

and the two subsequent decisions of our High Court in Yemmiganuru Municipality and Palakole Municipality which seem to be clear, the reasoning in the case under discussion by His Lordship Honourable Sri V.V.S. Rao, J, is not correct in my view and it also appears to '*per incuriam*', because the earlier decision in the Vijayawada Municipality case was decided by a Bench.

12. In the decision under discussion, a reference is made to another earlier Division Bench decision of His Lordship Honourable

Sri *Jeevan Reddy* J, reported in 1977 (2) APLJ 272. But this is a case of surcharging a Sarpanch for defalcation of funds of Panchayat. In that case the suit was based upon an audit report and Surcharge Certificate issued by the Audit Department. That is not a case of house tax or any amount due under a contract.

13. Therefore, I am of the opinion that the above ruling in 2002 (2) ALD P281 is not correct and that it is necessary to settle the law by a larger Bench.

### CHILD LABOUR : THE ERITREAN SCENARIO

*By*

—Dr. MOHAMMED S. HUSSAIN,

M.A., M.L.I.S., L.L.M., Ph.D

Assist. Professor - II. Law School,

University of Asmara

The child place is home and second home is the school. It is the prophecy in some sacred books "child is the incarnation of God" and such child should not be put to work at such age. It is the age of learning and not earning. This paper is concerning Child Labour in Eritrea which highlight few causes of child labour and an attempt is made to highlight certain issues with their remedies which would be a beginning or first step to stir-up of issues involved regarding such evil.

In Eritrea generally persons who are under the age of 18 years are divided into two categories. Under the first category falls those who are under the age of 14 and under the second category fall those who are between the ages of 14 to 18 years. The first category is generally what we call children and according the proclamation No. 8/91 (An amended Labour Code under Eritrean Labour Proclamation No. 118/2001 has been enacted on of November 15, 2001 repealing Labour Proclamation No. 8/1991),

the employment of these children is prohibited. The second category is called "young persons" who according to the proclamation can be engaged in light works that is not dangerous to their health."

There are many causes of child labour problems like poverty (root cause of child labour), a big family, drop out of school, social attitude, structure of labour market, divorce *etc.*, In divorce, the children deprive of parent love and affection which affects them morally and leave their home and quit school and try to earn themselves. Such child can be abused as well as harassed by the employer either in formal sector or informal sector. When we speak of cultural, we see specially in rural areas a boy of six and seven years is herding cattle and in case of girl she is maid for her family or she may be employed in houses for doing domestic work. In capital of Eritrea, in most places it is observed that the boys are engaged in boot/shoe polishing and girl children are working in bars and hotels. Is it the age of

earning when they are supposed to be in the process of learning. Death of the parents where there is no one to take care of them and they will be forced to work for their livelihood. In case of deportees who were sent out from Ethiopia to Eritrea, they also forced to work irrespective of their age. The father who became martyr because of earlier or recent war and their children to undergo child labour. In the family where suitable age group children undergoing conscription (draft) and when there is big family and for bread and butter also child are employed to earn money.

As it is obviously known that most of their Eritrean families are living on food aid. There are 80% of the Eritrean people are engaged in agricultural activities as their means of livelihood. In spite of this they could not meet their food requirements of the nation. Annually hundreds of thousands of metric tons should either be donated or imported which clearly shows the food shortage. These families especially parents instead of engaging themselves in whatever kind of job, let their children work in an unpleasant work and as a result would shoulder the responsibility of family maintenance and care. Moreover, recent war with neighbour country made the situation in such a way the families are disturbed and in some families their bread winner was no more and such situation also made them to work to their livelihood.

In this aspect, the family is not financially in need but only is in pursuit of more money to live luxuriously or lavishly in such case child is ordered by his family member to be engaged in certain kind work. As a result the child would decline his education inclination. The vested interest of the child also as he/she gets her/his share in their income, which can be utilized, lavishly for their own sake. One more aspect under this category is that, families do send their children to certain technical undertakings

such a mechanical work or skilled works thinking that they will achieve certain technical knowledge, and the owner of the undertaking will take advantage of this apprenticeship (some changes may be brought under new labour code) opportunity and will abuse the child. High adult unemployment, which can impede production and thereby creating the worst forms of child labour.

The prone areas where child can be exploited are domestic workers, self-employed younger persons and in family undertakings. In many sectors of labour market, children have been given more and more demand than adults for the fact that the former can be paid less wages than the latter even for the same kind of work. The reasons can be *inter alia*, since child workers can hardly form labour union and since their work is outlawed in labour legislation. In domestic work, the masters prefer young girls rather than adult women so that they could sexually exploit them.

In the observation it is almost found none among the child labourer that bought even decent clothing let alone a decent living. Above all men in general are greedy and employers are no exception. They only want their profit, no matter how it comes they do not care about the child's welfare; well being, education *etc.*, Parents send their children to engage in hard labour, because families are very poor, they cannot stand any vulnerability they face. This vulnerability could be personal like death of bread winner, loss or death of a relative, social like war, divorce, desertion natural vulnerability like plague. HIV/AIDS, locust, holocaust draught/famine. Since all this should be the responsibility of parents at large and the State in lesser degree. Eritrea as an emerging nation relies heavily on its manpower especially young men and children. That is why we should give emphasis on the welfare and well being of child, since it is really

connected to the development of nation. Education and health (hence the State has undertaken a middle-level hospital at Vilaggio, South-West Asmara, is under construction at the cost of Nfa. 10 Million. The hospital will give service to 50,000 inhabitants of the south and northwestern parts of Asmara, it is in addition to the Helibeth Hospital/run by the State) should be given priority rather than occupation in rudimentary jobs. The children are in a position to stand on their feet and become productive citizens. Hence love tenderness and responsibility one has to show towards to them. If the cruelty and injustice they encounter at tender age has adverse effects in later times.

