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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

CASE COMMENTARY: BACHPAN BACHAO ANDOLAN v. UOI

AUTHORED BY - SREENIDHI S

FACTS:

Bachpan Bachao Andolan, an NGO founded by Kailash Satyarthi, filed the petition. He later received the Nobel Peace Prize for his work against child labour.

The defendants in the case were the Union of India (representing the central government and various state governments)

In 1996, the petitioner saw the situation of children forced to work in circuses under inhumane and deplorable conditions. At this stage, the petitioner was able to rescue 18 girls from a circus in the Vidisha district of Madhya Pradesh.

It was only after this incident that the petitioner realized the need for an organized effort to understand, analyze and alleviate the child's problem. The result was the formation of a commission "Elimination of Child Labor in Indian Circus".

After formulating the facts and figures of the study, a multifaceted strategy was published. Efforts began to improve the conditions of children working in the circus. This involved several discussions with circus owners in India, including awareness of the significant moral and legal issues surrounding the use of children in circuses. Although the Circus Federation of India responded positively to the proposals made at the conference, their representation was less than 10 percent of the main circuses and less than 20 percent of all circuses.

Due to the aforementioned lack of consensus and representation, the agreement could not be carried out. However, the number of cases involving child labor continued to grow. Due to the seriousness of the situation and severe injuries and abuse of children who were forcibly detained in the circus, a declaration of public interest was presented under Article 32 of the Constitution.

As a result of severe injuries and abuse of children took place who were forcibly imprisoned in the circus, in many cases this was done without access to their families in extremely inhumane conditions.

The petitioner presented this petition after several incidents in which he encountered many children trafficked to perform in the circus. The activities carried out in these circuses deprive children of their basic rights.

Most of them are transported from some poor areas of Nepal and also from backward areas of India.

After detailed inquiry and investigation, the petitioner found that trafficking of children to circuses for trafficking in India, especially from Nepal, is rampant organized crime. In most cases, these children are sold to the circus owners or by agents or their relatives, or sometimes poor parents are lured on the Internet with promises of high salaries, luxurious life, etc. Children are often abused physically, emotionally and sexually in these places.

The Juvenile Rights Act and all international treaties and conventions on human rights and children's rights to which India is a signatory are violated.

Child employment in circuses violates several fundamental rights and legal rights, namely the right to education; freedom of expression; qualification to conclude a work contract in the circus; applicable labor law and legality of contracts; and all statutory provisions relating to child labour.

The petitioner cited countless cases describing the abuse of children in circuses under many laws such as the Child Labor (Prohibition and Regulation) Act, 1986, the Minimum Wages Act, 1976 and international conventions to which India is a signatory.

This also includes violation of fundamental rights - Articles 14-18, Article 21, Article 21(A), Article (23-24) and Article 32.



PROVISIONS OF LAW INVOLVED
CONSTITUTION OF INDIA

Art 21:

Article 21 contains two rights:

- Right to life
- Right to personal liberty

The fundamental right under Article 21 is one of the most important rights guaranteed by the Constitution.

The Supreme Court of India has described this right as the 'heart fundamental rights'.

The law specifically mentions that no one can be deprived of life and liberty except as prescribed by law. This means that this right is granted only against the state. The state includes not only the government, but also ministries, local bodies, legislatures, etc.

Any private person who violates those rights of another person does not constitute a violation of Article 21.

The remedy of the victim in this case would be under Article 226 or common law.

The right to life is not just the right to survive. It also presupposes the ability to live a full, dignified and meaningful life.

The main purpose of Article 21 is that when the state takes away a person's right to life or liberty, it should be done only in a prescribed manner. the law.

Art 24:

This article exclusively prohibits the employment of children under 14 years of age in hazardous industries or factories or mines.

The employment of children in non-hazardous work is, however, permitted.

CHILD LABOR (PROHIBITION AND REGULATION) ACT, 1986

The Child Labor (Prohibition and Regulation) Act, 1986 prohibits the employment of children below the age of 14 in 18 occupations and 65 processes which are dangerous to the life and health of children. list of occupations/processes prohibited by law.

A list called hazardous work list is provided called the List of Occupations (Non Industrial Activity).

