

irretrievable breakdown of marriage is a facet or an extension of concepts DESERTION and CRUELTY (in particular Mental Cruelty). The several judicial pronouncements as illustrated hereinabove indicate that though the principle "Irretrievable breakdown of marriage" has not been part of the statute so far, yet its ingredients have already been interpreted and compared with the existing concepts of "Desertion" and "Cruelty" and the new principle of irretrievable breakdown of marriage comes within the ambit of existing provisos of Hindu Marriage Act.

The wordings of the proposed insertion of Section 13C to the Hindu Marriage Act appears to be an act in isolation and in clash to the already existing provisions of Section 13(1)(ia), 13(ii) and 13(iii) of the Hindu Marriage Act. The proposed Section 13C on a bare reading gives an impression that mere living apart by the spouses though under a same roof for a period of three years even without presence or requirement of the ingredients of Section 13(1)(ia), 13(ii) and 13(iii) qualifies them for seeking divorce under irretrievable breakdown. It would have been apt and prudent for the legislative wizards to have provided the explanation indicating the

nature and its scope of the words constituting 'IRRETRIEVABLE BREAKDOWN' and "LIVING APART" with relevant explanatory notes narrating the circumstances under which the period of living apart for three years constitute or qualify to consider marriage as irretrievably broken down. The normal practical prudence indicate that divorce under the proposed Section 13C cannot be granted without the satisfaction of the ingredients as provided in the existing provisions of Section 13(1)(ia), 13(ii) and 13(iii) of the Hindu Marriage Act.

Generally legal legislations with proposed amendments are to take birth to provide better and new clarifications to avoid ambiguity and curb pending litigations to serve the interests of humanity and justice at large. In my considered view with due respects and regards to all the legal luminaries, the proposed Marriage Laws Amendment Bill 2010 with its proposal to insert under Section 13C the concept of "Irretrievable Breakdown" as ground to grant divorce with its incidental proposed provisos requires reconsideration for its introduction or insertion to the Hindu Marriage Act will serve no new purpose to resolve the marital litigations relating to divorces in India.

ROLE OF JUDICIARY IN PROTECTION OF CHILD LABOUR IN INDIA

By

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Introduction :

Children are blooming flowers of the garden of the society and valuable assets of the nation. It is therefore our duty to protect these tender flowers from damaging effects of excess exposure. Unless tender plants are properly nourished, it has little chance to go

into a strong and useful tree. The society must be given first priority to the welfare of the children.

In the words of Mr. Justice *Subba Rao* "Social Justice must begin with children. Unless tender plant is properly tended and nourished, it has little chance to grow in to a strong and

useful tree, so first priority in the scale of social justice shall be given to the welfare of the children.¹

Almost 1/3 of the world population comprised of children, they deserve to be cared and protected to keep up and improve their position. Children are an important component of the social structure and the potential future careers of culture, social Justice, therefore demands Justice to children". The need for providing protection and safe gourd to the children. The Genève Declaration of Right of the Child 1942 and was recognized in the universal declaration of Human Right, 1984 and since in the statutes of specialized agencies of the UNO, Article 25 of the universal declaration of Human Rights, 1984 provides that "Mother hood and childhood are entitled to special care and assistance.

All children,

whether born in or out of wedlock shall enjoy the same social protection."

The phenomenon and problem of child labour is centuries old and has allowed Socio-economic attention and protection. Child labour is more or less seen in all periods of time and it varies in nature and dimension depending on the existing socio-economic structure of society. They constitute a hidden source of potential development of a growing nation. The nation must be given social economic and cultural protection to strengthen the children. The living conditions of the child labour show that they are socially neglected, economically exploited and normally tortured. Girl children engaged in domestic works and in industries are morally tortured under the pressure of economic circumstances.

In India child labour is engaged in cultivation, (Agricultural labour), live stock, Forestry, Fishing, Plantation, Mining and quarry (Stone polishing), Manufacturing processing,

serving and repairs, Constructions, trade and Commerce, Transport , storage and communication, and in domestic work. Most of the children are working in dangers and harmful works.

Article 24 of the constitution of India lays down that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any of the hazardous employment. The I.L.O. and U.N.O identified children below the age of 15 as child labour. The Mines Act, 1952 prohibits children below the age of 18, their presence in any part of mine which is below ground or in an open – cast working in which mining operations are being carried. The employment of children Act, 1938 considered employment below the age of 15 as an evil. The Beedi and Cigar workers (Condition of employment) Act, 1966 prohibits employment of children below age of 14 in any industrial premises. The International Child Labour rights Agreements, 1989 considered the child below the age of 18 as child labour. In India a child below the age of 14 working in any place is prohibited.

Constitutional Provisions

There are a number of constitutional and legislative provisions and enactments passed time to time by the central and the state governments in India to eradicate the problem of child labour in the nation.

→ Article 21-A, of the constitution right to education:

The state shall provide free and compulsory education to all children of the age of 6 to 14 yrs in such manner as the state, by, Law, may determine.

