

with its familial relationship with its members *etc.*, intact in the provisions of the Hindu Succession Act 1956.

Honourable M/s. Justice Maruti of Andhra Pradesh High Court in 1995 (1) ALD 456 = (1995) 1 ALT 814, *Musini Leela Prasad v. Musini Bhavan and others*, relating to a suit for partition of ancestral property *etc.*, filed by a wife against her husband, his brother and mother, held relying on AIR 1986 SC 1153, that the ancestral property inherited by the son on the death of his father should be treated as his separate property and his son is not entitled to a share by birth.

Before concluding it is quite apposite to quote Arnold Toyanbee "Hinduism takes it for granted that there is more than one valid approach to truth and salvation and that the different approaches are not only compatible with each other but are complementary" (The present day experiment in western civilization). This elasticity, adopting characteristic, absorptive tendency and imbibing nature is a view and

way of life, of which 'Vyavahara' (law) is one of the organic components, which made its survival possible for thousands of years.

The son's right by birth in the ancestral property is a typical and peculiar concept of Mitakshara and it is not meddled with by the Act of 1956.

This is the humble and firm view of this writer. The Honourable Apex Court may in the light of the above discussion and analysis, reconsider or review its ruling in AIR 1986 SC 1753 (*Chander Sen Case*), clarifying the position, at the earliest occasion if the unique system of joint family, with its incidents of right by birth and co-parcenary, has been abrogated under Hindu Succession Act 1956 altogether and the identity of the ancestral impress of the property wiped out by the device of partition and steer clear the law of the probable polemics in Court Halls and in the minds of people and the society.

May it please your Lordship Supreme !

NEED OF WORKERS' EDUCATION ON CHILD LABOUR — A Legal Perspective

By

—POTHURI NARASIAH, B.A., B.L., L.L.M.

Part time Lecturer,
University College of Law,
Osmania University, Hyderabad

Introduction : Child Labour has been stirring the science of the world community for long. While children must be enjoying their childhood and preparing to enter into adulthood through proper education, many of them are forced to work for long hours in human condition, often in hazardous industries. The notion that the child labour is a social problem, is a relatively recent development. This interpretation of child labour and the accompanying idea that the

child should be protected against it, came to the force when paid child labour became common, till date we do not have a common definition of child labour. But the most suitable definition is that "Child labour can be conceived to include children under the age of 15 years in work or employment with the aim of earning a livelihood for themselves or for their families the causes of child labour may be attributed to such factors as illiteracy, ignorance, low wages, unemployment,

low standard of living and our social life. But these factors can be seen to be emanating from a board cause *i.e.* poverty.

Sectors Employing Children for Work

—Children are engaged in a variety of industries or vocations – making of matches and fireworks, carpet making, glass bangle-making, brass wares, plastic and rope weaving, salt extraction, incense matches and fireworks, carpet making, glass bangle-making, beedi making, stick production, diamond cutting and polishing, biscuit making, steel rolling and chips recycling, domestic work, construction industry, *etc.*

Unorganised Sector :—

(1) Agrarian Sector – Agricultural labour and other related vocations – Animal Care/ husbandry, domestic work. 2) Ancillaries – machine parts, wires, switches, tanning, stitching for export companies, dying, printing *etc.* 3) Shop and Commercial establishment – Hotels, restaurants, dhabas, shops, mechanic repair services, petrol pumps and automobiles servicing stations. 4) Cottage, handicrafts and handloom industries 5) Constructive work 6) Self-employed ventures – Vendors, hawkers and other street business like rickshaw pulling, shoe-shining, car-cleaning, rag-picking and also in black trends like smuggling, drug trafficking, begging and prostitution.

Organized Sector :—Food Product, wood and wooden products, textile products, chemical and chemical products, non-metallic mineral products, plantation *etc.* Indeed child labour exists more in unorganized sector than in organized, which makes its detection difficult. India is notorious for its neglect of the girl child. The problem is multifaceted, it encompasses foeticide, female illiteracy, social discrimination, child marriage and so on.

Problems of Child Labour :—The data relating to the nature and the extent of child labour in India is simply mind boggling. The woes of child labour gets aggravated when

they are subjected to exploitation by the employer. They work in the capacity of their adult counterparts they receive less remuneration. Long hours of work and exposure to hazardous working conditions make them susceptible to various diseases. While working, they are exposed to various chemical fumes (*e.g.* in electroplating, spraying, tobacco fumes *etc.*) and hot flames which causes several health hazards. The most common diseases found among them are Tuberculosis and bronchitis, muscle atrophy, weakening and malfunctioning of bones, eye diseases, stunted growth, finger arthritis, damage of finger nails and excessive fatigue and malnutrition effects functioning of endocrine glands.

