

**IN THE SUPREME COURT OF INDIA**  
**Writ Petition (Civil) No.                      of 2005**  
**(PUBLIC INTEREST LITIGATION)**

**IN THE MATTER OF:**

Public Interest Litigation

And

**IN THE MATTER OF:**

Petition under Article 32 of the Constitution of India

And

**IN THE MATTER OF:**

Seeking declaration of constitutional law that Article 21-A of the Constitution of India completely prohibits all forms of child labour

And

**IN THE MATTER OF :**

Seeking declaration of constitutional law that continuation of child labour in any form is in negation of fundamental rights guaranteed to the children under Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution, read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138).

And

**IN THE MATTER OF:**

Seeking directions that Government of India should forthwith bring all the existing laws relating to child labour including, the Child Labour (Prohibition and Regulation) Act, 1986, the Plantation Labour Act,

1951, the Children (Pledging of Labour) Act, 1933 and the Apprentices Act, 1961 in conformity with Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution, read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138) and the constitutional law as may be declared by this Hon'ble Court

And

**IN THE MATTER OF:**

Violation of fundamental and human rights of all the children up to the age of 14 years of this country as guaranteed to them under Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution of India read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138)

And

**IN THE MATTER OF:**

1. Constitution of India
2. The Child Labour (Prohibition and Regulation) Act, 1986
3. ILO Minimum Age Convention, 1973 (No.138)
4. UN Convention on the Rights of the Child (1989)
5. The Apprentices Act, 1961
6. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

7. The Children (Pledging of Labour) Act, 1933
8. The Emigration Act, 1983
9. The Factories Act, 1948
10. The Minimum Wages Act, 1948
11. The Mines Act, 1952
12. The Plantation Labour Act, 1951
13. The Motor Transport Workers Act, 1961
14. The Bonded Labour System (Abolition) Act, 1976
15. The Second National Labour Commission Report (01-06-2002)

And

**IN THE MATTER OF:**

1. Smt. Shantha Sinha,  
Secretary-Trustee, M.V. Foundation and  
Professor, Department of Political Science,  
University of Hyderabad,  
201, Narayan Apartments, Marredpally West,  
Secunderabad-500026
2. HAQ: Centre for Child Rights  
Through it's Executive Secretary,  
Ms.Enakshi Ganguly Thukral  
208, Shahpur Jat, New Delhi-110049
3. Social Jurist, A Civil Rights Group,  
Through it's Coordinator,  
Ms. Ritu Jain, Advocate,  
478-479, Lawyers Chambers,  
Western Wing, Tis Hazari Courts.  
Delhi-110054.

...Petitioners

Versus

1. Union of India,  
Through its Secretary,  
Ministry of Law and Justice,  
401, A-Wing, Shastri Bhawan,  
New Delhi-110001

2. The Secretary,  
Ministry of Human Resource and Development,  
Government of India,  
301, C-Wing, Shastri Bhawan,  
New Delhi-110001

3. The Secretary,  
Ministry of Labour & Employment,  
Government of India,  
120, Shram Shakti Bhawan,  
New Delhi-110001

... Respondents

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA**

The humble petition of the petitioners above named

**MOST RESPECTFULLY SHOWETH:**

1. The petitioners by this public interest litigation are highlighting the fact that Article 21-A has been incorporated in the chapter on Fundamental Rights in the Constitution of India in December 2002, which mandates compulsory education for every child in the age group 6 to 14 years. It is submitted that even after 57 years of independence of our country, out of 200 million children in this age group, 100 million children are estimated to be out of school and are engaged as child labour. It is submitted that compulsory schooling as envisaged in Article 21-A of the Constitution and the existence of child labour are in contradiction to each other. It is submitted that particularly after Article 21-A has been incorporated into the Constitution, child labour up to the age of compulsory education has become unconstitutional and has to give way to compulsory schooling to all children between the ages of 6 to 14 years. It is submitted that the continuation of child labour in any form is in negation of the fundamental right guaranteed under Article 21-A of the Constitution. It is submitted that the failure of the existing laws on child labour to completely prohibit all forms of child labour is causing continuous violation of all fundamental and human rights of children as guaranteed under Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution, read with UN Convention on the Rights of the Child and ILO Minimum Age Convention,

