

PUBLIC INTEREST LITIGATION AND CHILD LABOUR: AN ANALYSIS OF THE *MC MEHTA* CASE

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Abstract

The paper seeks to explain the mechanism of public interest litigation with respect to child labour and with an analysis of the *M.C. Mehta* case. The case being a landmark one but also old, hence the article also analyses and presents the contemporary jurisprudence in the field in the form of relatively new judgments of the Supreme Court. The article is divided into five parts – The first part introduces the topic and the terms involved, the second part specifically analyses the public interest litigation with respect to children, part three precisely analyses the *M.C. Mehta* judgment and proceeding to the fourth part it details the way forward and the contemporary jurisprudence and finally the fifth part concludes the article. The primary take away from the conclusion is that the effective implementation of the court orders is the key to solving the child labour in India if we limit ourselves to the ecosystem of Indian judiciary.

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¹ (1996) 6 SCC 756.

I Introduction

PUBLIC INTEREST litigation (PIL) is an effective modern day mechanism to make law more accessible to the people of our nation. It is not the case that justice has not been delivered to the countrymen but its admission has been very difficult. PIL has made justice more accessible. According to the Black's Law dictionary, "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected". PIL can be filed by any person acting *bona fide* and who has enough interest in instituting an action for redressal of public injury or public wrong doing. Thus the rule of *locus standi* has been relaxed.

PIL was introduced in the nation in late 70's and early 80's where the Supreme Court and the newly formed social action groups and the consumer groups were given an easier access to law so that they can act on behalf of the deprived classes of the society. This has been one of the main motives of bringing PIL into force. The law had been for a long time understood to be an elite commodity and it appeared very difficult for the poor to have access to it. PIL has solved this problem of accessibility and has made it easier to stand for an issue which has big impacts on the lives of the people and the community. A lot of efforts were put in by P.N. Bhagwati and V.R. Krishna Iyer JJ to bring this litigation into action.

A PIL should ideally not be filed by to get any personal gain. The precedent says that it should be filed for issues which will serve the public like the concern for providing basic amenities, environmental issues, concerns pertaining to children, atrocities against schedule caste and the schedule tribe, maintenance of law and order, payment of minimum wages *etc.*

The judiciary has shed its *pro status quo* approach of the post-independence era and taken upon itself the duty to enforce the basic rights of the poor and the vulnerable sections of society, by progressive interpretation and positive action.² Thus this progressive interpretation is based upon the use of PIL which would ensure that there is an opportunity for the unheard voices to be heard. Ours is a pluralistic society and the majority of the population are struggling to overcome poverty and trying to increase their standard of living. The long procedures and the complications involved in judiciary have many times isolated a large section of Indian society which lives a very ordinary life and has no power or authority to stand for themselves.

² Satyaranjan Purushottam Sathe. *Judicial activism in India* (Oxford University Press, India, 2002).

The question here is of the justice which ought to be attainable. PIL has been brought about in order to reduce this distance. It also brought the advent of judicial activism in the country. Judicial activism is a way through which justice is provided to the disadvantaged group of people in the society. It is a step in making legislature closer to the people and especially to the vulnerable ones. A PIL can be filed in the high court under the article 226 of the Indian constitution and in the Supreme Court under the article 32 of the Indian constitution invoking the writ jurisdiction of the courts.

The courts' interventions have played a pivotal role in advancing the protection of civil liberties, the rights of workers, gender justice, and accountability of public institutions, environmental conservation and the guarantee of socioeconomic entitlements such as housing, health and education among others.³ PIL has been an invaluable innovative judicial remedy that has translated the rhetoric of fundamental rights into living reality and for at least some segments of exploited and downtrodden humanity.⁴

Thus we can say that public interest has been restored and the credit goes to a more realistic and much needed litigation which speaks for the masses on their behalf and upon that courts in many landmark judgments have proven the creditability of PIL and the positive impacts that it had on the society as a whole. It also sensitizes the people and gives an opportunity to individuals and organizations to question the loopholes and raise the concern for the common well-being of people.