The worse cases of exploitation on child labourers have been seen in the form of bonded labour. According to an estimate of World Bank around one and a half crore are working as bonded labour in India. The parents obtain a loan and surrender their child as security. Child labour which so far means exploitation of children has now consumed even a more sinister form. In Mumbai and Goa for example, “Pleasure Packages” of sex with children are available. An estimated 20 percent of the 1,00,000 prostitutes in Mumbai alone are below 18 years of age.

Similarly, the self-employed children have to face the wrath of police, municipal employees and adults employed in the same occupation. Infrequently, problems are also created by drunkards or anti-social elements.

Thus, child labour has wide ranging, physical and mental repercussions which subsequently damage the child’s physical and mental growth to an irreparable extent.

Laws Against Child Labour in India

—In India there have been several legislation (both before and after independence) seeking an end to child labour and to protect children rights. The first law relating to child labour, was “Children (pledging of labour) Act, 1933”.

It prohibited pledging of labour of children and provided for penalty for parents/guardians pledging the labour of any child. It was later amended several times in 1949, 1951 and 1978.

Constitutional Provisions :—The Indian Constitution provides certain measures to protect children right and thus seeking an end to child labour. The provisions relating to children are :

- * Article 15(3) of the constitution lays down that “nothing in this article shall prevent in the state from making any special provisions for women and children”.
- * Article 21-A right to primary education Added to (86th Amendment, 2002).
- * Article 23 prohibits traffic in human beings and beggar and other similar forms of child labour, any contravention to this article is an offence and shall be punishable under law.
- * Article 24(1) provides that no children below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- * Article 39(e) and (f) direct the state of evolve policies for protection against exploitation and promotion of facilities for their development in healthy environment.
- * Articles 42 and 43 provide for securing just and human conditions of work ensuring a decent standards of life and full; enjoyment of leisure and social and cultural opportunities *etc.*
- * Article 45 lays down compulsory primary education for children upto 14 years of age.

Provisions relating to child labour are contained in several enactments which have

concentrated mainly on aspects such as reducing working hours, increasing minimum age and prohibiting employment of children in occupation and processes detrimental to the health and development of children of tender age. For example,

1. The Factories Act 1948 prescribes the minimum age of employment in factories as 14 years. The 1954 amendment prohibits employment of children below 17 years to work at night.
2. The Plantation Labour Act, 1951 prohibits the employment of children under 12 years in plantations.
3. The Mines Act, 1952 prohibits the employment of children under 15 years in mines. For underground mining it lays down that the minimum age should be 16 years and there should be a certificate of physical fitness from a doctor.
4. The Merchant Shipping Act 1958 prohibits employment of children below 15 years for work in any capacity in any ship except in certain specified cases.
5. The Motor Transport Workers Act, 1961 prohibits employment of children under 15 years in any motor transport undertaking.
6. The Apprentices Act 1961 prohibit apprenticeship/training of a person under 14 years.
7. The Beedi and Cigar Workers (Conditions of Employment) Act 1966 prohibits employment of children below 14 years in beedi and cigar making and employment of persons between 14 and 18 years between 7 pm and 6 am.

In the mean time the problems of child labour were engaging the attention of many committees on child labour. Significant among them were National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979), Sanat Mehta Committee

(1984) and others. Their deliberations and recommendations culminated in the enactment of “Child Labour (prohibition and regulation) Act, 1986” which is now the basic law specifically dealing with the child labour.

This Act mainly :—

- (1) Bans the employment of children, *i.e.* those who have not completed 14 years of age, in specified occupations and processes;
- (2) Lays down a procedure to make additions to the scheduled of banned occupations and processes;
- (3) Regulates the working conditions of children in occupations where they are not prohibited from working;
- (4) Lays down penalties for employment of children in violation of the provisions of the Act, and other Acts which forbid the employment of children;
- (5) Brings out uniformity in the definition of “child” in related laws.

Basically the Act prohibits employment of children below 14 years of age in occupations and processes listed in Part “A” and Part “B” of the Schedule of the Act. Through a notification dated 26-5-1993, the working condition of children have been regulated in all employment which are not prohibited under the Child Labour (Prohibition and Regulation) Act, 1986. Through a notification dated 27-1-1999 the schedule has been modified by adding six more occupations and 33 more processes. Now the employment of child labour is prohibited in 13 occupations and 51 processes listed in the amended schedule of the Child Labour (Prohibition and Regulation) Act, 1986.

National Child Labour Policy and Plan of Action :—The Government of India announced the National Child Labour Policy in August 1987. The reason for adopting a separate Child Labour Policy probably was

to focus attention on a problem which was defying solution inspite of action initiated in the early years of the twentieth century. A programme of action was, therefore, also formulated to initiate a vigorous process of progressive elimination of the Child Labour.

