Production of Courseware

Paper: Advanced Constitutional Law
Module: Rights against Exploitation (Articles 23-24)
Role | Name | Affiliation
--- | --- | ---
Principal Investigator | Prof. Ranbir Singh | National Law University, Delhi
Principal Co-Investigator | Prof. G. S. Bajpai | Registrar National Law University, Delhi
Paper Co-ordinator | Dr. Anupama Goel | Associate Professor National Law University, Delhi
Content Writer | Dr. Rajinder Kaur | Assistant Professor Department of Laws, Panjab University, Chandigarh
Content Reviewer | Dr. Anupama Goel | Associate Professor National Law University, Delhi

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of Module</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject Name</td>
<td>Advanced Constitutional Law</td>
</tr>
<tr>
<td>Module Name</td>
<td>Rights against Exploitation (Articles 23,24)</td>
</tr>
<tr>
<td>Module Id</td>
<td>20</td>
</tr>
<tr>
<td>Pre-requisite</td>
<td>Basic Knowledge of fundamental Rights against exploitation, beggar and child labour</td>
</tr>
<tr>
<td>Objectives of Module</td>
<td>to discuss in detail fundamental rights against exploitation expressly recognized in the Constitution</td>
</tr>
<tr>
<td>Key words</td>
<td>Begar, Forced Labour, Child Labour, Article 23, Article 24</td>
</tr>
</tbody>
</table>

Module :- 20- Rights against Exploitation (Articles 23,24)

Structure :

1. Introduction
2. Learning Outcome
3. Prohibition of traffic in human beings and forced labour (Article 23)
4. Prohibition of Employment of Children in Factories etc (Article 24)
5. Conclusion
6. Summary
1. **Introduction:**

The Fundamental Rights enacted in Part-III includes basic inherent human rights which an individual possesses. These rights operate as limitations on the powers of the State and impose negative obligations on the State not to intrude on individual liberty. But under Part-III there are certain Fundamental Rights bestowed by the Constitution which are enforceable against the entire world and they are found inter-alia in Article 17, 23 and 24.¹ Article 23 was incorporated in the Constitution to prohibit traffic in human beings and begar and other similar forms of forced labour.

2. **Learning Outcome**

- Article 23 and 24 under the Constitution guarantees the fundamental right against exploitation. The right is wider in application as available to every person citizen or non-citizen and against State as well as individuals also.
- To enforce these Articles Child Labour (Prohibition and Regulation) Act, 1986 and Bonded Labour System (Abolition) Act, 1976 was enacted
- In Asiad’s case the apex Court widened the scope of Article 23 by including the wages paid less the minimum wages will fall within the purview of Article 23 i.e. begar
- In President Cinema Worker’s case the non revision of wages in five years by the appropriate government was held to be violative of Article 23.
- In M.C. Mehta’s case the apex Court laid down the blue print to tackle the problem of child labour
- In BachpanBachaoAndolan’s case the directions were issued to rehabilitate the children working in Circus

3. **Prohibition of traffic in human beings and forced labour (Article 23)**

3.1 **Article 23 and Constituent Assembly**

Article 23 of the Constitution of India, 1950 prohibits traffic in human beings, beggar and other similar form of forced labour. The right against exploitation was mentioned in the drafts prepared by B. R Ambedkar, K M Munshi and K T Shah. While Ambedkar draft simply provided that subjecting a forced labour or to involuntary servitude would be an offence. K.M Munshi draft was more elaborative containing provisions for the abolition of all forms of slavery, traffic in human beings and compulsory labour. K. T Shah expressly forbade slavery of any kind but also recognized the rights of Government to conscript by law the man power of the

---

country for the purposes of national defence, social service or for meeting a sudden emergency. The provision finally drafted by the sub-committee was as follows:

15. (1) (a) Slavery
(b) traffic in human being
(c) the form of forced labour known as beggar
(d) any form of involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,
Are hereby prohibited and any contravention to this prohibition shall be an offence.
Explanation: Compulsory Service under any general scheme of education does not fall within the mischief of this clause,
(2) Conscription for military service or training or for any work in aid of military operation is hereby prohibited.
(3) No person shall engage any child below the age of 14 years to work in any mine or factory or any hazardous employment.

