

CHILD LABOUR IN INDIA: A LEGAL VIEW

By

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1. Introduction:

Child is the dawn of human raise and a bud to become flower which spreads fragrance the future nation and coming generation a child is the very important vulnerable piece in any community and requires great and special attention. The childhood of any person entirely depends on the parents the dependence of childhood and its vulnerability compelled them to face many exploitations and ill – treatment.

In industries, factories, small establishments, plantations, and in agriculture there are thousands of working children because of the reason that the child labour is prevalent. With the advent of industrialization, employers are making efforts to get more profits at lesser cost of production *i.e.* employing a child at a very low wages. Especially the children of poor parents are employed in all kinds of work and majority of the children are employed in hazardous occupation where the children are exposed to many risks, accidents and other occupational diseases. The children have to for long hours with insufficient wages under inhuman working conditions and behind their physical capacity, specially in agriculture, plantations, industrial establishments and in unorganized sectors. Even before independence also the majority of the children were working in India specially in agriculture because India is predominantly an agricultural country. After the entry of East India company in India as traders they established some factories in India and employed the children and also adult workers in their factories with a view to have production and earn profits. This system continued for a longer period and

due to the efforts of many leaders the India got independence in year 1947 even after independence also the system of employing children continued and the Indian leaders throw some five year plans tried to eradicate the child labour. But even after having more than 60 years of independence the child labour is being continued.

2. Definition of Child Labour :

‘The term child labour has not been defined properly in any of the labour enactment and even the term child has not been defined uniformly in different labour enactments of India. The factories Act, 1948; minimum wages Act, 1948; plantation labour Act, 1951; Merchant Shipping Act, 1958; Motor Transport Act, 1961; Bidi and Cigar Workers (Conditions of Employment) Act, 1966; Child Labour (Prohibition and Regulation) Act, 1986; and Apprentice Act, 1961 defined ‘child as a person who has not completed age of 14 years in conformity with Article 24 of the Indian Constitution which provides that ‘no child below of 14 years shall be employed in any factory or mine or engaged in any other hazardous employment’. But the Mines Act, 1952 fixes the age below 16 years. Children (pledging of labour Act, 1933, Indian Ports Act, 1908 sets the age below 15 years and Atomic Energy Act, 1962 fixes the minimum age for work is 18 years there are many acts relating to shops and commercial establishments acts applicable in different states and in Union Territories define the ‘child’ as a person below the age of 12 to 15 years..

Child labour broadly be defined as the that segment of the child population which

participate in work either paid or unpaid. 'Child labour' means a working child who is between 6 and 15 years of age is not attending school during the day, is working under an employer or is learning some trade as an apprentice. The term 'child labour' is commonly interpreted in two ways: first, as an economic practice, secondly as a social evil.

3. *Rights of the Child :*

Child labour is both an economic practice as well as social evil and it has existed in some form from time immemorial but it was only after the advent of factory type units in the middle of the 19th century that children began employed in industries where they worked for long hours under appalling conditions. In the year 1875 a committee was appointed by Bombay Government and which provided for the regulation of the working hours of children below 12 years of age by passing an Act in the year 1881. Children below 7 years were not allowed to work. Between 7 to 12 years of age, they were allowed to work for 9 hours a day. This 1881 Act was applied only to units consisting of 100 or more workers and using mechanized power. In the 1891, another Act was brought which apply to units having 50 or more workers the minimum age for children was fixed at 9, and hours of work were 7 for children between 9 and 14 years of age however smaller units were not covered by the Act where the system of work was very worst the evasion of the Act was continued.

In India there is a Legislation relating to the regulation of child labour which concentrated on 4 basic issues which are specified below:

- (1) minimum age for employment of children,
- (2) a maximum period of work per day and forbidding work at night,

- (3) prohibition of certain types of work for children, and
- (4) medical examination of all working children.