No 18 states: 'Working in the circus'

It also provides for the regulation of working conditions for adolescents. Regulations like:

- Hours of work
- Weekly holidays
- Notice to inspector
- Health and safety
- Maintenance of Register

RIGHT TO EDUCATION ACT, 2009 (RTE ACT)

The Right to Education Act, 2009, or RTE Act, is an important law in India that makes education a fundamental right for all children between the ages of 6 and 14 years. This law entered into force on April 1, 2010 and aims to ensure free and compulsory education for all children in India.

It was passed by the Parliament of India on 4 August 2009. It describes the meaning of free compulsory education for children aged 6 to 14 years under Article 21. A) Constitution of India. The law came into force on 1 April 2010, making India one of the 135 countries that have made education a fundamental right for every child. It mandates that all children have the right to education, irrespective of their social or economic background.

The purpose of the RTE Act is to provide basic education to all children between the ages of 6 and 14 years. Compulsory education is a fundamental right (Article 21). The law requires the reservation of 25 percent for groups in a weaker position in society. It also shares financial and other responsibilities between the central government and the states. Children who complete primary education receive a certificate.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 ushered in a new era in juvenile justice in India by establishing the handover of children between the ages of 16 and 18 to an adult

who is said to have committed a heinous crime. criminal court . This is due to the Nirbhaya rape case, which is one of the most brutal crimes of 2012. The Juvenile Justice Commission is tasked with assessing whether a child has fallen into an illegal situation and, accordingly, deciding whether the child should be handed over to a juvenile court or brought to adult court as an adult.

INDIAN PENAL CODE, 1860:

Section 41: This section deals with the exercise of the right of private defense.

Sections 293: Deals with sale, etc., of obscene objects to young person.

Sections 319-329: Deals with hurt, grievous hurt, wrongful restraint, wrongful confinement, abduction, etc.

Sections 339-346: Cover wrongful restraint and wrongful confinement.

Sections 350-351: Deal with the use of criminal force and assault.

Sections 361-363: Deal with kidnapping and abduction.

Section 365: Deals with kidnapping or abducting with intent secretly and wrongfully to confine person.

Section 367: Deals with kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.

Section 370: Deals with trafficking of persons.

Section 416: Deals with cheating by personation.

Section 420: Deals with cheating and dishonestly inducing delivery of property.

Sections 465-466: Cover forgery.

Section 468: Deals with forgery for purpose of cheating.

Section 471: Deals with using as genuine a forged document or electronic record.

Section 503: Deals with criminal intimidation.

Section 506: Deals with criminal intimidation.

CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986.

The law prohibits the employment of children under the age of 14 in certain hazardous occupations and processes. Its purpose is to prevent the exploitation of children and to protect their health and safety.

The law prohibits the employment of young children in dangerous occupations, but regulates the working conditions of young people (aged 14-18). Their well-being and educational opportunities are not at risk.

The law provides for the appointment of inspectors to monitor compliance with its provisions. These inspectors have the power to inspect workplaces, investigate complaints and ensure compliance with

laws. However, in the Bachpan Bachao Andolan case, the main issue was the effectiveness of the enforcement mechanisms, because the petitioners claimed that enforcement was inadequate, leading to the continued use of child labor.

The law includes provisions for the rehabilitation of child labor.

FACTORIES ACT, 1948.

Factories Act 1948 regulates working conditions in the factories. It includes provisions on health, safety and welfare of the workers. It also imposes obligations on the factory owners to guarantee the safety of the employees. Section 67 prohibits children from working in factories if they are less than fourteen years of age. This provision is in line with the general objective of preventing child labour and safeguarding children's rights. The Factories (Prohibition) and Child Labour (Regulation) Act, also known as the Factories (Child Labour) (1948) Act, is a law that governs the employment of Adolescents (Adolescents aged 14-18 years). It lays down certain rules and conditions concerning their employment.

SUPPRESSION OF IMMORAL TRAFFIC IN WOMEN AND GIRLS ACT, 1956 (THE IMMORAL TRAFFIC (PREVENTION) ACT 1956

Sections 7, 8, 8A, 8B, 15, and 17(3).

Section 7: This section deals with the penalty for carrying on prostitution in or near public places.

Section 8: Deals with the penalty for soliciting or seducing for the purpose of prostitution.

Section 8A: Deals with the penalty for promoting or facilitating prostitution of a minor.

Section 8B: Deals with the penalty for trafficking of a minor for the purpose of prostitution.

Section 15: This section empowers the police to remove a person from a place if there is reason to believe that such person is being forced or induced to carry on prostitution.