The provisions relating to slavery and involuntary servitude in Clause (1) were based upon the thirteenth amendment of US Constitution. As far as prohibition of conscription for military service or training contained in sub-clause (2) there was no precedent available. On the other hand some of the Constitutions like Swiss (article 18 para1), Czechoslovakian (art 127 para1) and Chinese (article 20) contained provision imposing compulsory military services on their citizens.

The Chairman of the committee appointed a small adhoc committee consisting of Mrs. Hansa Mehta, Rajagopalchari and Govind Ballabh Pant to consider the matter and prepare a suitable draft. The committee redrafted the explanation to clause (1), omitted Clause (2). The redrafted provision again came up for discussion Assembly on May 1, 1947 and it turned as clause 17 in the Draft constitution prepared by the draft committee.

17(1) Traffic in human being and beggar and other similar form of force labour are prohibited and any contravention to this provision shall be an offence punishable in accordance with Law.
(2) Nothing in this article shall prevent the state from imposing compulsory services for public purpose.

---

4 The 13th Amendment provides: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the UnitedState, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation."
5 Switzerland – Constitution Article 18 (1) Every Swiss is under the obligation to perform military service.
6 The Constitution of the Czechoslovak Republic- Section 127 Para1 “Every able-bodied of the CzechoslovakRepublic shall undergo military training and shall obey Republic shall undergo military training and shall obey the summons when called upon for the defence of the State”.
7 The Constitution of the Republic of China- Article 20 The people shall have the duty to render military service in accordance with law.
8 Kashyap (n 2), 250.
In imposing such services the state shall not make any discrimination on the ground of race, religion caste or class.  

Draft article 17 again came up for consideration in Assembly on Dec 03, 1948. Karimuddin desired to qualify prohibition of begar by the words except as a punishment for crime so as to enable jail authorities to extract work from prisoners. Several other members sort to extend the scope of the provision related to traffic in human being to certain specific practices like serfdom devdasis system and others form of enslavement and degradation. During the debate on the draft articles, several members welcomed it as a charter of liberty for downtrodden people who have so far suffered from the imposition of forced labour in one form or the other at the hands of princes and zamindars. Gurmukh Singh Musafir welcomed the article and referred to two points: (i) that the course of prostitution should be specifically abolished and (ii) the provision must be made for compensation being paid for compulsory services. B. Dass suggested that particular attention to be paid on prohibition of traffic in women. Kamath raised the point that word begar has not been define in the constitution.

Concluding the debate Ambedkar rejected all the amendments except the one moved by K.T.Shah for the inclusion of the word “Only” after the word “discrimination on the ground” in clause (2) of the Article. At the revision stage the drafting committee renumbered article 17 as article 23 which read as follow

23. (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 23(1) prohibits traffic in human beings and begar and other similar form of forced labour and provides that the contravention to the same will be punished in accordance with law. But it took 25 years to make specific law the above referred contravention initially through the ordinance i.e. the Bonded Labour System (Abolition) Ordinance, 1975 and finally was replaced by the Bonded Labour System (Abolition) Act, 1976.

3.2 Judicial Intervention:

The Constitution doesn’t specifically define the word ‘begar’. In the case of S. Vasudevan and Ors. v. S.D. Mital and Ors. Tambe, J. referred to Molesworth to define the word begar which says that ‘Labour or service exacted by a Government or

---

10 Ibid. p. 252
11 The issue relating to extracting labour in prison has been a contentious issue which has been discussed in several judgments later on. For details see infra 30, 33 & 34.
13 Kashyap (n 2), 256.
14 Ordinance was promulgated on the 24th October, 1975.
15 AIR 1962 Bom 53
a person in power without giving remuneration for it.” He further quoted Wilsons Glossary for the meaning of the word 'Forced labour’ which means, one pressed to carry burden for individuals or to public; under old system when pressed for public service, no pay was given.” The Bombay High Court observed that, to bring the case within the mischief which clause (1) of Article 23, it must be established that a person is forced to work against his will and without payment.