The United Nations Convention on the Rights of the Child (CRC) is the first and most comprehensive instrument on children's right. It was unanimously adopted on 20th November, 1989 and was ratified by India in year 1992. This implied that India accepted the legal obligation of brining its existing laws, policies and programmes in line with the International standards as laid down by the convention. The CRC recognised the indivisibility and inalienability of children's right and not merely objects of right the convention provided the following principles for examining the implementation of the Convention:

- (1) the principle of non-discrimination (Article 2).
- (2) best interests of the child (Article 3).
- (3) the right to life, survival and development (Article 6) and
- (4) respect for the views of the child (Article 12).

The Constitution of India through many articles included in the directive principles of state policy, prescribes that child labour in factory, mines and hazardous occupations should be prohibited (Article 24 of the Indian Constitution), and that free compulsory education should be imparted to children below the age of 14 years (Article 45 of the Indian Constitution) as the tender age of children should not be abuse and that are not forced by economic necessity to vocations unsuited to their age and strength (Article 39(e) of the Indian Constitution¹). Article 24 of the Constitution provides for the prohibition of employment of Children

1. *Usha Sharma*, Child Labour in India 2006 P.vi

in factories *etc.*, which says that no child below the age of 14 years shall be employed to work in any factory or mine engaged in any hazardous employment. In the case of *Lakshmikanth v. Union of India*,² various safe guards have been mentioned in these case against the exploitation of children by the foreigners who adopt them. In case of labourers working on *Salal Hydro Projection v. State of Jammu and Kashmir*,³ it was held that the children cannot be employed in a hazardous construction work. There are many number of enactments which prohibits employment of children such as employment of Children Act 1938, Motor Transport Workers Act, 1951, the Indian Factories Act 1948, Mines Act 1952, Merchant Shipping Act 1958, Apprentice Act 1961, Beedi and Cigar Workers (Prohibition and Regulation) Act 1986.

The Article 45 of the Indian Constitution provides that for the provision for early childhood care and education to children below the age of six years. This section has been added by the Constitution (86th Amendment) Act 2002, Section 3. This new section states that the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years. This Article is very important specially for the taking care of the children of the people who are suffering with poverty and the Government has formulated some schemes and programmes for taking of the children providing medical facilities through primary health centers. But, unfortunately there is a criticism against the working of the primary health centre's in the rural areas, because the Government doctors in the rural areas are not in a position to work honestly and sincerely due to the lack of facilities for their living and many of such doctors are engaged in private nursing homes of towns and cities.

The Supreme Court In *Re. Kerala Education Bill*,⁴ has given its opinion that the Government under Article 45 can implement free and compulsory education for all children without impairing fundamental rights. The ban on Christian Minorities education institution in collecting fee is unconstitutional for violating Article 30(1) of the Constitution. The right to education upto the age of 14 years is a Fundamental Right under Article 45 and Article 21 of the Constitution⁵.

The Article 39(e) of the Indian Constitution provides that the health and Strength of the workers men and women, and the tender age of children are not abused, and that citizen are not forced by economic necessity to enter avocations unsuited to their age or strength. The Supreme Court held in *Bandhu Mukti Morcha v. Union of India*,⁶ that the Government could be compelled to give effect to social welfare legislation and labour laws by writ petition under Article 32 of the Constitution.

The Article 39(f) defines that childhood and youth are protected against exploitation and against moral and material abandonment.

4. Policies of India on the Problem of Child Labour:

It is very important to mention that over the years, India has adopted a proactive policy in the matter of tackling the problem of child labour. Provisions relating to child labour under different enactments such as the factories Act, the Mines Act, the Plantation Labour Act *etc.*, have concentrated mainly on aspects such as reducing working hours, increasing minimum age and prohibiting employment of children in occupations and processes detrimental to the health and development of children of tender age. In addition to the

2. AIR 1987 SC 232

3. AIR 1984 SC 232

4. AIR 1958, SC 956.

5. *Unni Krishnan v. State of A.P.*, (1993) 1SCC 645

6. AIR 1984 SC 802

laws existed in India simultaneously, many committees and commissions have been constituted such as the Whitely Commission (1929), the Raje Committee (1941), and Gurupadas Swamy Committee (1979) recommended laws to regulate child labour. Based on this recommendations the Government of India passed a very important act called the Child Labour (prohibition and regulation) Act (1986), a fairly comprehensive piece of legislation. It prohibits employment of children in certain hazardous occupation and processes, and regulates their employment in some other areas. It is specified specifically that through a notification dated 27th January 1999, the schedule to the Act has been substantially enlarged bringing the total number of occupations and processes listed in the schedule to 13 and 51 respectively. Six more process have also been added.