As per the NSSO (66th round of Survey) on Child Labor in Major Indian States, 2009-10 in the (Age group 5-14) is 49, 83,871. The figure of 49.83 lakh child labor is from the organized sector.⁵ The corresponding number from unorganized sector of child labor is not taken into consideration but rough estimates by some NGO put the number in crores.⁶ Social security or rather the lack of it and poverty are the two major contributors which coerce the children to work

³ S.P Sathe, *Judicial Activisms in India* (Oxford University Press, India, 2002).

⁴ Hans Dembowski, *Taking the state to court: public interest litigation and the public sphere in metropolitan India* (Oxford University Press, USA, 2001).

⁵ The data can be accessed at the website of Labour Ministry, available at: <http://labour.nic.in/upload/uploadfiles/files/Divisions/childlabour/NSSOEstimateofChildLabourinMajorIndianStates.pdf> (last visited on Dec. 1, 2015).

⁶ One such NGO is 'Salaam Balak Trust'. Its reports are, available at: <http://www.friendsofsbt.org/statistics> (last visited on Dec. 1, 2015).

as laborers. In almost all sectors child labor can be found. The girls and boys from rural as well as urban places are into child labor working in organized sectors industries, factories, and unorganized sectors such as brick kiln, carpet making, beedi and cigar making units, construction sector, agricultural fields, as domestic help, dhabas/ restaurants/ hotels/ motels, auto-workshop, vehicle repairs, gem-cutting, jewellery making units.

This paper seeks to trace the development of jurisprudence of PIL with respect to the courts taking a lead role in combating the menace of child labour and the stellar judgment of M.C. Mehta. The paper will conclude by analysing the way forward in this regard.

II Public interest litigation and children

PIL was formulated in order to answer the needs of the people who cannot be heard. Ours is a wide country with a lot of diversity. There is no particular homogenous group in the nation. But there lies a class of citizens who are deprived of the most basic amenities. Thus to these masses the litigation is effective tool to raise their concerns. In these masses also the most vulnerable group is of the children. As we know children are minors and most of the times their voices go unheard. It becomes very difficult for these children to go to court and fight for their rights. Thus in that case PIL seems to be an effective weapon to fight for their rights and justice.⁷

Since past few years, the concern for children and their rights have increased. This concern for the welfare of children has also been achieved through PIL. Through this litigation various important contemporary issues can be raised. The PIL is the answer for the vulnerability of the children. Here when we are talking of vulnerability, it means that children because of their age and innocence are exposed to different circumstances in society. In the contemporary times where through different ways exploitation of children takes place. It may be in the form of child labor, bonded labor, child trafficking *etc.* These are some of the cruel circumstances which are imposed on children and have become the face of social evil. PIL seems to act to bring these issues in the eyes of law. Further adding on to this what the litigation does is that it acts as a mechanism to make law more realistic and approachable. The PIL gives the freedom to any concerned individual or to any organization to bring many violations of the rights of children in the eyes of court. Here the most important part is that these organizations for the public good can act on behalf of the children. Thus without rigorous participation in the judiciary, there is a

⁷ David Feldman, "Public interest litigation and Constitutional theory in Comparative Perspective." *The Modern Law Review* 55 (1), 44 (1992).

chance that justice can be brought about. It is primarily through PIL that the court has expanded the scope of fundamental rights by interpreting them liberally.⁸

PIL has helped children who are homeless, abandoned, abused, bonded, trafficked, illegally employed and displaced. These are some of the basic situations in which children are the most vulnerable and they feel distress in it. Only some 38,000 crimes were recorded last year which includes feticide, infanticide, child marriage and child labor were registered at all in 2012 when over 50% of India's children are estimated to experience the abuse and the ratio of girl to boy children declines with each measurement.⁹ All the cases of concern of children cannot be brought about through the formal procedure. It is very time consuming and it is expensive too. This long formal Procedure has been eliminated by the PIL. Through a writ petition only, PIL can be filed. It is not expensive and can raise the issue in front of the court. It is not about only raising the issue but it also acts like a pressure on government to act against the violations of the rights happening in the society. In essence, the PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interest of the weaker elements in the community.¹⁰ Here when we talk about the weaker community, it also implies to children as their experience go without any consideration. These experiences can be used to file a PIL and with the instructions provided by the court, a change can be brought about in the situation of these children.