1973 (No. 138). Therefore, the petitioners are most humbly seeking a declaration of constitutional law from this Hon'ble Court that child labour in any form up to the age of compulsory schooling i.e. 14 years is constitutionally completely prohibited. The petitioners are also seeking directions from this Hon'ble Court that the Government of India should forthwith bring all the existing laws relating to child labour including, the Child Labour (Prohibition and Regulation) Act, 1986, the Plantation Labour Act, 1951, the Children (Pledging of Labour) Act, 1933 and the Apprentices Act, 1961 in conformity with Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution, read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138) and the constitutional law as may be declared by this Hon'ble Court.

2. The petitioners by this PIL have raised the following vital questions of law of great public importance for determination by this Hon'ble Court: -

- i. Is compulsory education between the age of 6 to 14 years as envisaged in Article 21-A of the Constitution of India at all possible without completely prohibiting child labour in all forms?
- ii. Whether Article 21-A of the Constitution of India independently as well as along with Articles 14, 21, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution of India read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138) completely prohibits child labour in all its forms?
- iii. Whether the Government of India are constitutionally obliged to bring various legislations including the Child Labour (Prohibition and Regulation) Act, 1986, the Plantation Labour Act, 1951, the Children (Pledging of Labour) Act, 1933 and the Apprentices Act, 1961 in conformity with Article 21-A of the Constitution and the constitutional law as may be declared by this Hon'ble Court?

3. That the facts of the case so far as relevant for the purposes of present petition are given in brief as under.

4. That Smt. Shantha Sinha, petitioner No.1 herein, is the Secretary-Trustee of M.V. Foundation and Professor, Department of Political Science, University of Hyderabad, Andhra Pradesh. She is a winner of the Magasasay Award. She is a leading social activist and has been fighting for the rights of the children of this country. It is submitted that the M.V.Foundation is the catalyst of grassroots movements in Andhra Pradesh and has been working in Ranga Reddy district of Andhra Pradesh since 1991. It has achieved remarkable success in this short period of time. By 1999, its presence was firmly established in 500 villages, covering more than half of the district. In 400 of these villages, every child in the 5-11 age group was in school. Nearly 1,50,000 children had been enrolled and retained in schools, more than 4000 bonded child labourers had been released, and 168 villages were child labour free. The last two years have seen a further consolidation of the programme in terms of impact and coverage, both within the Ranga Reddy district as well as in other districts. As at end 2001, it was active in a total of 8 districts and 2,500 villages in Andhra Pradesh including its traditional base in Ranga Reddy district. It is submitted that the petitioner is a pioneer in child rights activities. She strongly believes that (i) All children must attend full-time schools; (ii) Any child out of school is a child labour; (iii) All work/labour is hazardous and harms the overall growth of the child; (iv) There must be total abolition of child labour and no regulation of work and (v) Any justification perpetuating the existence of child labour must be condemned.

6. The HAQ: Centre for Child Rights, petitioner No.2 herein, is a non-profit society founded in 1999 which is dedicated to the recognition, promotion and protection of rights of all children. The organisation has grown out of the recognition of the need for building and strengthening a child rights movement in India. In doing so HAQ focuses on children in a holistic way- as Actor in society, as Citizens of today, and as Adults of tomorrow. HAQ's emphasis is on the need to look at the CHILD in an integrated manner and fill the conceptual and practical gaps, making crosscutting linkages between different categories of children and issues affecting them. HAQ is engaged in research, training and advocacy on child rights. HAQ has made a major contribution to the body of knowledge and advocacy efforts aiming at building accountability from the State through its 'Children in Governance project.' The organization has made a pioneering effort in analysing the economics of child rights in terms of the State's budgetary allocation for children. This has been recognised by the Government of India and adapted by the Department of Women and Child Development for their own analysis. It regularly undertakes a study on the commitment of the Parliament of India to children, through an analysis of the proceedings of the Parliamentary sessions. This is published as "Says a Child—Who speaks for my Rights". This is circulated to both Parliamentarians and those working with children. Its status report on children "Children in Globalising India: Challenging Our Conscience" was well received. It is in the process of setting up a legal resource centre, which will study judicial commitments to children through analysis of cases and court proceedings. It will also provide legal assistance to children. HAQ hosts the national secretariat of the Campaign Against Child Trafficking which has chapters in 17 states, and has in the last three years undertaken awareness generation, fact finding missions and rescue and

