

ROLE OF JUDICIARY IN PROHIBITION AND REGULATION OF CHILD LABOUR IN INDIA

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Abstract

The Judiciary demonstrated profoundly empathetic responses against child labour practice. It is very heartening to note that the Indian Judiciary has done noble services to minimize the problem of child labour in all possible ways where it gets the opportunity to safeguard the welfare of the children as well as by suggesting to amend the loopholes in the existing laws. The judiciary has always made concrete efforts to safeguard them against the exploitative tendencies of their employers by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities. The statutory provisions provides only a medium of directions as regards the nature of remedies and the procedure for safeguarding them, leaving a large extent of free play with in province of judges. So this article seeks to analyses the judicial trend towards issue of Child Labour and it is clear from the perusal of the judgements on the issue.

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The Judiciary is considered next to God. In the Criminal Justice system, courts occupy a position of primary importance. Their Predominant position gives them the authority to even reprimand other components of the system i.e. police, prosecution and prisons, for failure in discharging their functions in the matters of law enforcement. Courts are so powerful that they can direct the government to do certain things, which they deem fit in the public interest. The court system is

central to administration of justice and to a large extent, determines its fairness, efficiency and character.¹

The Constitution of India is a social document, which imposes an obligation on every organ of State 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. The judiciary has therefore, a socio-economic destination and to perform creative function. In the same spirit the judiciary in India has played a significant role in promoting child welfare. Mr. Justice Subha Rao, the former chief justice of India rightly remarked that, social justice must begin with child. Unless tender plant is properly nourished, it has little chance of growing into strong and useful tree. So, first priority in the scale of justice should be given to the welfare of the children.²

The Apex court has taken every opportunity as a challenge to serve the welfare of the child.³ The Judiciary with its innovative and inspiring judgements has been a bedrock of social justice. This concept of social justice would remain a myth if protection could not be provided to children –the future of any nation. With a collage of constitutional and legislative provisions the judiciary took up cudgels against the exploitation of children and whenever called upon gave full protection to the rights of children in consonance with the international commitments which India has made. However, the biggest challenge –child labour and its exploitation –remains. Taking into consideration the reality that the malaise cannot be eradicated the Courts, especially the Supreme Court, has given ways for its regulation.⁴

Throwing light on the problem of child exploitation in *Sathyavan Kottarakkara v. State*⁵, the High Court held :

“Exploitation of children in any form which has the tendency to exploit them either physically, mentally or otherwise is objectionable. Any attempt in this direction should be put an end to achieve the goals enshrined by the India Constitution, makers, which are reflected in various provisions of the Constitution, namely Articles 21, 39, 41, 45 and 46.

¹ N.R. Madhava Menon, *Criminal Justice India Series*, xi (2001).

² Subhas Rao, *Social Justice and Law*, 110 (1974).

³ Devinder Singh, *Child Labour & Right to Education*, at 141 (2013).

⁴ Mamta Rao, *Law Relating to Women and Children*, at 457 (2008).

⁵ AIR 1997 Ker 133.

The apex court has laid emphasis on the fact that the important task of social justice is to take care of child, for him lies the hope of nation's future.⁶ The Supreme Court of India has shown a great activism in the past two decades for the protection of human rights of all groups, including children. Directives have either been issued to fill in the gaps in the legislation or to provide for supplementary matters that have not been provided by any legislation.⁷ The judiciary demonstrated profoundly empathetic responses against child labour practice.⁸ The child welfare was given top priority in its judgments while translating the ideals of Social Justice as enshrined in the Constitution of India.⁹ Following are some cases on Child Labour where the judiciary has shown its activist approach:-

In *Bandhua Mukti Morcha v. Union of India*¹⁰ a Public Interest Litigation was filed alleging employment of children aged below 14 in the Carpet Industry in the State of U.P. Reports of the Commissioner/ Committee appointed by the Supreme Court confined forced employment of a large number of children, mostly belonging to SCs and STs and brought from Bihar, in carpet weaving centres in the State. The court directed the Central Government to convene a meeting of the concerned Ministers from different States to evolve policies for the progressive elimination of child labour. The court held that the workers who were being held in bondage without basic amenities such as shelter, drinking water or two square meals in a day, amounts to violation of fundamental rights, as everyone has a right to live in this country free from exploitation. Thus it was pointed out that there is a need for compulsory education of children, vocational training, health checkups and nutritious food.