A custom which was prevalent in Manipur State came to the notice of the Court in Kahaosan Thangkhul v. Simirei Shaifer16 in which each of the village holders in the village have to offer one day’s free labour to the headman of the village. The appellant in that case denied to tender one day’s free labour to the headman and challenged validity of the custom as being in contravention to the Article 23(1) of the Constitution. The court upheld that the custom is violative of Article 23(1) of the Constitution.

The landmark case in this context popularly known as Asiad Games Case17 was result of Public interest litigation which was initiated with the letters addressed to Justice P N Bhagwati. The letter was based on an exploration by three social scientists, alleging the violations of labour laws by the Union of India, the Delhi Development Authority and the Delhi Administration. The primary accusation was that the contractors paid wages to jamadars—crew bosses—who subtracted a commission and then made the payments to the workers which were less than the minimum wages prescribed i.e. 9.25 rupees per day. The question before the Supreme Court was whether Article 23 can be made applicable to a condition where workers are paid less than the minimum wage.

While delivering the judgment the Court took into consideration the International instruments i.e. International Labour Organization Convention 1929, the European Convention for Protection of Human Rights and Fundamental Freedoms, 1950 and the International Convention on Civil and Political Rights, 1966 and observed that the Article 23 prohibits the forced labour in whatever form it is found or existed. The Court also relied upon the two US peonage cases Bailey v. Alabama18 and Pollock v. Williams19 and further held that Article 23 was anticipated to cover all forms of forced labour even if the workers or persons have entered voluntarily.

The Court focused the study on the specific term i.e. force in forced labour and also highlighted the different ways through which it force can be used which can be physical compulsion, hunger and poverty and economic situation can also be the reason. In all these circumstances a person doesn’t have an option but to accept any employment on the wages less than minimum wages. The Apex Court observed that accepting employment less than the minimum wages specified will also fall within the purview of forced labour under Article 23 of the Constitution.

In Sanjit Roy v State of Rajasthan20 in the present case the state government undertook relief work in a drought hit area manifestly with the aim of providing

---

16 AIR 1961 Mani 1.
17 P.U.D.R (n 1).
18 219 U.S. 219 (1911)
19 322 U.S. 4 (1944)
20 1983 SCR (2) 271
persons affected with some form of work. The wages paid to the persons employed in the relief work were much less than the minimum wages. The court invalidated that provision of the Rajasthan Famine Relief Work Employees Act, 1964 which exempted the application of the Minimum Wages Act, 1948 to the employment of famine relief work.

In *Bandhua Mukti Morcha v. Union of India*\(^\text{21}\) public interest litigation was filed by Bandhua Mukti Morcha through a letter to Justice Bhagwati contending the situation of huge numbers of labourers working in inhumane circumstances as bonded labourers in the stone quarries of Haryana. It was further contended that it was in gross violation of the Bonded Labour System (Abolition) Act, 1976. The Court assumed the letter as a writ petition. The court also appointed a commission comprising of two lawyers to check out the situation of stone quarries. The commission brought into that the workers were working in inhumane conditions where they were not having clean water to drink, living in appropriate places without basic amenities.