rehabilitation of victims of child trafficking. In recognition of its work, Ms. Enakshi Ganguly Thukral, Executive Secretary, has been awarded the prestigious international Ashoka Fellowship. She is competent to file this PIL on behalf of the petitioner No.2-organisation.

7. The Social Jurist, petitioner No.3 herein, is a civil rights group consisting of lawyers and social activists dedicated to the cause of the common man and particularly of the downtrodden, socially oppressed and economically exploited sections of society. That during the last five years, it has extensively worked on the educational rights of children in Delhi. Notable amongst them are: PIL relating to enforcement of land allotment condition of admission and grant of freeship by the unaided recognized private schools to the children of weaker sections, PILs relating to the provisions of schools, basic physical and academic infrastructure in government run schools and denial of admission to the children with disabilities in government run schools. The petitioner has also organized several public meetings, seminars, demonstrations and workshops concerning right to education of children. It is submitted that Ms. Ritu Jain, Advocate, is the Coordinator of the petitioner body and is competent to file the present PIL on behalf of the petitioner No.3-organisation.

8. The petitioners submit that India has the largest number of children engaged in child labour in the world in absolute numbers. The operational Research Group in a study in 1980 estimated 44 million children below the age of 15 years to be working in economic, non-economic and household activities. While the 1991 census had put the number at 11.28 million, the 50<sup>th</sup> round of the National Sample Survey (NSS) conducted in 1993-94, estimated the child labour population at 13.5 million. According to the 2001 census (Provisional) India has 12,591,667 working children in the 5-14 age group. The Census observes that the level of participation of children in school going age of 5-14 years in economically productive activities was five per cent. Studies across the country have shown that some of the working children are less than 5 years. An important source of data to make an estimate of the number of working children is the number of children out of school. As per the estimates for 1995-96, out of the 173 million in the age group of 6-14 years, 110 million children were estimated to be out of school, and more than half of these i.e. 60 million, are girl children. As per the government's own estimates, India still has 3.5 crore out of school (35 million) children in the 6-14 age group. (Rajya Sabha USQ # 1908, 10 March 2003-Budget Session).

9. The petitioners submit that the incidence of child labour in India is more rural than urban. More than 90.87% of the working children are in the rural areas and are employed in agriculture and allied activities and in household chores. Cultivation, agricultural labour, livestock, forestry and fisheries account for 85% of child labour. In the urban informal sector, child labour is found in small-scale cottage industries, in tea stalls, restaurants, workshops, factories, and domestic service and on the streets. Children working in manufacturing, servicing, and repairs account for 8.7% of the urban child labour force. Out of this only 0.8% works in factories. In non-agricultural sector, child labour is found in many

activities such as: Carpet industry in Mirzapur-Bhadohi belt of Uttar Pradesh; Match and fireworks industry of Shivakasi, Tamil Nadu; Diamond cutting industry of Surat; Glass industry of Ferozabad; Pottery industry of Khurja; Brassware industry of Moradabad; Tea plantations of Assam and West Bengal; Silk weaving industry of Varanasi, Sports goods industry in Meerut and Jalandhar. About two million children are engaged in employment that is characterized as "hazardous". In certain communities where social and caste factors are important, bonded child labour is also present. Commercial and sexual exploitation of children in the form of prostitution is also present in urban areas. The unorganized and informal sectors, both in rural and urban areas, account for almost all the child labour force.

