

articulates that the provisions of Part VI shall not apply to the property of any Mohammedan and to any property of Hindu, Buddhist, Sikh or Jain except as provided by Section 57. That apart Section 30 of the Hindu Succession Act, 1956 enables a Hindu to make a testamentary disposition of his undivided share also in the family property. Thus if a policy of a life insurance is held as a Hindu Joint family

asset, each coparcener can dispose of his share in it by testamentary disposition. When a deceased policy holder made an assignment of policy to the Life Insurance Corporation against is loan before death, his heirs could not claim the outlay of amount under the policy without production of a Succession Certificate as held in *Madhu Gar v. LIC of India*, (1999) Company Cases 939 (Delhi).

CHILD LABOUR - AN INSIGHT

By

—D. SRUJANA,

Advocate

Hyderguda, Hyderabad

Childhood is a period of wonder and an era of true freedom. But in India this is not true for nearly 13.5 million children between the age group of 5 to 14 years, receive very unusual and alarmingly strange introduction to their lives. They lack basic amenities and are forced to labour at a very young age and spend major part of the day sweating most of the time under a crooked master for a meager pittance. This child labour still vastly persists though Constitutionally, ethically, and legally undesirable. Children in most cases are scapegoats of poverty. They bring income though small would supplement their parents income. According to me the menace of child labour is prevalent in two forms.

- a. Exploitative child labour,
- b. Hazardous child labour

There are many family enterprises which are non-exploitative but hazardous. On the other hand there is child labour prevalent everywhere which is non-hazardous but exploitative. Once the above types of child labour is eliminated, almost ninety per cent

of the childhood trauma is removed from the society. Then the only one kind of child labour remains that is non-exploitative and non-hazardous. This one is erased gradually as the society is enlightened.

According to 43rd National Sample Survey (1987) report the estimated number of child labour is 17 million which is gone up to 20 millions at present.

Constitution and Child Labour :

Indian Constitution is one of the few and one of the foremost Constitutions to specifically refer and respect rights of children. The Constitution provides for the prohibition of the employment of children in any form. The Constitution contains provisions in respect of children under Part III that is under the very Fundamental Rights and Part IV as well, that is Directive Principles of State Policy.

Abolition of child labour has been held to the obligation of the State and the practice of the same has been held to be a violation of basic human rights.

The above statement was made in the case of *M.C. Mehta (Child Labour Matter) v. State of Tamil Nadu*, AIR 1997 SC 699.

Article 24 recognises from now on the Right against exploitation of a Bonded labourer and to be rehabilitated after release.

This was held in the case of *Bandua Mukti Morcha v. Union of India and others*, AIR 1984 SC 802.

And also in the case of *Neeraja Choudary v. State of Madhya Pradesh*, AIR 1984 SC 1099.

The State has the obligation to preserve the life of every person, including an offender by providing adequate medical aid.

The above statement was held in the case of, *Paramanand Katara v. Union of India and others*, AIR 1989 SC 2039.

A prisoner is also entitled to the bare necessities of life such as adequate nutrition, clothing, shelter and facilities for reading, writing *etc.*, and meeting his family and friends subject to the prison regulations.

This was held in the case of, *Francis Coralie Mullin v. Union Territory of Delhi and others*, AIR 1981 SC 746.

And also in the case of *A.K. Roy v. Union of India*, AIR 1982 SC 710.

Reasons for continuity :—Patents are the root cause for the nurture of child labour. Employers stand next to them to readily invite small children to works thus reducing the cost of production. Meagre supplementary income that these tender hands bring is in a way self defeating personally and socially.

Health hazards and such other aspects :—Industries like glass, carpet, beedi making, diamond cutting, plastic are very harmful to children as they release toxic fumes which are health destructors. They directly

affect the muscles to heart and cause hindrance to pulmonary system as well, thus causing permanent damage to the general health as a whole.

Supremacy of Supreme Court of India :—In spite of all laws child labour thrives without any hindrance from any quarter in the society. In the year 2006, the child labourers in the cities of Mumbai and Delhi are rescued in hundreds, speaks about the quantum of penetration of this practice. Nearly 500 minors were freed after a raid in the year 2005 by a raid conducted by Delhi Police. Also children numbering nearly 465 are rescued by police working in exploitative conditions in industrial units located in the congested Madanpura area in Central Mumbai.