The Haryana Government, with a view to avoid the rehabilitation requirements for bonded labourers obligatory through the Bonded Labour System (Abolition) Act, the State turned with a new argument that they may fall under forced labour but not bonded labour. The Court initially highlighted that the Act was made with the objective to give effect to Article 23 of the Constitution which forbid traffic in human beings and begar and other similar forms of forced labour. The Court observed that it is patently obvious that the “bonded labour is a form of forced labour”. The Court further highlighted the situation that the worker is an illiterate person who will not have documentary proof to prove the advance taken. The Apex Court observed it is an unkind to give benefit of the above referred social welfare legislation through the cumbersome process of litigation involving process of trial and procedure of recording evidence. Such kind of application process will practically result into non implementation of this Act. Therefore, in such circumstances whenever the labourer is made to provide forced labour, the court will presume that it is the result of consideration of an advance or other economic consideration received by him. This is a rebuttal presumption but with cogent evidence.

In *Neeraja Choudhary v. State of M.P*\(^\text{22}\) the court reasserted its stand in the following word same view that is unkind to give benefit of the social welfare legislation through the cumbersome process of litigation involving process of trial and procedure of recording evidence. Justice Bhagwati further observed that whenever it is revealed that a labourer is providing forced labour, there will be presumption in the Court that he is required to do so in consideration of an advance received by him and is, therefore, fall with in the purview bonded labourer. Unless the employer or the government rebuts this presumption, the court shall presume that the labourer is a bonded labourer entitled to the benefit of a provision of the Act. The court has, issued direction to the State government to include in the vigilance committee representatives of Social Action for identification, release and rehabilitation of bonded labourer. It also made a number of suggestions and recommendations for

---

\(^{21}\) AIR 1984 SC 820

\(^{22}\) AIR 1983 Ker 261
improving the existing state of affairs. One such suggestion related to their re-organization and activation of vigilance committees.

In the case Government Engineering College v. Sreenivasan23, the Court has observed that 'Minimum Wages Act is a pre-constitution enactment and the provisions contained therein have to be read subject to the provisions of the Constitution where a person is compelled by force of circumstances like hunger or poverty to provide labour or service to another for wages which is less than the minimum charges, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article23 of the Constitution of India. In such a situation unless the infraction of the Constitutional rights is writ large, this court has the obligation to enforce the Constitutional guarantee contained in Article23 of the Constitution of India.'

In another landmark case the President Cinema Workers Union Affiliated to Bharatiya Mazdoor Sangh v. The Secretary Social Welfare and Labour Department and Ors24 the Notification was issued in the month of July 1992 fixing the minimum wages and thereafter, no fresh Notification is issued by the State Government fixing the minimum wages for the Cinema workers till this day. Looking to the said intention of the Legislature, while enacting the Minimum Wages Act, 1948, the Government should not have failed to review the minimum rates of wages fixed by it as back as in the year 1992. It is unfortunate that there is no revision of minimum wages for the last 13 years. The Government cannot take shelter under proviso to Section 3(1) (b) of the Act for postponing to issue the revised notification after five years. The Government cannot indefinitely postpone the issuance of revised notification fixing minimum wages, particularly in view of the intention of the Legislature. The Government shall as far as possible review the minimum rates of wages at such intervals not exceeding five years. Wherever, for any reason, the wages are not reviewed within the period of five years the same have to be reviewed within the reasonable period thereafter. In this case, as aforesaid, there is no revision of minimum wages for 13 long years. Definitely, the period of 13 years cannot be said to be reasonable period. In view of the above, it is clear that the Government's inaction in this case is violative of Article23 of Constitution of India.

Remuneration, which is not less than the minimum wages, has to be paid to anyone who has been asked to provide labour or service by the state. The payment has to be equivalent to the service rendered; otherwise it would be ‘forced labour’ within the meaning of Article 23 of the Constitution. Whenever during the imprisonment, the prisoners are made to work in the prison; they must be paid wages at the reasonable rate. The wages should not be below minimum wages. In Constituent Assembly debates this issue was specifically pointed out but later on dropped during further discussion.