10. The petitioners submit that the incidence of child labour is high among Schedule Castes and Scheduled Tribes. In terms of occupations, it is very high among agricultural labourers. Amongst the States, child labour is predominant in the states of Uttar Pradesh, Bihar, Madhya Pradesh, Orissa, Karnataka and Tamil Nadu, and is mainly found among the poor, disadvantaged and marginalized sections of society. The distribution of child labour in various states appears to indicate certain correlations: States having a larger population living below the poverty line have higher incidence of child labour; high incidence of child labor is accompanied by high dropout rates in schools. The presence and availability of child labour forces adult unemployment, greater poverty and in the absence of compulsory education, the cycle is perpetuated.

11. The petitioners submit that it is universally accepted that children should not be made to work. That child work for economic gain is by its very nature exploitative and hazardous and therefore, unacceptable. Any distinction is tenuous and arbitrary. It is particularly so as there is nothing to prevent the child from transiting from one category to another. Thus, the distinction between work done by children within the home and outside the home has become blurred. It is submitted that all the children who are out of school are actual or potential child labour. "The rights' based approach when applied to the problem of out-of-school children, dictates an inclusion of all children into the schooling system, irrespective of whether they work in agriculture, in industry or at home"(United Nations Development Programmes (UNDP), 2001).

12. That it may be relevant here to quote Dr. B. R. Ambedkar from the proceedings of the constituent assembly i.e. "The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words "every citizen is entitled to free primary education and". But I am not prepared to accept the amendment of my friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my honourable Friend, Mr. Naziruddin Ahmad had referred to article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of



14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word "primary" is quite inappropriate in that particular clause, and I therefore oppose his amendment".

13. The Report of the National Commission on Labour (2002) noted, "As for education, it has been observed that child worker in India are largely illiterate. Most have never been to school. Since education is not compulsory, children begin work at very young ages. Even children of pre-primary age can be seen working in cottage industries. In fact, child labour is keeping children out of school and contributing to the growth of illiteracy especially among girls. Employers prefer to employ young girls since they are paid lower wages than boys".

14. The said Report also noted, "Child labour is not an economic compulsion of all poor families. It is the consequence of extreme social and economic exploitation. The only way by which it can be eliminated is by prevention. The only way to prevent child labour is to recognize that the rightful place of children is in school, not in the workplace or in house. So, the first step is to ensure compulsory primary education for all children. Historically and worldwide, wherever child labour has been abolished, this is how it has been done".

15. The said Report further noted, "Any programme seeking to deal with the problem of child labour, has to address all the children out of school. It has to bring into its ambit all out-of-school working children irrespective of the nature of work they do. A second, equally significant consideration is to see the link between eliminating child labour and universalizing elementary education. They become almost synonymous. One cannot be achieved without achieving the other. The task of withdrawing children from work, therefore, becomes the same as inducting children into school. The fundamental belief on which the programme has to be based is that parents, even poor parents, are not only capable of sending their children to formal day time schools but are also wanting or willing to do so. Viewing all out-of-school children as potential child labour, irrespective of the nature of the work done by them, would treat the elimination of child labour and the universalisation of elementary education as inseparable processes, the obverse and reverse of the same coin, the success of the one automatically leading to the success of the other. Briefly stated therefore, the entire strategy would have to be based on promoting the norm that no child should work, and all children should be in schools. It is only this strategy that can enable children engaged in agriculture comprising nearly 85% of the child workforce to come out of their present plight".

16. The petitioners submit that the National Commission on Labour in its Report (2002) has very clearly established a link between prevention of child labour and compulsory schooling. The Commission was strongly of the view that no child should work and all children should be in school: prevention and elimination of child labour would facilitate and go

hand in hand with the objective of compulsory schooling. The Commission has proposed an indicative law on child labour, which amongst others says, "No child shall be employed or permitted to work in any establishment including any agricultural and family based activities".