→ Article 24 of the constitution, prohibition of employment of children in factories *etc.*

→ No child below the age of 14 shall be employed in work in any factory or

1. Child in India - Dr. Mitesh Bandiwala 1986 p.127.

mine or engaged in any other hazardous employment.

- Article 39(e) of the Constitution the state shall, in particular, direct its policy towards securing:

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 avow.

- Article 39(f) of the constitutions:

Emphasize is given to see that childhood and youth are protected against exploitation and moral and material abandonment.

- Article 45 Legislative Enactments:

The Central Legislations dealing with prohibition and regulation of child labour can be divided under two categories.

1. General Legislations
2. Specific Legislations

General Legislations are :

1. The Child (Pledging of Labour) Act, 1933.
2. The Child Labour (Prohibition and Protection of Children) Act, 1986.
3. The Juvenile Justice (Care and Protection of Children) Act, 2000.

Specific Legislations are:

1. The Factories Act, 1948.
2. The Plantations Workers Act, 1951.
3. The Mines Act, 1952.
4. The Merchant and Shopping Act, 1958.
5. The Motor Transporters Workers Act, 1961.

6. The Beedi and Cigars Workers Act, 1966.
7. The Dangerous Machinery Act, 1983.
8. Shop and Establishments, Act,

Child Labour (Prohibition and Regulation) Act 1986, seeks the government to ban employment of children below the age of 14 in factories, mines, and hazardous employments and regulates the work of conditions of children in other employment.

National Child Labour Project (NCLP) 1974

The NCLP scheme started in the year 1988. The scheme is the major scheme for the rehabilitation of child labour. Under the scheme, project societies at the District level are fully funded for opening up of special schools/Rehabilitation centers for rehabilitation of child labour.

- The Special school/Rehabilitation centers provide non –formal education, vocational training, supplementary nutrition, stipend *etc.*, to the children withdrawn from employment.
- The Child workers identified in the survey are put in the special schools provide the following facilities:
- a. Non-formal/formal education
 - b. Skilled/Craft trading
 - c. Supplementary nutrition @ Rs.5/- per child per day
 - d. Stipend @ Rs.100/- per child per month.
 - e. Health care facilities, through a doctor appointed for a group of 20 schools.

Role of Judiciary:

In spite of all these constitutional provisions, legislative enactments, children are forced to

work and put to many hardships. Public interest litigations have been filed in the interest of child labour.

On the role of the Indian Judiciary, Justice *Bhagwati* says that, the Judiciary has to play a vital and important role in eliminating exploitation and Justice². It was only during the post emergency era that the judges of Supreme Court have begun to feel that they are also accountable to the people for the existence of judicial power. Consequently, the court reacting sharply, to the misery and suffering of the poor has begun to function as a poor man's court. In the process, the court has devised new strategies, new remedies and evolved new concepts to transform the theoretical constitutional principles into functional valves. The constitutional principles forged by *Bhagwati* court in *Asiad workers*,³ *Bandu Mukti Morcha*,⁴ and *Neeraja Chowdary*,⁵ are the outcome of the exercise of permissible Judicial legislation further the substantive social policy embodied in Bonded Labour System (Abolition) Act, 1976. The court in the above cases virtually acted as bonded labour law – maker.

A number of writ petitions were filed before the Supreme Court by way of public interest litigation for the enforcement of Article 23 of the Constitution and also the Child Labour Prohibition and Regulation Act, 1986.

In *People's Union for Democratic Rights v. Union of India*,⁶ the Supreme Court held that construction work is hazardous work and therefore under Article 24, of the constitution

no child below the age 14Y can be employed in the construction work, even if construction industry is not specified in the schedule to the Employment of Children Act, 1938. The Court advised the Union Government to take immediate steps for inclusion of construction work in the schedule to the Act and to ensure that the constitutional mandate of Article 24 is not violated in any part of the country.

In *Labour Working on Salal Hydro Project v. Jammu and Kashmir*,⁷ in this case also the Supreme Court has held that the construction work is a hazardous work and children below the age of 14 can not be employed in this work through though construction work was not in the schedule of the Employment of Children Act, 1938.

In *M.C. Mehta v. State Tamil Nadu*,⁸ a public interest litigation was filed on the issue of employment of children in match industry, the Court held that the children below the age of 14 can not be employed in any hazardous industry or mines or other work. The Supreme Court directed that the children can not be employed in match factories in the process of manufacturing. It, further, stated that they can be employed in the process of packing which is an area away from the place of manufacturing by following the special facilities *i.e.* quality of life, minimum wage, education facilities, recreation, basic diet during the working period, medical attention, compulsory medical insurance must be paid by the employer and providing job oriented education.

Lakshmi Kanth Pandey v. Union of India,⁹ case was admitted in the Supreme Court on the basis of a latter complains of malpractices indulged in by social organization and voluntary agencies engaged the work of offering Indian Children in adoption to

2. Justice O. Chinnappa Reddy, Towards a new Jurisprudence, "Journal Bar Council of India, Vol.4, 205-1975.

3. *P.U.D.R. v. Union of India*, AIR 1982 SC 1473.