In the case of Re Prison Reforms Enhancement of Wages of Prisoners etc25 this Court has been receiving petitions from prisoners in the various jails of the State either directly or through the grievance deposit boxes maintained in the jails on the issue whether prisoners were entitled to reasonable wages for the amount of labour

---

23 (1993) II LLJ 213
24 ILR 2005 KAR1889
25 AIR 1983 Ker 261
extracted from them while serving the sentence. The approach to the question of payment of wages in the different, countries of the world differs widely. From 1877 to 1913 some local English prisons used to pay wages or gratuity, however small, to the inmates. This practice was totally abolished in 1913 but re-introduced later in response to a fairly large body of public opinion. The wages paid in the United States of America is said to be meagre. Wages are paid in the shape of compensation in Belgium and Japan, premium in Sweden, gratuity in China, bonus in Thailand and reserve in Portugal. But the wages supplied in all these countries are meagre or inadequate and are not in recognition of the right of the prisoner to claim such wages. Hence to sustain a claim of the prisoner for reasonable wages, wages which a man outside the prison would obtain by negotiation supplemented by the labour and welfare laws of the country there is no precedent brought to our notice, perhaps the question is raised by the prisoners in this form for the first time. The court referred to the case of D. B. M. Patnaik v. State of A. P.\textsuperscript{26} that a inmate does not surrender his citizenship nor does he lose his civil rights, except such rights as freedom of movement, which are necessarily lost because of the very fact of imprisonment. The consequence is that to deny a prisoner reasonable wages in return for his work will be to violate the mandate in Article 23(1) of the Constitution. Consequently the State could be directed not to deny such reasonable wages to the prisoners from whom the State takes work in its prisons.\textsuperscript{27}

In another important case of Gurdev Singh v. State Himachal Pradesh\textsuperscript{28}, the court said that Article 23 of the Constitution forbids ‘forced Labour’ and mandated that any breach of such prevention shall be an offence liable to be punished in accordance with law. The Court observed that all the inmates of different class in all the jails in the State are entitled to be paid reasonable wages for the work they are called upon to do in the jails and outside the jails. These wages are left to be decided by the State Government within a reasonable period i.e. one year from the date of decision of these cases. However, the prisoners will be paid the minimum wages as notified by the State Government from time to time under the Minimum Wages Act, 1948 from the date of filing of these petitions in this Court. These wages will be worked out within a period of three months from today and deposited in the account of each prisoner.

In the case of State of Gujarat v. Hon’ble High Court of Gujarat\textsuperscript{29}, a sensitive question which required very circumspective approach mooted before the court. Whether the prisoners, who are under obligation to do labour as part of their punishment, should essentially be paid remuneration for such work at the rates prescribed under Minimum Wages legislation. All the judgments were considered in appeal in this case it was held that it is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not. It is essential that the detainees should be remunerated reasonable wages for the work done by them. In order to decide the quantum of reasonable wages payable to the prisoners the State Government shall comprise wage fixation body. Until the state Government takes any decision on such suggestions every inmate must be paid for the

\textsuperscript{26} AIR 1974 SC 2092
\textsuperscript{27}Re Prison (n 25).
\textsuperscript{28} AIR 1992 HP 70
\textsuperscript{29} AIR 1998 SC 3164
work done by him at such rate or revised rates as the Government fixes in the light of the observation made by the Supreme Court in the Judgment.

Clause (2) of Article 23, an exception to clause (1), enables the State to impose compulsory service for public purpose. However, while imposing such compulsory service, the State is prohibited from making any discrimination on the ground only of religion, race, caste, class or any of them. In *Acharaj Singh v. State of Bihar*\(^ {30}\), it has been held that to compel a cultivator to bring food grains to the Government godown without remuneration for such labour, in a scheme for procurement of food grains as an essential commodity for the community, there shall be no contravention of Article 23 of the Constitution because the compulsory service is for "public purpose". The Calcutta High Court in *DulaiShamanta v. District Magistrate, Howrah*\(^ {31}\) held that the state is not prevented from imposing compulsory service for public purpose such as conscription for police or military services as this services is neither begar nor trafficking human beings and not hit by Article 23 of the constitution.