A copy of relevant extract from the Report of National Commission on Labour (2002) is enclosed hereto as **Annexure P/1**.

17. The petitioners submit that the main legal instruments used for prescribing minimum age limit are the Factories Act, 1948, the Child Labour (Prohibition and Regulation) Act, 1986, Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Mines Act, 1952, The Motor Transport Workers Act, 1961, the Plantation Labour Act, 1951, the Apprentices Act, 1961 and the Children (Pledging of Labour) Act, 1933. It is submitted that all these legal instruments except the Mines Act, 1952 prescribe the minimum age limit for employment as 14 years. However, the Mines Act, 1952 prescribes the minimum age limit for employment as 18 years.

18. The petitioners submit that the Factories Act, 1948 applies to establishments employing ten or more workers if the manufacturing process is carried on with the aid of power, or employing more than twenty workers if the manufacturing process is carried on without the aid of power, with the result that children working in smaller establishments are excluded from its purview. The Child Labour (Prohibition and Regulation) Act, 1986 prohibits employment of children in specified occupations and processes only and regulates employment of children in other occupations and processes. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 completely prohibits employment of children in any industrial premises in which manufacturing process connected with the making of beedi or cigar or both is being carried on. The Motor Transport Workers Act, 1961 also completely prohibits employment of children in any capacity in any motor transport undertaking. The Mines Act, 1952 also completely prohibits employment of children in mines. The Plantation Labour Act, 1951 permits a child to be employed in any plantation subject to certificate of fitness for work by a certifying surgeon. The Apprentices Act, 1961 prohibits engagement of children in certain specified designated trades only excluding engagement in other trades from its purview. The Children (Pledging of Labour) Act, 1933 on one hand, prohibits employment of children but on the other hand, permits such employment. The Minimum Wages Act, 1948 by prescribing less wages compared to that of the adult for the same job besides legalizing child labour encourages greedy employers to employ more and more child labour against payment of less statutory wages.

19. The petitioners submit that the legislations on child labour in India prohibit the employment of children below 14 years in specified occupations and processes only and exclude other vast number of occupations and processes from its purview. It is estimated that out of 100 million out-of-school children, 2-3 million are working in the prohibited occupations and processes whereas the rest of the 97-98 million children are working in the non-prohibited occupations and

processes. The Child Labour (Prohibition and Regulation) Act, 1986, in its current formulation, therefore, allows the employment of children. It is also important to note that most children are employed in non-hazardous processes and occupations. These children are thereby denied their right to education.

20. The petitioners submit that Article 21-A has been incorporated in the Constitution by the Constitution (Eighty-sixth Amendment) Act, 2002. The said Article 21-A reads as under: -

**"21-A. Right to education** – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as State may, by law, determine."

21. The petitioners submit that after incorporation of said Article 21-A in the Constitution, every child has a fundamental right to free and compulsory education between the ages of 6-14 years. The question arises herein is that: Can a child realize this fundamental right to education if he is simultaneously asked to continue as child labour? It is submitted that child labour and right to education cannot go together. It is submitted that Article 21-A would become meaningless, if child labour in all forms is not completely prohibited. It is, therefore, submitted that Article 21-A of the Constitution completely prohibits child labour in all its forms.

22. The petitioners submit that early minimum age standards were linked to schooling. The Minimum Age Convention, 1973 (No. 138), which built on the ten instruments, adopted before second world war, expresses this tradition by stating that the minimum age for entry into employment should not be less than the age of completion of compulsory schooling. By establishing such a link, the aim is to ensure that children's human capital is developed to its fullest potential, benefiting children themselves, their families and communities and society as a whole by the increased contribution they can, when grown, make to economic growth and social development.

23. The petitioners submit the ILO Minimum Age Convention, 1973 (NO. 138) came into force on 19.06.1976. Article 1 of the said Convention provides that each member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of Child Labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Paragraph 2 of Article 2 provides that the minimum age shall not be less than the age of completion of compulsory schooling and in any case, not less than 15 years. The paragraph 4 of Article 2 provides that notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and

additional facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum of 14 years.