The PIL is proving to be an effective medium of struggle against victimization of children. PIL can be very helpful for bringing into consideration a lot of prominent issues of children into the eyes of law. The relief that is provided by the litigation is of the accessibility of justice which has become easier. Law is no more seen as the property of elite but has been transformed into a force which recognizes the need of the exploited and the needy ones and acts strongly upon it.

III The path-breaking case

*M.C. Mehta v. State of Tamil Nadu, 1996*¹¹

This case here is taken as an example of a PIL which became instrumental in changing the landscape of the child rights scenario and related jurisprudence in India.

⁸ Clark D. Cunningham, "Public interest litigation in the Supreme Court of India: A study in light of the American experience." 29 *JILI* 494-823 (1987).

⁹ P. M. Nair, and Sankar Sen, *Trafficking in women and children in India* (Orient Blackswan, India, 2005.)

¹⁰ Prafulla chandra Natwarlal Bhagwati, "Judicial activism and public interest litigation" 23 *Colum. J. Transnat'l L* 561 (1984).

¹¹ 1996 6 (SCC) 756.

M. C. Mehta filed a PIL in the Supreme Court of India alleging that many children were being employed in several hazardous industries particularly in the firecracker and matchstick industries in Sivakasi in Tamil Nadu. The Constitution provides “no child below the age of age of fourteen years shall be employed to work in any factory or mine or engaged in other hazardous employment”¹² Child labor is a huge problem which is a socially acknowledged reality but the PIL filed indented to bring about this crucial issue in the eyes of law. As of December 1, 1985 there were 221 registered match factories in Sivakasi; these factories employed 27,338 workmen of which 2,941 were children.¹³ With the help of this PIL, Mehta raised his concern for the future and safety of these children who were working in these factories. In a larger perspective if we see then it is a case of mass violation of human rights. Moreover, the conditions in which these children were working were also very perilous to their health and overall well-being. This judgment examines the continuation and the reasons for child labor despite the enactment of Child labor (Prohibition and regulation) Act, 1986.

In the course of hearing, the supreme court of India appointed a committee which would visit the site and make a report pertaining to the different aspects of the matter. This committee was appointed earlier on the same issue to understand find solutions to the child labor problem in Sivakasi. The committee submitted its report on November 11, 1991 and gave several recommendations. It recommended that the state of Tamil Nadu should be directed that children should not be employed in hazardous industries of any sorts. Children must also have a separate premise where they should not work more than six hours. Proper transport facilities, recreation facilities and education should be provided in or around the factory. The recommendations were also made on providing the basic diet for children, monthly payment and insurance. It was also recommended to start a national commission on children’s welfare which would prepare a scheme for abolition of child labor.

After effects of the judgement

The Supreme Court identified that Sivakasi was not the only center where child labour is prevalent rather the court recognised that child labour was an all pervasive national problem in India even after 50 years of independence and despite the enactment of various legislations.¹⁴ The Supreme Court highlighted the causes of child labor as poverty, low

¹² The Constitution of India, art. 24

¹³ *M.C. Mehta v. State of Tamil Nadu* 1996 6 SCC 756, para 3

¹⁴ *Ibid.*

wages of an adult, Unemployment, absence of schemes for family allowance, migration to urban areas, large families, children being cheaply available, non-existence of provisions available for compulsory education, illiteracy of ignorance of parents and traditional attitudes.¹⁵ Further the Supreme Court of India gave several directions:

- The state government must conduct a survey in their respective states within a period of six months on the issue of child labor.
- The offending employees have to pay a sum of Rs. 20,000/- for every child who is employed in lieu of infringement of Child Labor Act.
- The inspectors who are appointed under section 17 of the act, should bear the responsibility of implementing the above direction. The sum should be deposited in a fund which would be called child labor rehabilitation cum welfare fund.
- The state should ensure that the child who is employed in a factory, his parent or guardian should be provided employment too. If the state government fails to do that then the state government has to contribute Rs. 5000 to the child rehabilitation cum welfare fund.
- On the discontinuation of the employment, the child has to be assured admission education in an appropriate institute. The inspectors will further make sure that these directions are carried on.
- The district collector would be responsible for monitoring the functioning of the inspectors. While the secretary of the labor department would be responsible for monitoring the scheme.

