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Bachpan Bachao Andolan v. Union of India & Others

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ABSTRACT

The preceding case law Bachpan Bachao Andolan v. Union of India is the title of Writ Petition (Civil) No. 51 of 2006. The following paragraphs summarise the case regarding child trafficking and underage labour in Indian circuses. Case facts, issues, arguments from the petitioners' and counter petitioners' sides, legal considerations, court opinions, judgement, conclusion, suggestions, and an author's comment are presented below. This case emphasises the need of realising one's own human rights as well as the relevance of the state government enforcing the laws enacted in this respect.

The circus has long been a popular source of entertainment in India. As kids, almost all of us were excited to witness clowns, animals, and children doing gymnastics. So even the happy children we see are in pain on the inside. Because they are obliged to work at such a young age, children are subjected to harassment, exploitation, physical and verbal abuse. These children are imprisoned in a never-ending cycle of bullying and cruelty at the hands of circus owners, who compel them to live terrible lives. This paper examines the subject of adolescents working in circuses as well as the legal changes surrounding it.

Keywords: *child labour, child trafficking, circus, fundamental rights, bachpan.*

I. INTRODUCTION

Human trafficking, sexual exploitation, child labour, and forced labour.

The non-governmental organisation Bachpan Bachao Andolan petitioned the Indian Supreme Court to take action against the use of children as performers in the country's travelling circuses. Children are being trafficked from Nepal or removed from their homes, used as slaves in these circuses, and abused physically, mentally, and sexually, according to a report. After realising that this practise violated child labour laws, rules on a child's right to an education, and other national and international laws, the Supreme Court issued an order prohibiting the employment of children in circuses, conducting raids on circuses to free children, and establishing rehabilitation programmes for child victims.

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This case³ demonstrates the Supreme Court of India's willingness to hear petitions from non-governmental organisations, paving the way for human rights reform. This case is a significant victory for children's rights in India, where parents frequently sell their children to labour at a young age. A committee was established to conduct study on "*eradicating child labour from Indian circuses*" as a result a multifaceted plan was announced after explaining the research findings in terms of facts and figures.

This marked the beginning of efforts to improve the situation of children employed by circuses. This meant having numerous meetings with the owners of Indian circuses to inform them of the relevant ethical and legal issues surrounding the use of children in circuses. Despite the Indian Circus Federation's positive responses to conference recommendations, they represented less than 10% of the major circuses and less than 20% of all circuses. The petitioner filed this lawsuit to obtain an order compelling the Indian government to:

1. Issue appropriate guidelines for circus workers;
2. Conduct raids at all circuses to free children and investigate rights violations;
3. Appoint special forces to ensure actions and keep an eye on cross-border trafficking;
and
4. Apply the Juvenile Justice Act and make violations offences under the Indian Penal Code/Juvenile Code.

II. BRIEF FACTS

An Indian-based organisation called *Bachpan Bachao Andolan* filed a public interest litigation under Article 32 of the Constitution⁴ over the grave abuse and detention of children in circuses. The children were trafficked from impoverished areas of Nepal and India and made to work in circuses where they were routinely subjected to physical, sexual, and emotional abuse as well as being held in deplorable conditions. The children lacked access to the necessities of life, such as food and water. The petitioner, on behalf of *Bachpan Bachao Andolan* initiated this case in response to the awful plight of the children at circuses and gathered comprehensive data regarding the circumstance of children at circus facilities around the nation. Further, more concrete information was gathered and a report was created using that information. The petitioner spoke with the Indian Circus Federation's owners and dealers and obtained a complete list of the children employed therein and instructed them to disperse the children and return

³ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.

⁴ INDIA CONST. art 32.

them to protective care, and made sure that no more children would ever be hired or employed for entertainment purposes. The scope of this petition was expanded by the Solicitor General, who was representing the Union of India, and he also provided a thorough report on the issue of child trafficking.

III. ISSUES DEALT

- Whether the children in the circus were being denied of their basic fundamental rights?
- Whether there are direct legislations protecting the rights of these children?
- Whether the employment of the children is a clear violation of Article 23 of the Constitution⁵?

IV. LAWS CONCERNED WITH THE CASE

The Hon'ble Supreme Court of India has decided the case in the light of *Articles 14 to 17, Article 21 and 21 A, Article 23, Article 24, and Article 32* of the Constitution of India.