A copy of the said ILO Minimum Age Convention, 1973 is enclosed hereto as **Annexure-P/2**.

24. That Articles 1 and 2 of the said ILO Minimum Age Convention, 1973 (No.138) are reproduced as under:

**"Article 1**

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

**Article 2**

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declaration, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years

5. Each Member which has specified a minimum age of 14 years in pursuance of the

provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement –

- (a) that its reason for doing so subsists; or
- (b) that it renounces its right to avail itself of the provisions in question as from a stated date."

25. The petitioners submit that UN Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on 20 November 1989 and the Government of India acceded to this convention on 11 December 1992.

26. The petitioners invite attention of this Hon'ble Court to the provisions of Article 32 of the UN Convention on the Rights of the Child which recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with child `education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, etc. The provisions of Article 32 of the said Convention also provide that the States parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: - (a) Provide for a minimum age or minimum ages for admissions to employment; (b) Provide for appropriate regulation of the hours and conditions of employment and (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

27. That Article 32 of the UN Convention on the Rights of the Child is reproduced as under:-

**"Article 32**

1. State Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. State Parties shall take legislative, administrative, social and educational measures to ensure that implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, State Parties in particular:

- (a) Provide for a minimum age or minimum ages for admissions to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

28. The petitioners submit that Article 36 of the UN Convention on the Rights of the Child provides that State Parties shall protect the Child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

A true copy of UN Convention on the Rights of the Child is enclosed hereto as **Annexure-P/3**.

29. The petitioners submit that in our country the compulsory schooling is up to 14 years of age as envisaged in Article 21 A of the Constitution of India and therefore, in terms of Articles 1 & 2 of ILO Minimum Age Convention, 1973 (No. 138) and Articles 32 and 36 of UN Convention on the Rights of the Child, the minimum age for admission to employment is deemed to be 14 years and therefore, all the children up to the age of 14 years are further deemed to be prohibited to work.

30. The petitioners submit that the existing legislations on child labour that are not completely prohibiting child labour in all occupations and processes are resulting in negation of all the fundamental and human rights guaranteed to the children under Articles 14, 21, 21-A, 23, 24, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138).

31. The relevant provisions of Articles 14, 21, 21-A, 23, 24, 39 (e), 39 (f), 41, 45, 51-A (h), 51-A (j) and 51-A (k) of the Constitution are reproduced as under:

**"14. Equality before law** – The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

**"21. Protection of life and personal liberty** – No person shall be deprived of his life or personal liberty except according to procedure established by law."

**"21-A. Right to education** – The State shall provide free and compulsory education to all

children of the age of six to fourteen years in such manner as State may, by law, determine."

**"23. Prohibition of traffic in human beings and forced labour-** (1) Traffic in human beings and beggar 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."

**"24. Prohibition of employment of children in factories, etc.** --- 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."

**"38. State to secure a social order for the promotion of welfare of the people—**(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in status, facilities, and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or different vocations."

**"39. Certain principles of policy to be followed by the State** – The State, in particular, direct its policy towards securing –

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

**"41. Right to work, to education and to public assistance in certain cases—**The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

**"45. Provisions for early childhood care and education to children below the age of six years—** The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

**"51-A. Fundamental duties—**It shall be the duty of every citizen of India---

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

32. The petitioners submit that the Child Labour (Prohibition and Regulation) Act, 1986 makes unreasonable and arbitrary distinction between children working in certain prohibited occupations and processes and those working in non-prohibited occupations and processes. It is submitted that by making such a distinction, it allows for continuation of child labour. It is not possible to make any kind of distinction among the child labour in fact or in law and all the so-called distinctions would be bogus, unconstitutional and hit by Article 14 of the Constitution. The Act ought to have completely prohibited child labour in all the occupations and processes without exception and since it has failed to do so, it offends the Constitution.