It is pertinent to mention here that the implementation of the judgment has not yet been done in the manner as has been envisaged by the Supreme Court. This was acknowledged by the Delhi High Court in *Court On Its Own Motion v. Govt of Nct of Delhi* in 2009 and it said:

...constitutional mandate and statutory provisions with regard to children were not being vigorously implemented and there was lack of coordination between different agencies of the Government of NCT of Delhi and other authorities...

In furtherance of the above also adopted the Delhi Action Plan for Total Abolition of Child Labour and directed the authorities to implement the same. The Delhi Action Plan was a policy

¹⁵ Ranjan K Agarwal, "Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India, The." 21 *Ariz. J. Int'l & Comp. L.* 663 (2004).

measure which was framed under the directions of Delhi High Court by the National Commission for Protection of Child Rights when it realised that the funds collected under the direction of the Supreme Court in the *MC Mehta* case were not properly utilised and also not being collected in the due manner.

The government quoted a report of Ministry of Women and Child Development in its submissions before of the Supreme Court in the case of *Bachpan Bachao Andolan v. Union of India*¹⁶ and identified the following as the reasons for limitations in effective implementation:

- Poor implementation of existing laws and legislations;
- Lack of linkages with essential lateral services for children, for example, education, health, police, judiciary, services for the disabled etc;
- No mapping has been done of the children in need of care and protection or of the services available for them at the district, city and state levels;
- Lack of coordination and convergence of programmes/services;
- Weak supervision, monitoring and evaluation of the juvenile justice system.

IV 2016 Amendment

The 2016 Amendment has a dual dimension when it comes to the progressive nature of the amendment. Amendments principally are a function of the progression of the society towards modernization. But at least in parts the latest amendment has proved to be a regressive one.

Section 3 of the principal act has now been replaced as:

(1) No child shall be employed or permitted to work in any occupation or process.

(2) Nothing in sub-section (1) shall apply where the child, —

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.

¹⁶ (2011) 5 SCC 1.

Explanation. —For the purposes of this section, the expression,

- (a) “family” in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;
- (b) “family enterprise” means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
- (c) “artist” means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sportsperson or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section(2).

As is evidently visible clause (2) of the new Section 3 completely negates the purpose of the clause (1) which is to stop the employment of children and provide a blanket ban. The second clause which acts as an exception to the first one gives such broad exemptions that it completely undoes the purpose of the Act itself. Further the Explanation to the Section while defining family is too liberal to be effective. For instance, family also means child’s paternal and maternal uncles and aunts both. It has been a trend it is often these family members who have indulged into exploitation of children. Further, if the child is a girl, the new provision not only exposes but also protects the paternal and maternal uncles against a possible environment where sexual harassment is perpetuated in the garb of ‘family business.’

Merely stating in a proviso that such employment should not impact the schooling of the child does not augur well with even commonsense, any employment be it howsoever mild will naturally effect the education of the child. Children are at a tender level of cognitive development and hence anything other than education naturally impedes their ability to succeed in any vocation of life. This new amendment has drawn flak from all corners of the academia including a strong protest from UNICEF.¹⁷

The above provision is supposed to be providing a blanket ban for prevention of employment of children below 14 years of age. The act then creates a different category of individuals called ‘adolescents’. These are children above 14 years of age and below 18 years of age. The earlier criticism of the Act was principally on the ground that it only prohibited child labor in hazardous occupations and everywhere else it was allowed. After the amendment, children are provided with a blanket ban, with two exceptions as stated above, instead adolescents are only

¹⁷ <http://www.huffingtonpost.in/2016/07/27/parliament-passes-child-labour-amendment/>

prohibited from being employed in hazardous occupations by the virtue of the newly incorporated Section 3A. Moreover, this provision gives power to the Central Government to remove any particular occupation as not being hazardous; this power should ideally be vested with the Parliament alone.