The other forms of causes as to the incidents of child labour are wide scale economic poverty and underdevelopment in the developing countries. Structural inequality to land, capital, technology, education health services, absence of social security mechanisms have increased the supply and demand for child labour. In certain parts of Eritrea collecting water has increased the pressure on women and girls to obtain free water from more distant and often dirtier sources and thereby creating an exploitative for a child labour. It is a good attempt the State undertaken in the capital city of Eritrea, water treatment plant at Adi Nifas. This will help to cope with the fast expanding size of Asmara and its water requirements. The city will be ensured of constant water supply for at least 10 years. But what about the situation in the low land areas.

There would be an absolute restriction in sexual exploitation of children for personal gratification or for financial gain, night work, work in dangerous or unhealthy conditions, work concerned with trafficking and production of illicit drugs and other dangerous activities or hazardous for the child health.

The alternatives to combating child labour include the effective legislation and its enforcement, poverty alleviation, social mobilization and awareness raising, education and training. The Constitution of Eritrea under Article 22(3) says : Parents have the right and duty to bring up their children with due care and affection; and, in turn, children have the right and the duty to respect their parents and to sustain them in their old age. Transition Civil Code of Eritrea: Parents who are the natural guardians or person who incharge of children have duty to educate and to supervise them as per Article 2052 (1)(2)(3). On 15th October, 1999, Eritrea ratified the seven conventions and one among them is Convention No.138 Minimum Age (1973) and undertake in accordance with Article 19, paragraph 5/d of the ILO constitution faithfully to perform and carry out all the stipulations therein contained. However, as to convention No.138 the Minimum Age in accordance to Article 2(1) and (4) is taken to be 14 years. Furthermore the scope of this convention is applicable only on mining quarrying, manufacturing, electricity gas and water, sanitary services, transport, storage and communication sectors. Construction, Plantation and other agricultural activities are excluded. It is the best attempt the State has repealed the old Labour Code and its place the new Labour Proclamation has emerged. It is a good sign of progress that Government has amended the Labour Code produced in congruent with the seven core ILO convention such as the right for organized and collective bargaining, abolition of forced labour, equal remuneration and others.

Through the concerning ministries, the State is launching its programme, to improve the existing farming practices and soil and water conservation activities, the involvement of child labour in village level development works is closely taken into considerations. In such areas, adults perform the work

eventually are paid for it. Either is food for work or cash for work programme. The State is campaigning against child labour using traditional media and modern media to reach children, parents, employers and community at large including teachers, spiritual leaders *etc.* Some more efforts to be taken by the State.

As the author said earlier the second home is school. The State has to pay greater attention to the educational system and hence many expatriates are employed for that endeavour. Even the State has taken up the matter in place like Senafe are where school building, hospital and other structures are razed to the ground by Ethiopian Soldrers. At present the schools and hospitals functioning under temporary shelter.

Based on the above observations and discussion one favouring the existence (permission) of child labour in certain sectors and the other opposing such permission seems unsolvable issues. Child labour is not only the issue in Eritrea; there are countries with more barbarous practices even amputating the limbs for their own gain. The upkeep of children likes primarily upon parents, the society and the last but not the least to the State. Children of tender age should be given all the possible opportunities to be the next generatio to lead this country into a propserous economy. The national surveys that is going to be undertaken by

ministry concerned should be done with earnest and at the earliest. The exclusion provision put while ratifying the minimum age convention to the mandatory provisions of the convention to some sectors such as construction, plantation and other agricultural activities are to be reconsidered. A mechanism should be provided to protect children who work in the informal sector where exploitative form of child labour is practised. The State should give due attention (of course conducted the First National Workshop on the Right of the Child, Asmara, Eritrea, December, 7 and 8, 1994 by Ministry of Labour Human Welfare) to the issues of child labour which is not yet advance stage when we compare with other under developing countries. The State has to take up the awareness to the masses and show the evil effects of child labour and build efficient school system, mobilize the society to cultivate sensitivty towards the plight of child workers, exert strenuous efforts to alleviate the poverty of people by launching job opportunity schemes. Let the author reminds once again that it is not only the responsibility of the State ( by legislation and enforcement) but also parents/persons in charge, individuals and society. These children may become the backbone of the country. Today's children will be toworrows Nation Pride. Hence, let their blossoming future should not be nipped in bud.

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### THE RIDDLE OF PASUPU-KUNKUMA

*By*

—A. RAMASWAMY, B.A., B.L.,  
Advocate, Addanki

*“Law-less Science of Law,  
The code-less myriad of precedent,  
The wilderness of single instances”.*

By Tennyson

A recent Full Bench decision of A.P. High Court reported in 2001 (3) Law Summary Page 115 held that ‘Pasupu-Kunkuma’ is a gift and nothing but a gift

2002(3) ALD June 15<sup>th</sup>