*Labourers Working On Salal Hydro-Project V. State Of J. & K.*¹¹

The Supreme Court directed that whenever the Central Government undertakes a construction project which is likely to last for a considerable period of time, it should ensure that children of construction workers who are living at or near the project site are given facilities for schooling.

⁶ Tapan Kumar Shandilya & Shakeel Ahmad Khan, *Child Labour: A Global Challenge*, at 103(2006).

⁷ M.G. Kashi Vidyapith, "Child Labour: Nature and Issues", *Labour and Industrial Cases*, Vol.36, at 197 (2003).

⁸ B. Srinivasa Reddy & K. Ramesh, *Girl Child Labour: A World of Endless Exploitation*, at 49 (2002).

⁹ R.K. Sabharwal, "Child Labour- National and International Perspective", *Civil and Military Law Journal*, Vol. 37, at 31(2001).

¹⁰ (1997)10 SCC 549.

¹¹ AIR 1984 SC 177.

The Court also specified that 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.

Further in *M.C.Mehta v. State of Tamil Nadu*,¹²

This petition under Article 32 of the Constitution, brought before the Supreme Court by way of a public interest litigation, is connected with the problem of employment of children in match factories of Sivakasi in Kamaraj District of Tamil Nadu. Sivakasi has been the traditional centre 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 31 December, 1985, there were 221 registered match factories in the area employing 27,338 workmen of whom 2941 were children. The Supreme Court observed that in our country, the goal of Article 45 of the Constitution (all children up to the age of fourteen years to get education) remains a distant dream as due to poor economic conditions, children are compelled to seek employment. So the court ruled that children can be employed in the process of packing of fireworks but packing should be done in an area away from the place of manufacture to avoid exposure to accidents.

In another *M.C. Mehta v. State of Tamil Nadu*,¹³ a three judge's bench of the Supreme Court delivered a landmark judgment. The court held that fundamental rights of children against exploitation were being grossly violated in match and firework industries in Sivakasi where children were employed. The court further held that the manufacturing process of matches and fireworks was hazardous, giving rise to fatal accidents. This ruling has certainly succeeded in generating a lot of enthusiasm relating to the elimination of child labour amongst the agencies concerned and the state government. The court also observed that , “ *a tremendous responsibility to look into the exploitation of child labour has been placed on the inspectors appointed under the Child Labour (Prohibition and Regulation) Act, 1986. But many of these inspectors are themselves responsible for the tardy implementation of the Act. There is a need for orientation and training of these inspectors and the other staff concerned to sensitize them toward eradication of child labour*”.

¹² AIR 1991 SC 283.

¹³ AIR 1997 SC 699: 1997 AIR SCW 407: (1996)6 SCC 756.

In this case Supreme Court extended the concept of compensatory jurisprudence in the area of child labour. In this case the Court issued certain direction which may be considered as a positive step in the eradication of child labour from our country. Among the various directions the Court issued, the most important are: (1) The offending employer (i.e., one who infringes prohibited child labour) must be asked to pay Rs. 20,000 as compensation for every child employed in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act; (2) the government must either provide a job to an adult member of a family in lieu of child belonging to that family who has been employed in any factory, mine or other hazardous work or it must deposit Rs. 5000 for every child; (3) where such alternative employment is not given, the parent or guardian of the child would be entitled to be paid per month the income earned on the corpus of Rs. 25,000 (Rs. 20,000 contributed by the employer and Rs. 5000 contributed by the state) for each child; (4) all amounts received from the employers as well as Government should be deposited in a fund called the Child Labour Rehabilitation cum Welfare Fund; (5) the alternative employment given as per above direction or the interest on Rs. 25000 payable to the parents or guardian of a child shall be stopped if the child is not sent to school; and (6) the inspectors appointed under Section 17 of the Act shall ensure compliance with the provisions.¹⁴