The national policy on child labour was formulated in the year 1987 in addition to the requirement of enforcing the legal provisions for the protecting the interest of children, envisaging focusing of general development programs for the benefit of child labour and project based plan of action in areas of high concentration of child labour. Under the project plan of the policy, National Child Labour Project (NCLP) have been established in different places to rehabilitate the child labour. However, the ultimate aim and objective of the National Child Labour Project is to convert working children into productive and participative members of society, voluntary organisation are being financially helped for taking up welfare projects for working children where they are provided with non formal education and supplementary nutrition, health care and vocational/skill training another important development took place in India for the Government's commitment to stamp out the problem of child labour is reflected in the announcement made in the national agenda for governance (1988). The

agenda specifies that the aim is to ensure that no child remains illiterate, hungry or lacks medical care and that measure will be taken to eliminate child labour. The Supreme Court of India in its judgment dated 10th December 1996, in a Writ Petition (Civil) No.465/1986 has given certain directions regarding the manner in which the children, working in the hazardous occupation or to be withdrawn from work and rehabilitated as also the manner in which the working conditions of the children engaged in non-hazardous occupation are to be regulated and improved on.

5. *Child Labour Laws in India:*

The following are the important enactments relating to the child labour.

- (1) The Employment of Children Act, 1938.
- (2) The Factories Act, 1948.
- (3) The Minimum wages Act, 1948.
- (4) The Mines Act, 1952.
- (5) The Plantation Labour Act, 1951.
- (6) The Merchant Shipping Act, 1958.
- (7) The Shops and Establishment Act,
- (8) Atomic Energy Act, 1962.
- (9) Radiations Protection Rules, 1971.
- (10) Apprentices Act, 1961.
- (11) The Child labour (prohibition and regulation) Act, 1986.

The above Acts are pertaining to the protection of child labour in many ways with regard to the prescription of age, protection of the health and safety of the child workers. After independence the Government of India took interest for the eradication of child labour without getting good results.

6. Conclusion:

The child labour is a very serious menace in India even after having the freedom and independence. India is not in a position to reduce the poverty because of various reasons such as corruption, non-implementation of laws meant for child properly, ineffectiveness of the enforcement of authorities of children's enactments, non implementation of policies of the Government, though appears to be good but failed to achieve the results. Lack of parental care on the child due to ignorance and illiteracy, failure of voluntary organisation specially meant for the eradication of child labour because of misuse of the funds provided by the Government and various organisation. It is pointed out that many decision have been given by the Judges of the High Courts and Supreme Court in several cases for implementing the laws very scrupulously and honestly by the authorities concerned. Therefore the writer of this Article making the following suggestion for the eradication of child labour in India.

- (1) Payment of certain allowances for the benefit of the Child to their parents as it is existed in advanced countries.
- (2) Creating work and employment to the parents of the children specially the workers in rural areas.
- (3) Strengthen the concept of rule of law

in India by way of creating legal awareness to the administrators or and authorities under various child labour acts.

- (4) Giving proper orientation and training to the teachers who are working in the rural areas for motivating the parents of the children for sending them to schools.
- (5) Establishment of vocational schools and colleges for the children belonging to the poorer sections of the society irrespective of caste, community and religion.

It is to remember the following quotations given by spiritual leaders of the country and Judges of the Supreme Court.

Smany Vivekanand said that "it is good to be born a child, but bad to remain a child". Child is the future father and mother, and future worker and future citizen.

Justice *Bhagavathi* very famous Chief Justice of India said that "the child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity into a fullness of physical and whittle energy and the utmost breath, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation".