

AN OVERVIEW OF CHILD LABOUR LAWS IN INDIA- A TRENCHANT ASSESSMENT

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Abstract

The objective of this paper is to enlighten the views about the child labour laws in India, besides having various Laws, the rate of child labourer's in India is at hype. Various statutes are established regardless there is a lack of awareness amongst a large number of people. The major reason of being poverty, due to which children are still forced to work as child labours. *"Today's children constitute tomorrow's future. To guarantee a brilliant fate of our children, we need to guarantee that they are taught and not misused. Indeed, children are the most powerless individuals from any general public. They are qualified for uncommon consideration and help due to their physical and mental in capabilities. The issue is more convoluted in creating nations like our own, where child labour exists in association with ignorance and neediness"*¹. Thus the children of our nation deserve better care and guidance in order to obtain a world free from social hurdles, the paper focuses on the underlining principles of laws regarding prevention of child labours with necessary suggestions to help in overcoming the social evil.

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¹ Supreme court on M.C. Mehta v. State of Tamil Nadu reported in AIR 1997 SC 699

INTRODUCTION

Childhood is the period of learning and comprehension. It is the time; one gains new learning furthermore, aptitudes. Instruction to children in this age is crucial to create character and capacities. Right to education is a fundamental right in India. Be that as it may, the later evaluation report of 2011 demonstrates that around 43.5 lakhs children in the age gathering of five to fourteen are child labours². Utilizing children as worker's will deny them access to social open doors like education, disables the identity and innovativeness, the advancement and development of full being, the wellbeing and the mental advancement of the child³.

MEANING OF CHILD LABOUR

The term child labour 'is characterized as a work that denies offspring of their adolescence, their potential and their respect, and that is hurtful to physical and mental improvement. The term child labour is deciphered in two route as a financial practice and as a social underhandedness. As a financial wickedness, it implies work of children in profitable occupation with a perspective to add to the pay of their families. To clarify it as a social malevolence, the nature, the degree, the risks of the occupation to which the children are utilized is to be considered⁴. Child labour implies —any work by children that meddle with their full physical and mental advancement, the open doors for an attractive least of instruction and of their required recreation⁵.

CAUSES AND KINDS OF CHILD LABOUR

The causes of child labour⁶ includes poverty, illiteracy and ignorance of Parents, unemployment, over population, war, low wages of the adult, absence of schemes for family allowances, migration to urban areas, children being cheaply available and non-enforcement of the provisions for compulsory education. Child labour may be two types⁷: Productive and Consumptive child labour.

PRODUCTIVE CHILD LABOUR

In Productive Child labour, the child worker in the family is provided process of learning the skills for a particular trade or craft. This helps the child to be a reasonably proficient craftsman or a skilled worker. Thus the childhood labour, paid or unpaid, might become an investment for at least a modest future. This category of child worker, without interfering with schooling (formal or non-formal), recreation and rest cannot be viewed as exploitive.

² Available at <http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/Census-2001%262011.pdf>, Last accessed on 30th October 2015, 11:30 am

³ Bupinder Zutshi, Mondira Dutta & Sudesh Nangia, "*In the name of Child Labour, Eradication and Evaluation Programme*", Shipra Publications, New Delhi, 2002, Page 24

⁴ V.V.Giri, *Child Labour*, Chapter 21, Page -173 - Usha Sharma, —*Child labour in India*—.

⁵ Haks, the chairman of the US National Child Labour Committee

⁶ See Dr.J.C.Kulshreshtha, *India Child Labour*, chapter III, quoted in *M.C.Mehta v State of Tamil Naidu*, AIR 1997 SC 699 at 708-709

⁷ Id.