33. The petitioners submit that without completely prohibiting child labour in all its forms, it is impossible to bring such children in the formal school system. It is submitted that full time formal school system alone ensures a decent and dignified life to the child for which, he is entitled to, under Article-21 of the Constitution. Any attempt on the part of the State to deny such life to the child would violate the right to life as guaranteed under Article-21 of the Constitution.



34. The petitioners submit that child labour is nothing but a forced labour, which is prohibited under Article 23 of the Constitution. However, the Bonded Labour System (Abolition) Act, 1976 does not consider a child labour as forced labour. It is submitted that no body including the State or parents/guardians can be permitted to exploit the child. It is totally inhuman, unjust and arbitrary to expect from a child to work in order to contribute to the income of the family. It is submitted that the right place of the child is school and not the work place.

35. The petitioners submit that all forms of labour is hazardous for the child as it tends to prevent the child from attending compulsory schooling and also adversely affects his mental and physical health and development. Article 24 of the Constitution expressly prohibits all children below the age of fourteen years from being employed or engaged in any hazardous employment. It is unfortunate that the lawmakers have never considered 'hazardous employment' from the child's point of view. Had it been ever considered, the Child Labour (Prohibition and Regulation) Act, 1986 would have prohibited child labour completely in all the occupations and processes. It is submitted that the word "any factory" used in Article 24 of the Constitution is unqualified and unlimited where as the word "Factory" used in Factories Act, 1948, is limited and qualified. Therefore, the definition of "factory" given in Factories Act, 1948, in regard to prohibition of child labour is in contradiction with the scope and ambit of "any factory" as given in article 24 of the Constitution. It is also submitted that Article 24 of the Constitution needs liberal interpretation so to include all out-of-school children as employed or engaged in 'hazardous employments'.

36. The petitioners submit that the State by not completely prohibiting all forms of child labour has failed to promote the welfare of the people and has also failed to eliminate inequalities in status, facilities and opportunities among individuals and also groups of people as envisaged in Article 38 of the Constitution. It is submitted that the prevalence and growth of child labour would only result in increasing inequalities in status, facilities and opportunities among the people. The children of the rich would have every opportunity to develop whereas the children of the poor would be condemned as child labour with no scope of development. Is it what our freedom struggle was meant for?

37. The petitioners submit that Articles 39 (e), 39 (f), 41,45, 51-A (h), 51-a (j) and 51-A (k) hit the perpetuations of child labour. The child labour is an abuse of the children. It adversely affects to their health and strength. There is no economic necessity nor can there be a valid ground to compel a child to work and not to attend full time formal school. It is submitted that the right of the child to receive free and compulsory education under Article 21-A of the Constitution is child's own independent right and does not depend on the economic status of his parents/guardian. Therefore, it would be unjust to force the child to work even on the ground of economic necessity. A child in all situations must be spared for school and if the parents have any economic difficulty, State must take care of them. It is submitted that in order to discharge fundamental duties as envisaged in Article 51-A (h), 51-A (j) and 51-A (k)

of the Constitution, it is necessary that the State must create conditions for that. How a parent or guardian can provide opportunities for education to his child as required under Article 51-A (k) of the Constitution unless the child labour in all its forms is prohibited and good quality education is provided to every child by the State? It is also submitted that when Article 21-A of the Constitution mandates State to provide free and compulsory education to every child and Article 51-A (k) of the Constitution casts duty on every parents to provide opportunity to their child to education, no scope is left for anybody to claim immunity from sending the child to work and not to school. Therefore, it is necessary that the child labour in all its forms must be completely prohibited.

38. The petitioners submit that failure of the existing laws on child labour to completely prohibit all forms of child labour is in negation of the fundamental and human rights of the children as guaranteed to them under Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution of India read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138).

39. The petitioners submit that in the absence of declaration of constitutional law by this Hon'ble Court that article 21 A of the Constitution completely prohibits all forms of child labour, every child in this country cannot realize his fundamental right to education. It is submitted that the declaration of law by this Hon'ble Court would pave the way to effectively check the evil of child labour. The problem being faced today is that when one approaches to check child labour, he is told that there is no law to check the same. It is, therefore, necessary that this Hon'ble Court in the present case may give such a declaration of constitutional law.