In *People's Union for Democratic Rights*,¹⁵ Also known as the Asiad case, the Supreme Court provided a rule to determine what constitutes forced labour. The court held that where a person provides labour or service to another for remuneration which is less than the minimum wages, the labour or service provided by him clearly falls within the scope and ambit of forced labour. The court held that although the construction industry is not mentioned in the schedule under the Child Labour (Prohibition and Regulation) Act, 1986 and is not within the scope of provisions of Section 3(3) of the Employment of Children Act, 1938, yet, a child under the age of fourteen years can be protected from working in construction industry by virtue of Article 24 of the Constitution.¹⁶ This is a constitutional prohibition which, if not followed up by the appropriate legislation, must operate *Proprio-vigore* as construction work is plainly and undoubtedly a hazardous employment.

¹⁴ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, at 242-243(2002).

¹⁵ *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC235: AIR 1982SC 1480.

¹⁶ Article 24 provides that 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.

In *Neerja Chaudhary v. State of M.P.*,¹⁷ Upon a PIL filed by a public spirited journalist, the Supreme Court directed the State Government to form a vigilance committee to work for rehabilitation of freed child bonded labourers and carry out these directions within one month. The Court also directed the State Government to take immediate action for identification and release of bonded labourers.

In dealing with a case of employment of children in beedi industry¹⁸ the Supreme Court observed that “Tobacco manufacturing has, indeed, health hazards. Child Labour in this trade should therefore, be prohibited as far as possible and employment of children should be stopped either immediately or in a phased manner to be decided by the State Governments but within a period not exceeding 3 years from, now.” In India millions of children are working in different factories in various hazardous processes to earn their daily livelihood or due to some other compulsion, which goes beyond the provisions of the Factories Act, 1948, as this Act like other labour laws is committed to protect the interest of the child labourers. When the question of employment of children in factories arises, the mind is automatically diverted towards the decision delivered in the leading case *Jhunjhunwala v. B.K. Patnaik*.¹⁹ To protect the child workers the Orissa High Court has interpreted the provisions of the Factories Act, 1948 more liberally and remarked that “if adolescent workers not possessing fitness certificate are found in factory, it is not obligatory upon the Inspector of factories to first get them medically examined under Section 75 before prosecuting the occupier for contravention of Section 69 of the Factories Act, 1948.”²⁰ In case of employment of young persons, it is decided that, when an owner or occupier is being prosecuted for violation of Section 68 it is his duty to prove that the worker was not of adolescent.²¹

In *Unnikrishnan's case*,²² The Apex court observed that however Article 45 is included in the directive principles of the state policy, yet in changed circumstances with the passes of time it has given place as fundamental rights have. The Court directed that a survey be conducted in

¹⁷ (1984) 3 SCC 24.

¹⁸ *Beedi Workers Union and State of Tamil Nadu & others and R.Chandra Segaram and State of Tamil Nadu &Others*, WP(Civil) No. 1262 of 1987 and WP(Civil) No. 13064 of 1983.

¹⁹ (1964) 2 LLJ 551 Ori.: (1963)29 Cut LT 573.

²⁰ (1964) 2 LLJ 551 Ori.: (1963)29 Cut LT 573.

²¹ (1964) 2 LLJ 551 Ori.: (1963)29 Cut LT 573.

²² AIR 1993 SC 2178.

relation to child labour and the person who employed children in prohibited employments be punished according to law. No children be allowed or required to work for more than 6 hours a day and they must be given an opportunity to take education for atleast two hours.

*Mukesh v. State of U.P.*²³

By this writ petition , the petitioner has prayed for quashing the attachment order dated 1st July, 2012 (Annexure No. 6 to the writ petition) by which the petitioner's agricultural land have been attached for recovery of an amount of Rs. 1,20,000/- against the petitioner, which was imposed on account of violation of Child Labour (Prohibition and Regulation) Act, 1986.

Learned counsel for the petitioner contends that the petitioner by an agreement has transferred the land to one Vikas Chaudhary and there is no liability of the petitioner towards violation of provisions of Child Labour (Prohibition and Regulation) Act, 1986. He has referred to registration certificate of the Brick Klin (Annexure No. 2 to the writ petition).

We have considered the submissions made by the learned counsel for the petitioner and perused the records. From the complaint, which has been filed by the petitioner (Annexure No. 3 to the writ petition), it is clear that inspection was made on 19.12.2008 by the Labour Enforcement Inspector and child labours were found working in violation of Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986. The recovery has been initiated on the aforesaid reason. The submission of the petitioner is that he had only transferred the land and he was not running the Brick Kiln, this fact is belied by the document which has been filed by the petitioner himself. Annexure No.1 to the writ petition is an agreement alleged to be entered between the petitioner and Vikash Chaudhary. In paragraph no. 1 of the affidavit, it is clearly mentioned that petitioner is transferring the M/s Shiv Brick Field to Vikash Chaudhary. The agreement is an unregistered agreement. Further more the registration certificate of the Brick Kiln relied by the petitioner dated 21st August, 2009 (Annexure No. 2 to the writ petition). Whereas inspection was made on 19.12.2008. In view of the materials brought on record, the petitioner cannot escape his liability and he cannot be allowed to say that he is not the owner of Brick Kiln and there is no liability on him to make the payment. We do not find any error in the attachment proceedings, which has

²³ 2012 SCC Online All 2807; Writ -C No. 43647 of 2012.
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Website: www.eupstream.com

been initiated in pursuance of recovery against the petitioner in the year 2009. Learned counsel for the petitioner now comes with the prayer that he may be allowed some reasonable time to clear up the entire amount. In view of the aforesaid, we provide that in event, petitioner deposits the amount of Rs. 1,20,000/- with respondent no.5 with in two months from today, no coercive action shall be taken against the petitioner. The proceedings for recovery having already issued, the petitioner shall also be liable to pay half the recovery charges, which shall be deposited by the petitioner before the Sub Divisional officer, respondent no. 3 with in a period of two months from today. In event, any default is committed by the petitioner in making the payment as aforesaid, recovery shall revive and the respondents shall proceed with the sale of the agricultural property of the petitioner. With these directions, the writ petition is disposed of.

In the case of *Hayath Khan vs The Deputy Labour Commissioner and Others*²⁴

Case has been registered against the petitioner under Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986. Fine of Rs. 20,000 has been imposed as compensation to be deposited to the district child labour rehabilitation and welfare fund-Recovery notice-questioned by the petitioner. It is held that the civil Liability to pay compensation arises in terms of the judgment of the Supreme Court in “AIR 1997 SC 699- M.C. Mehta vs State of Tamil nadu”- The compensation cannot be confused with levy of fine by the way of penalty under Section 17 of the Act –the compensation cannot be confused with levy of fine by way of penalty under Section 17 of the direction of the Supreme Court and it is therefore legally acceptable. No case is made out for interference. Writ petition is dismissed.

*Satish Singh V. State of U.P. and Others*²⁵

In this case shop of the petitioner was inspected by Labour Enforcement Officer / Incharge, Child Labour , Sant Kabir Nagar on 26.11.2007. On inspection, it was found that the petitioner was employing child labour, consequently the Deputy Labour Commissioner U.P., Lucknow issued a notice dated 14.1.2008 directing the petitioner to deposit Rs. 20,000/- as provided under Child Labour (Prohibition and Regulation) Act, 1986 for employing a child labour read with

²⁴ ILR 2005 KAR 6001.

²⁵ 2008 SCC OnLine All 1361: (2008) 71 AIC 699 (All): (2008) 118 FLR 798 (All).

G.O. and judgement rendered by the Apex Court in *M.C. Mehta v. State of Karnataka*.²⁶ Contention of the counsel for the petitioner is that the aforesaid recovery certificate has been issued without affording any opportunity to the petitioner and that according to medical certificate, sant Kabir nagar , age of respondent Mukesh is about 15 years. It is the fact that even by a scientific approach the medical practitioner cannot determine the correct age of any person and there is always a variance of 2 years even in ossification test of bones for determination of age. If the doctor at the behest of the petitioner has examined the age of the child labour said to be employed by him as 15 years, his age could be anywhere in the range of 13 to 17 years. Therefore , it is not ruled out that Mukesh , the said child labour is not less than 14 years of age.

For the reasons stated above, this court is not inclined to interfere in the matter. The writ petition is accordingly dismissed. No order as to costs. Petition dismissed.

*Reddy Veeranna v. State of Jharkhand and another*²⁷

This application has been filed for quashing of the entire criminal proceeding of GOCR case no. 26 of 2011 including the order dated 13.10.2011 whereby and whereunder cognizance of the offence punishable under Section 14(1)(a) of the Child Labour (Prohibition and Regulation) Act has been taken against the petitioner and others.

The case of the complainant as it appears from the complaint petition is that when the opposite party no. 2 , Labour Enforcement Officer-cum-Inspector made an inspection at the work site where the work was being executed by a company known as M/s. Reddy Veerana Construction Pvt. Ltd. To which this petitioner is the Managing Director, it was found that a child labour had also been engaged to execute the work of construction of road. Therefore, a complaint was lodged alleging therein that the petitioner being Managing Director of M/s. Reddy Veerana Construction Pvt. Ltd. has contravened the provision of Section 3 of the child labour (Prohibition and Regulation) Act punishable under Section 14(1) of the said Act. On such complaint, cognizance of the offence punishable under Section 14(1) of the Child Labour(Prohibition and Regulation) Act was taken which is under challenge. It would be significant to note that the

²⁶ AIR 1997 SC.

²⁷ 2013 SCC OnLine Jhar1002: Cr.M.P. No. 503 of 2013.

construction of road has not been included in the occupation as has been given in Schedule A. Once that occupation is not there taking a work even from a child, one cannot be said to have contravened the provision of Section 3. Under the circumstances, the court certainly committed illegality in taking cognizance of the offence under Section 14(1) (a) of the Child Labour (Prohibition and Regulation) Act, 1986.

Accordingly, that order under which cognizance of the offence has been taken against the petitioner is hereby quashed. In the result, this application stands allowed.

*Bachpan Bachao Andolan v. Union of India and Others*²⁸

Writ Petition (c) No. 51 of 2006, decided on April 18, 2011

This Petition has been filed in Public Interest under Article 32 of the constitution in wake of serious violation and abuse of children who are forcefully detained in circuses. There is violation of Articles 21, 32, 21-A, 23, 14, 19 and 39(f), 39-A, 41 to 43, 45, 47 and preamble of the Constitution of India. Public Interest Litigation highlighted the issue of Children's rights- Abuse of human rights of children in circuses- Rescue, rehabilitation and social integration of Children/Juvenile working in circuses- Directions regarding, issued- though writ petitioner was concerned with human rights violations of children in circuses, Solicitor General broadening scope of petition and presenting broader evil of child trafficking and violation of children's rights in general rather than confining it only to circuses – Supreme court noting comprehensive suggestions and reports presented and acknowledging that children's exploitation needs to be systematically dealt with, but before going to other aspects, Supreme Court first dealing with children working in Indian circuses- Employment of children below 18 years in circuses, held, is unconstitutional and illegal- Central government directed to issue notification prohibiting employment of children/ Juveniles in circuses, conduct raids and liberate children/ juveniles send them to protective homes and hand them over to their parents after proper verification . State directed to frame proper scheme for rehabilitation of rescued children from circuses. Secretary, Ministry of Human Resource Development, Department of Women and Child

²⁸ (2011) 5 SCC 1.

Development directed to file a comprehensive affidavit of compliance with in ten weeks- Certain other directions issued for coordinated action at the State level.

Writ Petition No. 60766/ 2009 (GM-RES)

*Abdulmunaf v. Govt. of Karnataka*²⁹

(Before A.N. Venugopala Gowda, J.)

In this case Respondent No. 2 having lodged a complaint, alleging that the petitioner, in his welding shop, had employed a child by name Kumar Zakirhussain, son of Abdunabisab Shaik, aged about 12 years, and a case having been registered against the petitioner in the year 2006 and order having been passed on 29.12.2008 vide Annexure- A, this writ petition has been filed to quash the said order.