CONSUMPTIVE CHILD LABOUR

In Consumptive child labour, the child is used purely for profit motive, either by the family or by the society. Child labour is used in various kinds of manual work or mental services. Such children are torn off from their family, community life and natural environment. The consumptive child labour could be further classified into categories like domestic work⁸, non-domestic, non-monetary Work⁹, bonded child labour¹⁰, commercial sexual exploitation¹¹ and wage labour (industrial, plantation and street work).¹²

LEGISLATIVE MEASURES TO CURB CHILD LABOUR

The origin of statutory protection of child labour in India can be traced back to the Indian *Factories Act, 1881*. This law is mainly regulated working hours, rest intervals, minimum wages and nature of work of child labour but it does not prevented the employment of children. Later on the *Children Act, 1933* was enacted to prohibit the pledging of labour of children below 14 years by parents. In 1938 the *Employment of Children Act* was enacted to prohibit the employment of children below the age of 14 years in specified hazardous occupations. This Act specifically prohibits the employment of children below 14 years of age in the railway and other means of transport. The Post-Independence Child Labour Laws in India starts with the *Factories Act, 1948*.¹³ Other laws includes the *Plantation Labour Act, 1951*¹⁴, the *Mines Act, 1952*¹⁵, the *Merchant Shipping Act, 1958*¹⁶, the *Motor Transport Workers Act, 1961*¹⁷, the *Apprentices Act, 1961*¹⁸, The *States Shops and Establishments*

⁸ Id. This includes the job undertaken by children, which is unpaid work for the maintenance of the household, thus allowing their parents to go out and work as wage laborers. Caring for younger siblings, cooking, cleaning, washing, fetching water etc.

⁹ Boys, in the rural areas from the age 6 onwards are usually engaged in family tasks like looking after the cattle, grazing goats, collecting fodder and scaring away birds.

¹⁰ The principle factor is the pledging of children against a loan (large or small) or an agreement between the child's parents and the employer, whereby the child would work throughout its life in exchange for money or food.

¹¹ Girls are lured or forced into this form of labour, which can verge on slavery. Agents act as procures for city brothels.

¹² Children are preferred to adults, because of low wages, docile nature, and pliability and for non-compliance of labour laws. The work nature in industries includes highly hazardous works like carrying molten matter, working in furnaces with temperature of 1500 to 1800 degree Celsius.

¹³ Section 67 of the *Factories Act, 1948* reads as —No child who has not completed his fourteenth year shall be required or allowed to work in any factory”

¹⁴ Section 24 of the *Plantation Act* reads as —No child who has not completed his twelfth year shall be required or allowed to work in any plantation”

¹⁵ Section 45 of the *Mines Act, 1952* reads as Prohibits the presence of persons below eighteen years of age in a mine- — (1) No child shall be employed in any mine, nor shall any child be allowed to be present in any part of mine which is below ground or in any open cast working in which any mining operations being carried on—

¹⁶ Section 109 of *Merchant Shipping Act, 1958* reads as —No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except-(a) In a school ship, or training ship, in accordance with the prescribed conditions; or (b) In a ship in which all persons employed are members of one family; or (c) In a home-trade ship of less than two hundred tons gross; or (d) Where such person is to be employed on nominal wages and will be in charge of his father or other adult near male relative.

¹⁷ Section 21 of the *Motor Transport Workers Act, 1961* reads as —No Child shall be required or allowed to work in any capacity in any motor transport undertaking”.

¹⁸ Section 3 of the *Apprentices Act, 1961* provides Qualifications for being engaged as an apprentice- “A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he- (a) Is not less than fourteen years of age and (b) Satisfies such standards of education and

Act¹⁹ and The Beedi and Cigar Workers(Conditions of Employment) Act, 1966²⁰. Only in 1986 a specific law relating to child labour called the Child Labour (Prohibition and Regulation) Act²¹²² 1986 was passed in the Schedule of the Act²³²⁴²⁵. The Act deals with the creation of a Child Labour Technical Advisory Committee to advice the Central Government

physical fitness as may be prescribed. Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different category of apprentices.

¹⁹ The states shops and establishment Act prohibits the employment of children in shops, commercial establishments, restaurants, hotels, etc. the age of children varies from 12 to 15 years.