4. *Bandhu Mukti Morcha v. Union of India*, AIR 1984 SC 802

5. *Neeraja Chowdary v. State of M.P.*, AIR 1984 SC 1999.

6. AIR 1983 SC 1473.

7. AIR 1984 SC 117.

8. AIR 1991 SC 417.

9. (1984) 2 SCC 244.

foreign parents. It was complained that the children were being transferred to distant lands at the great risk of their lives without providing any shelter. They, sometimes, become beggars and prostitutes. With the object of ensuring the welfare of the children Justice *Bhagwati* directed the Government and other agencies dealing with the matter to follow the principles and norms laid down by the court in such cases as it is their constitutional obligation under Articles 15(3) and 39(c) and (f) to ensure the welfare of the child.

In *Sheela Barse v. Union of India*,¹⁰ public Interest litigation was filed before the Supreme Court by a social worker relating to detainment of children below the age of 18 in jails in different states of the country. The Court held that the state should enforce the provisions of the Children's Act, enacted by the respective states in India, effectively. The Court also said that the Parliament should pass a central legislation on this subject.

The Supreme Court of India gave certain directions on the issue of elimination of Child Labour in hazardous industries¹¹. The main features of judgment are:

1. Survey for identification of children
2. Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions.
3. Contribution @ Rs.20,000/- per child to be paid by the offending employers of children to a welfare fund to be established for this purpose.
4. Providing employment to one member of the family of the child.
5. Financial assistance to the families of the children so with drawn to be paid out of the interest earnings out of corpus fund.

6. Regulating the hours of work for children in non – hazardous occupations – not exceeding six hours per day. Providing education at least two hours in a day with the cost of employer.

Conclusions:

Child labour is a social evil in developing and under developed countries. The prevalence of it is shown by the child work participation rates which are higher in India than in other developing countries. The main cause for child labour is poverty. Children are forced to work by their parents for additional income to maintain the family. Some parents also feel that a formal education is not beneficial, and that children learn work skills through labour at a young age. These views are not correct. Now-a-days education is not affordable, their earning are inadequate hence children are sent labour work.

Education in India needs to be improved. High illiteracy and dropout rates are reflecting the educational system in India. Poverty plays a major role in the ineffectiveness of education system. Dropout rates are high because of children are forced to work in order to support their families. Compulsory education may help in regard to these attitudes. In some states in India compulsory education has worked effectively in those areas.

Child labour can not be eliminated by focusing on education. The Government of India must take steps to improve the family income of poor families. Once family income improves, automatically parents will send their children to schools.

The central and the state government are enacting laws to provide adequate relief but not implementing effectively. Number of initiatives have been taken by the Government and Non Governmental Organizations to eliminate this evil and rehabilitate the child labour.

10. (1986) 3 SCC 596.

11. *M.C. Mehta v. Union of India*, (1996) 4 SCC 750.

There is a need for spreading awareness among the community and neighborhood regarding the child labour.

Law Colleges and other educational institutes should play a major role in creation of awareness and consequent eradication of many social evils like child labour. The Students of Law Colleges should

actively be involved by forming groups to spread awareness among employer and employee and parents about the enactments passed by the Central and State Government and judgments passed by the Judiciary with regarding to protection of child labour and also explain the plan for reduction and rehabilitation of child labour in India.

PATENTABILITY OF MICRO-ORGANISMS – ISSUES, CHALLENGES AND LEGAL IMPLICATIONS

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In the contemporaneous world, it is deemed to be a matter of expediency, rather than calibrated choice, that human ingenuity, innovation and enterprise is rewarded. The premise of intellectual property law is that, recognizing and rewarding the innovator, fosters industrial and technical progress, paving way for a vibrant socio-economic structure.

Introduction:

A patent is an exclusive privilege in the form of a monopoly right, granted by State to the inventor or an assignee for a certain period of time in lieu of full disclosure of the invention. A patent is in the form of a negative right to exclude others from making, using, selling, offering for sale, or importing the patented invention for the term of the patent, which is usually 20 years from the filing date. Since it is a monopoly right, the grant of a patent must fulfil the three essential criteria of novelty, non-obviousness and usefulness. Every country in the world has same sort of conditions for granting patents.

In initial days of development of patent mechanisms there was an overburden of Ethical and Moral firewalls surrounding the idea of resting the right of commercial exploitation of certain substances and resources in the hands of a selected few. Patenting by many was opined as a capitalist centric idea¹.

With advancements in Pharmaceutical Industry and increasing stress on biotechnological research, pressure started mounting on policy makers to allow such patenting of basic life forms so as to encourage research and development [R&D] initiatives in the field which can contribute in exploring the unrecognized commercial utility of such life forms.

Definition and Meaning of Micro-Organisms:

A micro-organism or microbe is an organism that is unicellular or lives in a colony

1. Grubb W. Philips, 'Patents for Chemical Pharmaceuticals and Biotechnology Fundamentals of Global Law, Practice and Strategy' Oxford University Press, London, 2004. P.58.