Shri. K. L. Patil, learned advocate for the petitioner and Smt. K. Vidyavathi, learned Additional Government Advocate for the respondents and perused the writ record. The main contention of Shri. K. L. Patil that there is denial of reasonable opportunity of hearing to the petitioner prior to the passing of the order as at Annexure- A is well- founded. Despite the petitioner having produced material before respondent No. 3, with regard to Kumar Zakir Hussain, son of Abdunabisab Shaik, attending the school, the impugned order has been passed. Had the 3rd respondent granted reasonable opportunity of hearing to the petitioner, relevant material would have been pointed out in the course of enquiry, based on which the authority could have passed an appropriate order. The impugned order, as at Annexure – A, being violative of principles of natural justice, is arbitrary and hence, is unsustainable. In the result, the writ petition is allowed and the impugned order, as at Annexure-A, is quashed. The case stands remitted to respondent No. 3 for consideration and decision afresh, in accordance with law. Petitioner is directed to appear before respondent No. 3, on 27.01.2015 at 3.00 p.m. and receive further orders. All other contentions are left open. No costs.

²⁹ 2015 SCC OnLine Kar 676

Conclusion:-

To conclude, it is very heartening to note that the Indian Judiciary has done noble services to minimize the problem of child labour in all possible ways where it gets the opportunity to safeguard the welfare of the children as well as by suggesting to amend the loopholes in the existing laws. The inclusion of the expression ‘social justice’ in the preamble of our Constitution is the recognition of the greater good to a larger number without depriving accrued rights to anybody. Illiteracy, poverty and ignorance of rights and entitlements under the law abounds leading to deception, exploitation and deprivation of rights and benefits under the law and it is observed that the Indian Judiciary system has not taken a back seat for deep interpretation to the extreme end of the existing labour laws related to child labour as well as the Constitution so that, the interests of the child labourers can be protected by all means by which they can avail their right to live with minimum decency and with human dignity. So, it can be rightly argued that Indian judiciary system has always favoured and played an important role to create an open and real welfare society where one is given his due rights and complete freedom to exist. For the well being of the child labourers, while delivering momentous judgements, the Indian Judges have made various new approaches and new form of rules with their discretion to suppress child labour and to uplift the down trodden labourers.³⁰

With the valuable decisions and golden suggestions Justice P.N. Bhagwati has tried a lot to implement the principle of ‘social justice’ mainly for the labour welfare with a special care and concentration to eradicate the problem of child labour and to rehabilitate them after they become free.³¹ The Court has always made efforts to benefit to 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. Whenever a legal wrong or legal injury is caused to the child workers by their employers, the judiciary has come forward to help them despite the *locus standi* issue. Frankly speaking, the courts have always liberalized the concept of *locus standi* to meet the challenges of

³⁰ Soumitra Kumar Chatterjee, “Judicial Trends in the context of Child Labour in India”, *Labour and Industrial Cases*, Vol. 40(3), at 86 (2007).

³¹ Soumitra Kumar Chatterjee, “Judicial Trends in the context of Child Labour in India”, *Labour and Industrial Cases*, Vol. 40(3), at 87 (2007).

time and provide justice to the child workers. The efforts made in this direction are quite evident from the decision discussed above. To mention a few, the Asid case (1981), Bandhua Mukti Morcha case (1984), Bihar Legal Support Authority case(1987), Sheela Barse case (1986), and M.C. Mehta's case (1991), are the glaring decisions where the judiciary has shown enough courage to uphold the interest of the children and spared nothing to improve the working conditions of the child workers. The judiciary has always made concrete efforts to safeguard them against the exploitative tendencies of their employers by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities.³²Judiciary in our country has shown a keen interest in the conditions of working children. In the light of foregoing discussions we find that judiciary has always given a lead to save the child-workers from exploitation and improve their working conditions.³³

³² Tapan Kumar Shandilya & Shakeel Ahmad Khan, *Child Labour: A Global Challenge*, at 154(2006).

³³ *Supra* note 31.