²⁰ Section 24 of the Act reads as —No child shall be required or allowed to work in any industrial premises”.

²¹ Section 2 (ii) of the Act

²² Section 3 of the Act

²³ The notification says that the following occupations are to be added to Part A—OccupationsI :-(14) Employment of children as domestic workers or servants ;(15) Employment of children in the dhabas (road –side eateries) restaurants, hotels, motels, tea-shops, resorts, spas or other recreational centers

²⁴ Occupations such as Transport of passengers, goods or mails by railways; Cinder picking, clearing of an ash pit or building operation in the railway premises; Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train; Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines; A port authority within the limits of any port; Work relating to selling of crackers and fireworks in shops with temporary licenses; Abattoirs/Slaughter House; Automobile workshops and garages;Foundries;Handling of toxic or inflammable substances or explosives; Handloom and power loom industry; Mines (underground and under water) and collieries; Plastic units and fiberglass workshops.

²⁵ Processes like Beedi-making. Carpet-weaving, Cement manufacture, including bagging of cement, Cloth printing, dyeing and weaving, Manufacture of matches, explosives and fire-works, Mica-cutting and splitting, Shellac manufacture, Soap manufacture,Tanning,Wool-cleaning, Building and construction industry, Manufacture of slate pencils (including packing), Manufacture of products from agate, Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos. —Hazardous processesI as defined in Sec. 2 (cb) and ‘dangerous operation’ as notice in rules made under section 87 of the Factories Act, 1948 (63 of 1948),Printing as defined in Section 2(k) (iv) of the Factories Act, 1948 (63 of 1948), Cashew and cashew nut descaling and processing, Soldering processes in electronic industries, Aggarbatti‘ manufacturing, Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting, Brick kilns and Roof tiles units, Cotton ginning and processing and production of hosiery goods, Detergent manufacturing, Fabrication workshops (ferrous and non-ferrous), Gem cutting and polishing, Handling of chromite and manganese ores, Jute textile manufacture and coir making, Lime Kilns and Manufacture of Lime, Lock Making, Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wiring patenting, lead casting, type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing, Manufacture of cement pipes, cement products and other related work, Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products. Manufacture of dyes and dye stuff. Manufacturing or handling of pesticides and insecticides. Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry. Manufacturing of burning coal and coal briquettes. Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.Moulding and processing of fiberglass and plastic. Oil expelling and refinery. Paper making. Potteries and ceramic industry. Polishing, molding, cutting, welding and manufacturing of brass goods in all forms. Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting. Saw mill – all processes. Sericulture processing. Skinning, dyeing and processes for manufacturing of leather and leather products. Stone breaking and stone crushing. Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.Tyre making, repairing, re-treading and graphite benefication.Utensils making, polishing and metal buffing. Zari, making (all processes). Electroplating; Graphite powdering and incidental processing; Grinding or glazing of metals; Diamond cutting and polishing; Extraction of slate from mines; Rag picking and scavenging.

for inclusion of further occupations and processes in the Schedule²⁶. Act also specifies the time limit²⁷ for which a child can be employed. Each child employed in any establishment shall be allowed in each week, a holiday or one whole day which shall not be altered by the occupier more than once in three months²⁸. The Act provides for furnishing of information by the occupier regards employment of a child labour to Inspector²⁹. The act requires the Government to make rules for the health and safety of the child³⁰. The Central Government and the State Government is entrusted with the task to enforce the provisions of the Act.

SHORTCOMINGS IN THE ACT

The major loophole in the Act was that it covers the child in the organized sector and not, the 90 % working in the unorganized urban, rural sector and family units. Many occupations which are hazardous are not included. The act does not determine the minimum age of employment of children in procedures and occupations where the child labour is not prohibited³¹. The Act forgot about domestic labour which forms the largest number of working Children.