In *DevendraNath Gupta v. State of M.P*\(^ {32}\) the Madhya Pradesh High Court held that the service required to be rendered by the teachers towards educational survey, family planning, preparation of voters list, general elections, etc. were for ‘public purpose’ and therefore even if no compensation was paid, that did not contravene Article 23.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplemented the 2000 UN Convention against Transnational Organised Crime was ratified by India in 2011. The party countries to the Protocol are required to penalise all forms of trafficking defined in terms of recruitment, harbouring, or transportation by means of force, fraud, coercion, or abuse of position of vulnerability for purposes of exploitation. Though exploitation was not defined under the Protocol but it includes a minimum forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. In other words, the Protocol is intended to aim trafficking in labour sectors as well.\(^ {33}\)

Bonded labour contacts are not purely economic contracts, which were voluntarily entered by the employees due to economic necessity. Once employees enter into these relationships, they are characterized by multiple asymmetries and high exit costs, which were not a part of the contract, as understood by the employee, at the outset.\(^ {34}\) Article 23 of the Constitution is though an economic right applicable against the whole world but its interpretation has been widened by the Supreme Court with the changing time and need. But still even after giving the status of fundamental right from the inception only we are unable to curb the whole problem.

---

30 AIR 1967 Pat 114
31 AIR 1958 Cal 365
32 AIR 1983 MP 172
4. Prohibition of Employment of Children in Factories etc (Article 24)

4.1 Article 24 and Constituent Assembly

Prohibition of child labour and provision for compulsory universal, primary education for all children up to the age of fourteen have been advocated long before Independence. In 1906, Gopal Krishna Gokhale, the then President of the Indian National Congress, unsuccessfully urged the British Government to establish free and compulsory elementary education. The movement continued. With the setting up of the Constituent Assembly in 1949, it was resolved that the future Constitution of India would provide for abolishing child labour and ensure compulsory education to children. The reference was made to Article 23 para 2 of the Yugoslavian Constitution in this regard which prohibits the employment of children in mines, factories or other hazardous jobs. The matter was discussed in the Constituent Assembly with all concern. Significantly, the draft constitution prepared by the Drafting Committee contained provisions for prohibition of child labour and for free and compulsory education for children.

Article 18 of the Draft Constitution provided ban on the employment of children below 14 years of age in any factory or mine or engaged in any other hazardous employment. It reads as:

No child below the age of 14 years shall be employed in any factory or mine or engaged in other hazardous activities.

Sh. DamodarSwarup Seth while expressing his views with regard to affording protection to children of minor age also suggested an addition to the said article for prohibiting employment of women workers at night in order to protect their health.

Prof. Shibban Lal Saksena also advocated the amendment proposed by Sh. Damodar Swarup Seth. He said that he was very glad that this article has been placed among fundamental rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in the Constitutions of other countries, we will find that many of them are concerned with economic rights. In Russia, particularly, the right to work along with, the right to rest and leisure, the right to maintenance in old age and sickness etc., are guaranteed. We have provided these rights in our Directive Principles, although it was thought, that they should be incorporated in this chapter. Even then, this article 18 is an economic right that no child below the age of fourteen shall be employed in any factory. He further suggested that the age should be raised to sixteen. In other countries, also the age is higher, and they also want that in our

---

36 Corresponding to Article 24 of the enacted Constitution.
37 Srivastava (n 34).
38 Shri DamodarSwarup Seth moved an amendment in this article. He wanted to add the following at the end of Article 18: ‘Nor shall women be employed at night, in mines or in industries detrimental to their health’, Constituent Assembly Debates, Volume-VII, p.814.
country this age should be increased particularly on account of our climate, children are weak at this age and the age should be raised.\textsuperscript{39}

The Constitution as was finally adopted on 29th November, 1949 contained provisions for the protection of children. The Constitution guarantees special protection to children. The relevant provisions in this regard are discussed below:

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". It must be noted that this Article does not create an absolute ban to the employment of child labour. In the first place, this Article applies only to children below the age of 14 years. Secondly even in case of the children below 14 years, this Article only prohibits the employment of children in a factory or mine or in any other hazardous employment.