A Public Interest Litigation (PIL) filed jointly by a group of three organizations from across the country claimed that the Child Labour (Prohibition and Regulation) Act 1986 which disallows the employment of children only in hazardous jobs, inadvertently legalizes other forms of child labour. The petitioners urged that a directive should be issued to the State Governments to make changes to all existing laws relating to child labour, including the Child Labour (Prohibition and Regulation) Act, the Plantation Labour Act, the Children (Pledging of Labour) Act and the Apprentices Act. The amendments, they argue, will ensure that the Acts conform to the Constitution, the UN Convention of Rights of the Child and the International Labour Organisation's Minimum Age Convention (The Hindu, Feb' 2006)

In December 2005, the Supreme Court issued notices to the centre on this PIL and also expressed concern at the continuance of child labour in most parts of the country. The Court has sought a response from the Indian Government and all the State Governments on the prohibition of all forms of the child labour. Supreme Court has also

asserted the enforcement of right to education of all Indian children in the 6 to 14 age groups. Referring to Article 21A of the Constitution of India, which guarantees the right to education to all children between the ages of 6 to 14 years, on January 31 the Apex Court said "After the amendment, there is no scope for child labour. There can't be any place for children other than school. If there is no place for children other than school. If there is no school, the State has to provide that."

Child Slavery :

United Kingdom reports more than 218 million children aged between 5 and 17 years are working as child labourers in the world today and 126 millions are in hazardous works.

And of these 8.4 millions are trapped in carrying out the very worst forms of illegal, dangerous and degrading tasks.

The report entitled 'Small Hands of Slavery' presents an overview of the scale of child slave labour and names of eight most prevalent forms affecting children.

Those eight are,

- * Child trafficking
- * Commercial sexual exploitation
- * Bonded child labour
- * Forced work in mines
- * Forced work in agricultural labour
- * Child soldier or combatants
- * Forced child marriages and
- * Domestic slaves

The report released in March 2007 reveals, 1.2 million children are trafficked every year either within their own country or across the borders.

An estimated 1.8 million are being sexually abused or exploited for profit while agricultural work is a daily reality for 132 million children under 15 years. And it is illegal to recruit and use children under the age of 15 as combatants or in other roles in conflicts. More than thirty thousand children are present in this area and some are as young as seven years are currently associated with fighting forces.

Poverty, threats, physical and sexual violence and family debts, all play a part in child slavery, it found forcing many into working long hours for little or no pay in cases for years together. Finally the report suggested that public as a whole or in part should lobby their concerned Member of Parliament to make them put effort to eliminate the menace of child labour.

A three week march by the children ended on 22nd March, 2007 as a part to demand framing a law to check child trafficking for bonded labour. The rally called for 'repatriation and rehabilitation of victims of child trafficking. It is very unfortunate thing that India will soon become the biggest hub of child trafficking in the World. International Labour Organisation study reveals that the victims are held up in sexual and labour exploitation doing domestic works, working in factories, on the streets, and as jockeys in camel races especially the situation is worse in South Asian countries.

As regards Andhra Pradesh is concerned the problem of child labour is in fact the biggest menace in the State apart from others. However this fact is not officially announced owing to political reasons. International Labour Organisation (ILO) has officially pronounced a figure of 14 lakhs children are suffering from child labour problem in this single State alone.

Many Constitutions instituted great provisions against child labour. Many more industrial countries have instituted trade

embargoes on goods produced by child labour. A lot of International Agreements and resolutions abolished the same on paper. Despite campaigns, movements mounted against it world wide, it is next to impossible to make a perceptible dent on the practice because it is indispensable for the very survival of poor households with no alternative sources of income, and even where there are other earning members, the additional incomes come in handy to meet emergent needs.

Yet another contributing factor of the child labour is that finding work is easier for children than it is for elders in the family.

There are yet another number of studies showing a strong correlation between child labour and poverty. In this sense, putting an end to child labour will be possible with the eradication of poverty.

Conclusion with suggestions :

- (a) It is important to put effort to know and eliminate the cause of child labour. Predominantly poverty and the level of it.

- (b) Interestingly there is some ambivalence among researchers on the question whether abolishing child labour is in the children's own interests and whether working children own best interests and whether working children can be said to be truly disadvantageous?
- (c) In the present conditions prevailing in developing countries the drastic erasing of child labour is quite impossible, therefore a via media solution of many is that to combine working with schooling and learning.
- (d) It is the immediate duty for all those nations to create necessary, healthy working conditions which would facilitate both working and learning go hand in hand with each other. This would in other way enable child to acquire skills of social integration.
- (e) I therefore feel that real remedy is not to deprive families of essential resources but to make education relevant and accessible to working children.

SEXUAL ABUSE OF CHILDREN

By

—D. SRUJANA,
Advocate
Hyderguda, Hyderabad

India is house without doors and fence built in the midst of a dark forest. If so individuals have to either become prey of wild animals or develop individual self defence. Though self defense is a natural phenomenon it becomes meaningless if it is a compulsion. Owing to ostensible institutions meant for protection of individual and society

and equally flaunting laws individual self-defense is pushed obviously to the back seat. Especially women protection is neglected though spoken loud in laws. Government of India asserts in Constitution of India that “a duty is cast on every citizen of India to renounce practices derogatory to the dignity of women”.