It can hence be safely insisted that the new amendment is not in line with the thought of a principally progressive society which we should seek to establish. It also does take away the good work and reverses the gains of the principal Act of 1986. As per UNICEF there are still 33 million child laborers in India.¹⁸ The amendments in our laws should reflect the urgency on part of the legislature to quantitatively and qualitatively change the scenario and not spoil it further.

V Conclusion

The issue of child labor is a complex one. It has become one of the most sensitive and debated issue on the rights of children. The task here is to eliminate this social evil and provide children with their rights. In a country like ours it is easier said than done. The possibility of ending this practice seems to be very difficult. It is important to understand the problems for its roots. The practice of child labor has integrated very well with the economy of our nation or vice versa. As in the above case Public Interest Litigation can be a good tool to counter this practice but it cannot guarantee its elimination because it is already imbibed in the economy of our nation. The question of poverty, unemployment and migration needs to be worked upon to find a solution to the problem of child labor. The need of the hour is the extensive use of PILs by Social Workers instead of using agitation as their medium of voicing their concerns.

In this particular case, the Court passed many positive directions to solve the problem of child labour. The recognition of perils involved in having children in these hazardous industries was a breakthrough. Many times this recognition will act as the first stepping stone in further answering the question of child labour. The Supreme Court in this case recognized the rights of children and passed an order where it ensured that education should be given a priority if the child stops working. The court also included the aspect of providing employment to the parent/guardian of the child who is working in the factory. Here the court has given orders in a way that it has tried to reduce the vulnerability of the child and also kept a reality check in its judgments. The court also understood that the problem of child labour has become a nationwide

¹⁸ <http://www.news.com.au/finance/business/breaking-news/indias-child-labour-law-in-adequate-un/news-story/7f4d5f42d3c7891dbf1647d06598596c>

phenomenon and is not restricted to any one particular state or region. The court also spoke about the prevalence of child labour in the unorganized sector is very difficult to handle. Unorganized sector in the country employs a majority of the population and this by employing children in it, there is a chance of increasing the vulnerability of the child. The positive impact that this judgment had on children is that it has reduced their vulnerability and provided an opportunity to grow also. This opportunity is provided in terms of factors like employment provided to Parents and the need for education in the case where the child has stopped going to school. The labour commissions and the child welfare committees were also setup to ensure the development of children.

It is important to understand here that the directions passed by the Supreme Court can only be successful when there is proper implementation on the side of bureaucracy. The directions issued by the Supreme Court in this case had some positive impact on addressing the issue had some positive impact in its own way where education of the child has been tried to be taken care. An opportunity has also been provided to the children when the child leaves the work then appropriate education should be provided. The part of parents is also answered but the concern here is of the implementation. The intention of Supreme Court has been good and through this judgment some kind of relief is also provided to children but at a larger scale it still becomes difficult to solve this evil until all the poverty elimination schemes are not implemented properly. A holistic approach is needed to bring these marginalized children into the mainstream and let their childhood not suffer because of their economic inefficiency.

The problem of implementation has been acknowledged by the government itself in the case of *Bachpan Bachao Andolan v Union of India & Ors.*¹⁹ as stated above. The Supreme Court in this case played an even more proactive role and directed that the Child Welfare Committee must directly come under the supervision of the District Judge/Judge of the High Court, and also that the above implementation must also be overseen by a Court-monitored mechanism. Hence it can be suggested here that the Court has also proactively taken upon itself to oversee the implementation of not only the MC Mehta Judgment but also various antecedent laws pertaining to the subject of Child Labour. Once again in this judgment the Court reminded the government of coming out with policy imperatives in the field of Child Labour with special reference to UN Protocol to Prevent, Suppress and Punish Trafficking in Persons its Preamble

¹⁹*Ibid.*

and Arts. 5 and 1 to 3. India being a signatory to the Protocol and Art. 5 obligation of member countries to adopt legislative and other measures to stop trafficking and child labour.

Through this particular case one can understand the extent and the intensity of the problem of child labor in our country. Further with the rise of liberalization, privatization and globalization, the vulnerability of the children has increased tremendously. The problem of child labor can only be solved when worked through a holistic approach where every order passed by the court is seriously implemented and a strong check and balance system for this implementation is placed in the society by all organs of the government.