4.2 Judicial Intervention:

In the well known \textit{Asiad Project}\textsuperscript{40} the Apex Court held that Article 24 of the Constitution, which even if not followed up by appropriate legislation, must operate \textit{proprio vigore} and construction work is included in the hazardous occupations. Therefore, there can be no doubt that even if the construction industry in not mentioned as hazardous activity in the schedule to the Employment of Children Act, 1938, no child below fourteen years can be employed in the construction work. Further, in another case the Hon’ble Supreme Court observed that it not enough merely to identify and release bonded labourers but it is equally perhaps more, important that after identification and release, they must be rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again.\textsuperscript{41}

In\textit{labourers working on Salal Hydro Project v. State of Jammu and Kashmir and others}\textsuperscript{42} the Hon’ble Apex Court directed that whenever the Central Government commences a construction project which is likely to last for a substantial phase of time, it should ensure that children of construction workers who are living at or near the project site are given amenities for schooling. The Court further lays down 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. In\textit{Rajangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu and others},\textsuperscript{43} The Supreme Court observed that tobacco manufacturing was certainly an unsafe occupation to the health of children. As far as possible the children in this avocation should be banned. The employment of child labour in this industry should be closed without delay or it can be dealt in a phased manner which is to be decided by the State Government but the period should not be exceeding three years.

\textsuperscript{39}Ibid.
\textsuperscript{40}\textit{Peoples Union Democratic Rights v Union of India}, AIR 1982, SC 1473, wherein it was contended that the Employment of Children Act, 1938 was not applicable in case of Projects in Delhi since construction industry was not a process specified in the schedule of Children Act, 1938.
\textsuperscript{41}\textit{BandhuaMuktiMorcha v Union of India & others}, AIR 1984, SC 802, BandhuaMuktiMorcha is an organization working for the release of bonded labourers. In this case also the Apex Court considered the scope and ambit of Article 23 in detail.
\textsuperscript{42}AIR 1994 SC 177.
\textsuperscript{43}(1992) 1 SCC 221.
In *M.C. Mehta v. State of Tamil Nadu & others*[^44] case M.C. Mehta, a public spirited lawyer, filed public interest litigation in 1986 against the harrowing practices of employing children in the match, fireworks and explosive factories of Sivakasi in Kamarajar district of Tamil Nadu. The Supreme Court delivered landmark judgement giving the following directions:

- In fulfillment of the legislative intention behind the enactment of the Child Labour (Prohibition and Regulation) Act, 1986, every offending employer must be asked to pay compensation amounting to Rs.20,000/- for every child employed in contravention of the provisions of the Act.[^45]
- As a large number of working children are engaged in such occupations, asking the respective State government to assure alternative employment to an adult would strain the resources of the states. As such, where it is not possible to provide a job to an adult member of the family, the government concerned should, as its contribution/grant of Rs.5000/- per child in the child labour Rehabilitation-cum-Welfare Fund.[^46]
- A survey should be conducted of the type of child labour under issue which should be completed within six months.[^47]
- In case where alternative employment cannot be made available the parent/guardian of the concerned child should be paid the income earned as interest on the corpus of Rs.25,000/- for each child every month. The employment given or payment made would cease to be operative if the child is not sent to school by the parent/guardian.[^48]
- On discontinuation of the employment of the child, free education should be assured in a suitable institution with a view to making him a better citizen.[^49]

In another significant judgment given by the Apex Court on the basis of PIL *Bandhua Mukti Morcha v. Union of India and others*[^50], a number of guidelines on the recognition release and rehabilitation of child labour has also been given. The Court, *inter alia*, directed the Government of India to organize a meeting with the State Government to come up with the principles/policies for progressive elimination of employment of children below 14 years in all employments consistent with the design laid down in Civil Writ Petition No.465/86. These guidelines were given by the Court in the background of employment of children in the Carpet Industries in the State of Uttar Pradesh. In this case the Court issued the following directions to the Government of Uttar Pradesh:

1. Examine the situation of child employment.
2. Welfare directions to be issued which results into the total exclusion of child below 14 years of age from any kind of employment.
3. Provides facilities for education, health, hygiene, healthy food etc.