1. Indian Penal Code, 1860: Sections 41, 293, 319-329, 339-346, 350-351, 361-363, 365, 367, 370, 416, 420, 465-466, 468, 471, 503, and 506.
2. Juvenile Justice (Care and Protection of Children) Act 2000, Sections 18, 31(1), and 33(3).
3. Goa Children's Act, 2003.
4. Indian Contract Act, 1857.
5. Child Labour (Prohibition and Regulation) Act, 1986.
6. Motor Transport Workers Act, 1961.
7. Children Pledging of Labour Act, 1933.
8. Bonded Labour System Abolition Act, 1976.
9. Factories Act, 1948.
10. 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).
11. Right of Children to Free and Compulsory Education Act 2009, Section 3.
12. Child Welfare Act, 1978.

⁵ INDIA CONST. art 23.

V. ARGUMENTS

(A) Petitioner's points of contention

The petitioner argued that children trafficked are typically from extremely poor families, often living in rural areas, and are forced into exploitative labour, bondage, and servitude. The petitioner claimed that agents pressure parents to let their children go in situations where they are being offered money in exchange for their labour. The petitioner went on to say that these children's lives start at dawn with loud obscenities from training instructors, brutal beatings, and two biscuits and a cup of tea. Children who experience fear while performing on the trapeze are reprimanded and mistreated by supervisors or employers, and occasionally even physically assaulted under false pretexts. According to the petitioner, there are neither any labour nor other welfare laws that protect the rights of these children. In these settings, children are constantly subjected to physical, emotional, and sexual torment.

(B) Respondent's Points of Contention

The learned Solicitor General, Shri Gopal Subramaniam appeared for Union of India and aimed to broaden the petition's scope and address the issue of child trafficking. He claimed that the following guidelines ought to be mandated-

- 1) The child's privacy must be protected, and the child must receive appropriate protection while serving as a witness;
- 2) In accordance with the Juvenile Justice Act⁶, child welfare committee centres or members should preferably conduct the victim interview.

He also asserted that the Child Labour (Prohibition) Act of 1986⁷, the Children (Pledging of Labour) Act of 1933⁸, and the Bonded Labour System Act of 1976⁹ have all been broken, and that the country should be concentrating on stopping child trafficking at the moment rather than taking a census in which all laws have been broken. For the same goal, there are international treaties and conventions.

Nevertheless, their one flaw is that these conventions only cover issues related to cross-border trafficking, not intrastate trafficking. The creation of legislation and regulations to combat the country's trafficking of women and children is urgently required. The PALERMO Protocol¹⁰

⁶ Juvenile Justice (Care and Protection of Children) Act, 2000, No. 56, Acts of Parliament, 2000 (India).

⁷ The Child Labour (Prohibition and Regulation) Act, 1986, No. 61, Acts of Parliament, 1986 (India).

⁸ The Children (Pledging of Labour) Act, 1933, No. 2, Acts of Parliament, 1933 (India).

⁹ Bonded Labour System (Abolition) Act, 1976, No. 19, Acts of Parliament, 1975 (India).

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

was thus approved by India in June 2001 in order to update its current working definition of child trafficking. To successfully promote peace in all the vulnerable locations, the police station in each state with the corresponding governmental entity must adhere to the rules and take action, according to the Union of India's arguments.

VI. JUDGMENT

(A) Ratio Decidendi

According to the Hon'ble Supreme Court, human trafficking is the most heinous practise that is alarmingly spreading in modern India. Slavery was abolished many years ago, but it is clear that old traditions die hard, as men, women, and children are still bought and sold like commodities. As the learned solicitor general Subramaniam correctly remarked, children under the age of 18 are unable to provide legally binding authorization. As a result of trafficking, citizens' most fundamental rights are jeopardised. The entire development of a child is the primary guarantee of civilization; nevertheless, these children are denied their fundamental right to education, as well as a number of other rights that are infringed, including the right against exploitation guaranteed by Article 23¹¹ of the Constitution. After weighing their suffering, the decision of *N. R. Nair & Others v. Union of India & Others*¹² decided that even circus animals have rights. In order to solve this problem as fast as possible, not only the middle, but also the state, must come up with a logical explanation and nexus between themselves.

(B) Obiter dicta

The Supreme Court of India determined that it is evident from the learned Solicitor General's thorough arguments that the Government of India is fully aware of the issues associated with minors working in circuses and other industries. In accordance with the Constitution, the Law on Juvenile Justice (Care and Protection of Children) Act, and international treaties and conventions pertaining to human and children's rights, including the Convention on the Rights of the Child, of which India is a signatory, children have the right to special protection. Yet, there are ongoing legal violations with regard to children who are trafficked into circuses.

