Civil) No.465/1986
15. Art.24 Constitution of India: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”
16. <http://www.crin.org/en/library/legal-database/mc-mehta-v-state-tamil-nadu> last visited on 12/6/2015
17. 1982 AIR 1473, 1983 SCR (1) 456
18. 1984 (1) SCALE 680, (1984) 3 SCC 538
19. 2011 SCC (5)
20. [http://www.unodc.org/cld/case-lawdoc/traffickingpersonscrimetype/ind/2011/bachpan\\_bachao\\_andolan\\_v.\\_union\\_of\\_india\\_uoi\\_and\\_ors\\_.html](http://www.unodc.org/cld/case-lawdoc/traffickingpersonscrimetype/ind/2011/bachpan_bachao_andolan_v._union_of_india_uoi_and_ors_.html) last visited on 12/5/2015
21. Egs: Employment of Children's Act, 1938, The Children (Pledging of Labour) Act, 1933, The Child Labour (Prohibition and Regulation) Act, 1986, Minimum Wages Act, 1976, The Prevention of Immoral Traffic Act, Equal Remuneration Act, 1976 and Rules made thereunder and the Bonded Labour System (abolition) Act, 1976 read with rules made their under, the Factories Act, 1948, Motor Transport Workers Act, 1961 etc.
22. Constitution of India, Articles 14-17, 21, 21A, 23-24, 32, and 39; Indian Penal Code 1860 (IPC), sections 41, 293, 319-329, 339-346, 350-351, 361-363, 365, 367, 370, 416, 420, 465-466, 468, 471, 503, and 506; Juvenile Justice (Care and Protection of Children) Act 2000, sections 18, 31(1), and 33(3); Goa Children's Act 2003; Child Labour (Prohibition and Regulation) Act 1986; Children Pledging of Labour Act 1933; Bonded Labour System Abolition Act 1976; Factories Act 1948; Plantation Labour Act, 1951; Mines Act 1952; Merchant Shipping Act 1958; Apprentices Act 1961; Motor Transport Workers Act 1961; Bidi and Cigar Workers (Conditions of Employment) Act 1966; West Bengal Shops and Establishment Act 1963; Suppression of Immoral Traffic in Women and Girls Act 1956 (The Immoral Traffic (Prevention) Act 1956 (ITPA)), sections 7, 8, 8A, 8B, 15, and 17(3); Right of Children to Free and Compulsory Education Act 2009, section 3, chapter 6 Child Welfare Act 1978.
23. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1950; UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) 1985; UN Rules for the Protection of Juveniles Deprived of their Liberty 1990; Hague Convention on Inter Country Adoption 1993.
24. <http://www.legalindia.com/role-of-indian-judiciary-in-protection-of-rights-of-the-children/> last visited on 14/3/2016
25. 1998 (8) SCC 485