CONSTITUTIONAL SAFEGUARDS FOR THE PREVENTION OF CHILD LABOUR

Our Constitutional framers had realized that India of their vision would not be a reality if the offspring of the nation are not sustained and taught. So they incorporated relevant provisions in the Constitution for the welfare of children. Article 21 A provides Right to Education³² of children within the age of 6-14 years, Article 24³³ prohibits Employment of Children in Factories, Article 39(e)³⁴ and 39(f)³⁵ entrust the State with the duty to direct its Policy towards securing the health and strength of the workers and Article 45³⁶ provides for free and compulsory education for children till the age of fourteen. Article 51A (K)³⁷ of the

²⁶ Section-5 of the Act the Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government. The Committee may, if it deems it necessary so to do, constitute one or more sub-committees.

²⁷ Section 7 of the Act provides Hours of work on each day as three hours and rest for at least one hour.

²⁸ Section 8 of the Act

²⁹ Section 9 of the Act

³⁰ Section 13 of the Act

³¹ Supra note FN 5, page 38

³² Article 21A inserted by the Constitution (Eighty –Sixth Amendment) Act, 2002. Article 21 A reads as “The states shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state, by law, may determined

³³ Article 24 reads as “No Child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment”.

³⁴ Article 39(e) states 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;

³⁵ Article 39(f) states 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.

³⁶ The State shall endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education until they complete the age of fourteen.

³⁷ Article 51 K reads as — it shall be the duty of every citizen of India who is 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

constitution makes it the duty of parents or guardian to provide education to the child who are between 6-14 years.

RIGHT TO FREE AND COMPULSORY EDUCATION ACT, 2009

This Act promises right to free and compulsory education to every child between the ages of 6-14 years of age group³⁸. The central government and the state government are entrusted with the responsibility of funding the provisions of the Act³⁹. The term compulsory education is defined in the Act as the obligation of the appropriate government to provide free and compulsory education to every child of the age of six to fourteen years and to ensure compulsory admission, attendance and completion of elementary education by every child of age of six to fourteen years⁴⁰. The Act also safeguards that children belonging to weaker section and disadvantaged group are not rationalized against and prevented from gaining and completing elementary education on any grounds⁴¹ there shall be no capitation fee or screening procedure for admission to any school⁴². The Act also restricts physical punishment (any injury to body) and mental harassment to child⁴³. The National and the state commissions for assurance of child rights are likewise depended with elements of observing children's entitlement to education⁴⁴. They can also enquire complaints under the Act. A national and a state advisory council can be constituted by the concerned government for the implementation of the Act.

JUDICIARY ON CHILD LABOUR

The issue of child labour has been raised before the Supreme Court on many occasions. In fact, in every case relating to construction workers, migrant labour, bonded labour, child labour is mentioned. *Salal Hydro Project v. Jammu and Kashmir*. The Court has reiterated the principle that the Construction work is hazardous employment and Children below 14 cannot be employed in this work⁴⁵.

M. C. Mehta v. State of Tamil Naidu and Others

One of the leading cases on child labour is the case of *M.C.Mehta v. Union of India*, pertaining to children working in the cracker industry in Sivakasi, Tamil Naidu. There are two judgments relating to children working in this industry. One in 1990 and the other in 1996. In the first case, court held that employment of children inside of the match industrial facilities specifically associated with the assembling procedure up to conclusive generation of match sticks or firecrackers ought to not in any way be permitted⁴⁶. Children can be utilized during the time spent pressing however pressing ought to be done in regions far from the spot

³⁸ Section 3(1) of the Act

³⁹ Section 7(1) of the Act

⁴⁰ Section 8 of the Act

⁴¹ Section 8 (c) of the Act

⁴² Section 13(1) of the Act

⁴³ Section 17 (1) of the Act

⁴⁴ Section 31 of the Act

⁴⁵ AIR 1984 SC 177

⁴⁶ 1990 (1) SCC 283

of production to stay away from presentation to mischance. Court likewise guided state to give extraordinary offices ought to be allowed for enhancing the quality of life of children like education, recreation and medical attention, creation of a welfare fund and compulsory insurance schemes for the adult and children employees.

M.C.Mehta v. State of Tamil Nadu and Others

In this judgment, the honorable Supreme Court has given directions, regarding the manner in which the children working in hazardous occupations are to be withdrawn from work and to be simultaneously rehabilitated⁴⁷ like

- 1) Survey for identification of working children should be done.
- 2) Withdrawal of children working in hazardous industry and to impart Free and compulsory education for children below 14 years of age.
- 3) To pay a compensation of Rs. 20000 for every child employed from in contravention to Child Labour (Prohibition and Abolition) Act, 1986 and a matching contributes of Rs.5000/- by the state to compensate the family of the child against loss of income. This fund is called —Child Labour Rehabilitation –cum-Welfare Fund.
- 4) Employment of one adult member of the families of the children so withdrawn from work and it that is not possible a contribution of Rs.5, 000/- to the welfare fund to be made by the State Government.
- 5) Financial assistance to the families of the children so withdrawn to be paid -out of the interest earnings on the corpus of Rs.20,000/25,000 deposited in the welfare fund as long as the child is actually sent to the schools; (6) Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer.

People's Union for Democratic Rights v. Union of India

In this case Public Interest Litigation was filed⁴⁸ to protect children under the age group of 14 years in the construction works for Asian Games. Court directed union of India and every state government to ensure that no child below the age of 14 years is appointed in construction of India.

Banhua Mukthi Morcha v. Union of India

This Writ Petition was filed to take steps to stop employment of children in carpet industry in the State of Uttar Pradesh⁴⁹. Court directed the central and state Governments to take steps to eliminate child labour like,

- 1) Mandatory instruction to all children either by the commercial enterprises itself or in co-appointment with it by the State Government to the children utilized in the

⁴⁷ 1996 (6) SCC 756

⁴⁸ (1982) 3 SCC 235; AIR 1982 SC 1473

⁴⁹ (AIR 1997 SC 228)

processing plants, mine or whatever other industry, sorted out or sloppy work with so much timings as is advantageous to confer necessary trainings, offices for optional, professional calling and advanced education; Apart from education, periodical health checks-up;

- 2) Nutrient food and to;
- 3) Assign the responsibilities for effective ramification of the principles.

Bachpan Bachao Andolan v. Union of India and Others

In this case the petitioners challenged the child trafficking in circuses⁵⁰. The court directed the central government to ban such employments and promoted right to education among them.

CONCLUSIONS AND SUGGESTIONS

Law has done its best for the prevention of child labour and for the protection of children. But still Child Labour is a threat for the country. Even though, the Right of the Children to Free and Compulsory Education Act, 2009 promises free and compulsory education as a right of every child in the age group of 6-14 years of age, it is still in vain. More and more efforts are needed so as to eradicate the evil of child labour and to help all the children to enjoy the fruits of education.

Suggestions:

- 1) First need is for a uniform definition of the term - *Child*. Laws differs each other in defining the term “child”.
- 2) Steps are needed to eradicate Poverty and to provide education, adequate living conditions for the people.
- 3) Unemployment is the main reason behind child labour. Better job opportunities shall be created.
- 4) Efficient education shall be provided through various agencies. So that the children who cannot come to school could access it.
- 5) There shall be wide spread propaganda about the right of children to free and compulsory education.
- 6) Speedy disposal of the cases of child labour and severe penalties should be imposed on those who promote child labour.
- 7) Rehabilitation of displaced or rescued children is essential.
- 8) The Child Labour (Prohibition and Regulation) Act should be amended so as to include more industries in Section 3.
- 9) Education should be Job-Oriented.
- 10) The involvement of NGO's, social organizations, local bodies and Media is needed to create awareness about the problem of child labour and about children's rights.
- 11) The Central government of India should help various states of India, providing

⁵⁰ (2011) 5 SCC 1

effective and widespread schemes for the people who are below the poverty line.

More and more awareness should be spread amongst the people by ways of movies, national dramas and posters for eradicating child labour.