40. The petitioners seek declaration of law and the directions against the respondents on the following amongst other

### **GROUNDS**

- A. Because Article 21-A of the Constitution of India and the existence of child labour are in contradiction to each other. The compulsory education and child labour cannot go together. The child labour has now to give way to the compulsory education for all the children. After induction of Article 21-A in the Constitution of India, the child labour in any form is constitutionally impermissible.
- B. Because compulsory schooling is up to 14 years of age as envisaged in Article 21-A of the Constitution of India and therefore,

in terms of Articles 1 & 2 of ILO Minimum Age Convention, 1973 (No.138) and Articles 32 and 36 of the UN Convention on the Rights of the Child (1989), the minimum age for admission to employment is deemed to be 14 years.

- C. Because the democracy guaranteed under the Constitution will have no meaning for the masses of this country, if even after 57 years of the independence, evil of child labour is not declared unconstitutional and is not completely prohibited by law. The existence of child labour violates the concept of social justice and is a shame for the Nation. The time has come to hit it hard.
- D. Because the existence of child labour in all its forms is completely in contradiction with Article 21-A of the Constitution. The existing laws on child labour including the Child Labour (Prohibition and Regulation) Act, 1986 prohibits employment of children in specified occupations and processes only and leaves a vast number of other occupations and processes out of its purview.
- E. Because failure of the existing laws on child labour to completely prohibit all forms of child labour is in negation of the fundamental and human rights of the children as guaranteed to them under Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138).
- F. Because the existing laws on child labour arbitrarily leave out 97-98 million of children from prohibition. These laws make unreasonable and arbitrary classification amongst the child labourers. All child labourers belong to a single class and cannot be legally sub-divided for the purpose of these laws. All forms of work for children are bad and there can be little scope for compromise on this issue. The arguments in favour of children working

are merely excuses for the perpetration of child labour to the advantage of certain vested interests. Any distinction between one form of work and another as far as children are concerned is completely arbitrary. All labour is hazardous and harms the overall growth and development of the child and therefore, the existing child labour prohibition laws ought to have covered all the children without any exception.

- G. Because the Government of India is obliged to bring all the existing laws relating to child labour including the Child Labour (Prohibition and Regulation) Act, 1986, the Plantation Labour Act, 1951, the Children (Pledging of Labour) Act, 1933 and the Apprentices Act, 1961 in conformity with Article 21-A of the Constitution and the constitutional law as may be declared by this Hon'ble Court.

41. The petitioners submit that they have not filed any similar petition in this Hon'ble Court.

42. The petitioners also submit that they have no other efficacious alternative remedy except to approach this Hon'ble Court by way of present writ petition under Article 32 of the Constitution of India.

43. In the premises aforesaid, the petitioners most humbly pray that this Hon'ble Court may be pleased to: -

- a. declare that Article 21-A of the Constitution of India completely prohibits child labour in all its forms;
- b. declare that continuation of child labour in any form is in negation of fundamental rights of the children guaranteed under Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution, read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138);
- c. direct the Government of India to bring all the existing laws relating to child labour including the Child Labour (Prohibition and Regulation) Act, 1986, the Plantation Labour Act, 1951, the Children (Pledging of Labour) Act, 1933 and the Apprentices

Act, 1961, in conformity with Articles 14, 21, 21-A, 23, 24, 38, 39(e), 39(f), 41, 45 and 51-A (h), 51-A (j), 51-A (k) of the Constitution, read with UN Convention on the Rights of the Child and ILO Minimum Age Convention, 1973 (No. 138) and the constitutional law as may be declared by this Hon'ble Court;

- d. pass any such further order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case in favour of the petitioners and against the respondents; and
  
- e. allow the present PIL with costs.

New Delhi:  
Dated : 07.07.2005

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