Section 17(3): This subsection provides guidelines regarding the inquiry and trial of offenses under this Act.

ISSUES:

1. The widespread prevalence of child labor violated the fundamental rights guaranteed under the Indian Constitution, particularly Article 21 and Article 24
2. Though there are existing laws prohibiting child labor and mandating compulsory education, the contention that the enforcement mechanisms were inadequate, leading to rampant exploitation of children.
3. Can the provisions of Juvenile justice (care and protection of children) Act, 2015 be applied?
4. Can this appeal against deplorable living conditions be maintainable?

5. Is there lack of a direct legislation concerning the rights of children in India?
6. Is there any non-compliance of existing legislation?

RATIO DECIDENDI

In the words of the Hon'ble Supreme Court,

“Trafficking in human beings is the most abominable practice that is spreading like wildfire in modern India.”

Slavery has been abolished in India for a long time now, but it is evident that the old ways of buying and selling men, women and children like commodities are still alive. As the learned solicitor General Subramaniam rightly observed,

“Children under the age of 18 are not able to provide a legally binding authorization.”

As a result of human trafficking, the most fundamental rights of citizens are compromised. A child's entire development is the guarantee of civilization. Yet, they are deprived of their fundamental right to education and many other rights that are violated, including the right to freedom from exploitation guaranteed by the Constitution.

After considering their suffering, the N.R. Nair and Others v Union of India and Others 2001 ruled that even circus animals have rights. In order to resolve this problem as soon as possible not only the middle but also the state must provide a logical explanation and a nexus between themselves.

Broad Interpretation of Fundamental Rights: The Supreme Court has interpreted Articles 21 and 24 of the Constitution of India broadly to include not only the right to life and personal liberty but also the right to education and protection from hazardous workplaces. This broad interpretation widened the scope of fundamental rights and emphasized the importance of ensuring children a dignified life without exploitation.

State responsibility for child protection: The judgment emphasized the responsibility of both the central and state governments to protect and promote the welfare of children. -being children It called on the authorities to take proactive steps to identify and rehabilitate child labour, enforce existing laws prohibiting child labor and ensure that all children have access to education.

Effective enforcement of legislation: The court emphasized the need for effective enforcement mechanisms to combat the use of child labour. work . labor force He criticized shortcomings in the implementation of existing laws and urged the authorities to take strict action against violators. This aspect of the ratio decidendi emphasized the importance of not only establishing laws, but also their effective implementation.

OBITER DICTA

The Supreme Court has ruled that it is clear that the Government is aware of the problems of minors working in the circuses and other sectors. Under the Constitution, the Care and Protection of

Children Act, and other international treaties and conventions relating to human and children's rights, such as the Convention on the Right of the Child, to which India is a party, children are entitled to special protection. However, there are ongoing cases of children being trafficked into the circuses. The Court took the following decisions after taking into account the advice of the Solicitor general and others and limited the following directions to children working in the Indian circuses:

- (i) To exercise the fundamental right of the children under Article 21A of the Indian Constitution, issue appropriate notifications barring employment of children in the circuses within two months of the date of the order.
- (ii) To carry out simultaneous raids at all the circuses, liberate the youngsters and prevent the infringement of their fundamental rights. The rescued children will be placed in the Care and Protection Homes until they reach the age of 18.
- (iii) Talk to the children's parents; if they are willing to repatriate their children after due verification they may be encouraged to do so.
- (iv) Prepare an appropriate plan for the rehabilitation of rescued circus children.

CONCLUSION

Bachpan Bachao Andolan Vs. The Union of India is a landmark in the fight against child labor in India. The decision of the Supreme Court of India affirmed the constitutional principles of protecting the rights of children and ensuring their holistic development. Broadly interpreting Articles 21 and 24 of the Constitution of India, the court emphasized the right to education and protection against hazardous jobs as essential components of the fundamental rights of children.

The case highlighted systemic failures in the implementation of existing laws and regulations aimed at eliminating child labor and protecting children from exploitation. It emphasized the need for strong enforcement mechanisms and coordinated efforts by government agencies, NGOs and civil society to address the root causes of child labor and provide social support to vulnerable families.

In addition, the judgment led to legislative reforms and policy interventions. . . which aims to strengthen child protection initiatives and promote universal access to education in India. This raised public awareness and activism around children's rights, leading to increased monitoring of labor practices and the implementation of social support programs for affected families.