The Court adopted the following rulings after considering advice from the Solicitor General and others and limited these directions to the children working in Indian circuses-

¹¹ *Prohibition of traffic in human beings and forced labour* (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 purpose, 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.

¹² *N.R. Nair v. Union of India*, (2001) 6 SCC 84.

- (i) To carry out the children's fundamental right under Article 21A of the Indian Constitution¹³, issue the appropriate notifications barring the employment of children in circuses within two months of the order's date.
- (ii) Execute simultaneous raids at all circuses to free the youngsters and stop the infringement of their fundamental rights. The rescued children will be housed in Care and Protection Homes until they become 18 years old.
- (iii) Speak with the parents of the children; if they are willing to send their kids back home after being properly verified, they may be told to do so.
- (iv) Create a suitable plan for the rehabilitation of circus children who have been saved.

VII. CRITICAL ANALYSIS

The ruling in the case is regarded as a turning point in the fight to protect children who are forced to labour in circuses. The Supreme Court specifically pointed out that the government was fully aware of the difficulties that children face working in such inhumane circumstances. The rights of these children were barely protected by labour and welfare legislation. The ones that are already in place lack the required machinery or implementation methods. Any governmental entity, including the police department, is ill-equipped to handle the situation of child trafficking. More of these scenarios will arise as a result of this ambiguity. Thus, it is essential to direct the respondents to frame suitable guidelines for the people involved in circuses.

These children's fundamental rights, as well as other rights outlined in laws and other international agreements, have not been upheld- the Child Labour (Prohibition and Regulation) Act of 1986, for instance. Consequently, the petitioner stressed the necessity of issuing a suitable writ ordering the Central Bureau of Investigation to free the children and stop the massive violation of their fundamental rights. It would also be highly beneficial to create a special task force to ensure that cross-border trafficking is prohibited.

Moreover, only shortly after this decision India had ratified the Palermo Protocol after having signed it already on December 12, 2002. The outcome of this case served as a catalyst for this move. Before the judgment, India had struggled with a comprehensive definition for the crime of human trafficking.

Following the 2012 Delhi gang rape case¹⁴, the Judge Verma Committee was established to

¹³ INDIA CONST. art 21A.

¹⁴ Mukesh v. State (NCT of Delhi) and ors., (2017) 6 SCC 1 (India).

examine the Indian Criminal Code and offer suggestions for updating it. The Committee issued a report in 2013 and suggested that the concept of human trafficking used in the *Bachpan Bachao Andolan v. Union of India* case be used. The Committee pushed Parliament to amend the country's anti-human trafficking laws.

The Supreme Court ruled that its earlier orders concerning children in circuses had not been followed in 2015, several years after the initial order. The 2015 ruling mentions an order dated December 12, 2014, which prompted the Secretary of the Ministry of Women and Child Development to call a conference, which was also attended by the Secretary of Labour and numerous officers from different States. The Union government and all the states were given notifications by the Supreme Court to submit affidavits as part of its monitoring duties, but only the State of Punjab did so on time.

The Court instructed the Central Government to oversee circus operations through the *National Commission for the Protection of Child Rights* and State Governments after taking into account a report from the Ministry of Women and Child Development. The Court also stated that the petitioner or any other person was free to contact the court or any other appropriate authority if any evidence of child labour or child abuse was discovered in any circus.

VIII. CONCLUSION

The aforementioned judgement represents the existing condition of human trafficking in India. The issue was fairly frequent in the past. To solve the issue, strict government action is essential, as well as the activity of non-governmental organisations. Because the next generation is critical to India's future, the government places a high value on protecting children's interests. It is critical to monitor the execution of the numerous laws and programmes put in place. Human trafficking is a serious issue, and while a rapid cure is unlikely, steady progress may be accomplished. Yet, in the case of *Bachpan Bachao Andolan*, the court directed the state governments to take efforts to halt child trafficking for the circus.

With the rulings to restrict first animals and subsequently children, the circus industry has suffered. These children are compelled to labour constantly, day and night, in order to survive in a country where poverty is at an all-time high. After being trafficked from countries such as Nepal, people were routinely forced to work here and subjected to constant physical and verbal abuse. They lacked access to basic necessities of existence. The bulk of the ladies were abused sexually. Of all of these, the restriction on child labour was a game changer. The whole country praised this decision. But, for a long time, these laws were not taken seriously, and there were infractions. The circus owners were still using children for their own gain. Unfortunately, the

application of rules over time ended this practise. The circus industry is nearing its demise.