[^44]: AIR 1997 SC 699 In *M.C. Mehta v State of Tamil Nadu and others* AIR 1991 SC 283. In this case Supreme Court allowed the children to be employed in the process of packing of fire works but packing should be done in an area away from the place of manufacture to avoid exposure to accident.
[^45]: Ibid., para 27.
[^46]: Ibid., paras 28, 29 and 30.
[^47]: Ibid., paras 31(1) and 31(2).
[^48]: Ibid., para 31(5).
[^49]: Ibid., para 31(6).
[^50]: AIR 1997 SC 2218.
In *Bachpan Bachao Andolan vs. Union of India*\(^{51}\) the Supreme Court observed directed that in the light of infrastructural constraint, the labour Department, Delhi has to commence implementing the Delhi Action Plan by accommodating for the time being about 500 children every month. The Court observed that the Delhi Action Plan lays down a detailed procedure for interim care and protection of the rescued children to be followed by Labour Department as prepared by the National Commission with the modifications mentioned in the judgment and we further direct all the authorities concerned to immediately implement the same.

In another important case *Bachpan Bachao Andolan v. Union of India*,\(^{52}\) in this case the Supreme Court of India has taken up the issues of children working in the circus and instructed the government to prohibit the employment of children in the circus business. Until recently, the form of entertainment was exempt from the laws which state that no child under the age of 14 can be placed into labor. However, an amendment passed to bring circuses in line with other industries has been ignored by employers and now the government has been encouraged to impose a complete ban. We plan to deal with the problem of children's exploitation systematically. In this order we are limiting our directions regarding children working in the Indian Circuses:

- Put into practice the fundamental right of the children under Article 21A is very important and the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.
- The respondents are aimed to conduct synchronized raids in all the circuses to release the children and verify the contravention of fundamental rights of the children. The salvaged children are to be kept in the Care and Protective Homes till they achieve the age of 18 years.
- The respondents are also directed to speak to the parents of the children and in case they are ready to take their children back to their homes, they may be directed to do so after appropriate authentication.
- The respondents are directed to frame suitable design of rehabilitation of salvaged children from circuses.

5. **Conclusion**

To conclude, I would like to quote Dr. Dorothy, a social activist, has said we have got to work to save our children and do it with full respect for the fact that if we do not, no one else is going to do it.\(^{53}\) The State is not exonerated from its duty by enacting legislation which is not sufficient to achieve the desired goal. To tackle this kind of social problems involvement of society at large is needed. All sections of society, government, elected representatives, trade unions, employers, legal and judicial fraternity, NGOs, academician can play a positive role in sensitizing the society towards hazards of child labour and encourage the reporting of these violations.

---

\(^{51}\) WP (Crl) 82 of 2009 Order dated 24\(^{th}\) December, 2010

\(^{52}\) Writ Petition (C) No.51 OF 2006 Judgment delivered on 18 April, 2011.

\(^{53}\) *Bachpan* (n 1), para 27.
6. Summary

- Article 23 and 24 under the Constitution guarantees the fundamental right against exploitation. The right is wider in application as available to every person citizen or non-citizen and against State as well as individuals also. To enforce these Articles Child Labour (Prohibition and Regulation) Act, 1986 and Bonded Labour System (Abolition) Act, 1976 was enacted. In Asiad’s case the apex Court widened the scope of Article 23 by including the wages paid less the minimum wages will fall within the purview of Article 23 i.e. beggar. The module further discusses M.C. Mehta’s case the apex Court laid down the blue print to tackle the problem of child labour and BachpanBachaoAndolan’s case the directions were issued to rehabilitate the children working in Circus.