It was considered necessary to set up special projects for the protections and welfare of the child labour in areas known to have high concentration of child labour. These project would identify the child labour, withdraw them for employment and rehabilitate them in the regular pursuits suitable for their age.

In pursuance of this idea 12 National Child Labour Projects (NCPs) were started in eight states, *viz.* Andhra Pradesh, Madhya Pradesh, Bihar, Orissa, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh.

The major activities of the project are implemented through the District Project Societies with District Collectors as chairpersons. The other members include officers of other concerned departments and NGOs. Some of the important programmes benefiting working children and their parents are—

- (1) Swarna Jayanti Gram Samriddhi Yojna
- (2) Swarna Jayanti Swarojgar Yojna
- (3) District Primary Education Programme (DPEP)
- (4) Mid-day Meal Scheme for School Children
- (5) Indira Awas Yojna
- (6) Employment Assurance Scheme (EAS)
etc.

In all 133 districts have been identified as Child Labour endemic districts of the country. At present NCPs have been started in 96 child labour endemic district of 13 states.

National Authority for Elimination of Child Labour (NAECL) :—A major

announcement was made by the Prime Minister on 15th August, 1994 for withdrawing child labour working in hazardous occupations and rehabilitating them through special school. As a follow up, a high powered body known as the National Authority for the Elimination of Child Labour (NAECL) are –

- (1) To lay down policies and programmes for elimination of child labour particularly in hazardous industries;
- (2) To monitor the progress of implementation of the programmes, projects and schemes for elimination of child labour;
- (3) To co-ordinate implementation of child labour related projects of the various sister Ministers of Government of India to ensure convergence of services for the benefit of the families of the child labour.

Secretaries to the Government of India in the Ministers of labour, Information and Broadcasting, Welfare, Rural Development, Textiles and Departments of Expenditure, Education, Health, Family Welfare, Women and Child Development are members of the National Authority for the Elimination of Child Labour (NAECL).

Central Monitoring Committee :—In view of the recommendations of the inter-ministerial study team, a Central Monitoring Committee was set up in February, 1999 under the chairmanship of the Labour Secretary with the representatives of the State Governments and concerned Ministries as member. Monitoring mechanism has been strengthened at the state level and the district level also.

National Resource Centre for Child Labour (NRCCL) :—The National Resource Centre for Child Labour (NRCCL) was set up in V.V. Giri National Labour Institute of Noida in March 1993 with financial support from Ministry of Labour and UNICEF. The

main activities of the NRCCL are documentation, publication and creation of data bank on child labour, media management, research and training, provision of technical support services *etc.* The main objectives of the centre are to assist the National and the State Governments, NGOs, policy makers and other social groups in the field of child labour by providing various support services and to develop the capabilities of various target groups involved in various aspects of child labour.

Contribution of Supreme Court in Elimination of Child Labour :—One of the three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and assumption of its jurisdiction, and more importantly, by innovative interpretation and application of the human rights provisions of the constitution.

The Hon'ble Supreme Court of India gave a historical judgment on child labour in 1996 when writ petition was filed by *M.C. Mehta* against match-factories of Sivakasi (Tamil Nadu). The plea was that these factories, by involving children in hazardous process had made a gross violation of fundamental right of children guaranteed by Article 24.

The Supreme Court gave directions for identification of child labour and subsequent actions to be initiated thereafter. They are :

- (1) The manner in which the children working in hazardous and non-hazardous occupations are to be withdrawn from work and rehabilitated.
- (2) Payment of compensation amount of Rs.20,000/- by the offending employer for every child employed in contravention of the provisions of the Act for hazardous employment.
- (3) Giving alternative employment to an adult member of the family in place

of the child withdrawn from hazardous occupation or payment of an amount of Rs.5,000/- by the appropriate Government for each child.

- (4) Provision of education in a suitable institution for the child withdrawn from work and payment of interest on the corpus of Rs.25,000/- to child's family member to be spent for the child's education for at least 2 hours a day at the cost of the employer.

This judicial pronouncement :

- (1) Has brought into light the number of children engaged in both hazardous and non-hazardous industries which will help in formulation of better policy and its implementation at the state and union level;
- (2) Will deter the employer from employing child in hazardous activity;
- (3) Will help lessen the exploitation of child labour in work place.

The Supreme Court of India has in fact declared that it has a special responsibility "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence".

Conclusion :—Child labour in the form of child work is an age-old tradition. Hence this problem cannot be eliminated overnight. It is a social evil and is intertwined with other common problems such as poverty, illiteracy *etc.* Hence, a multi-pronged strategy is to be followed to tackle this problem.

Vigorous efforts should be made/undertaken to eliminate poverty, as it is the most basic cause of perpetuation of child labour. Both short-term and long-term measures should be adopted to push the people above poverty line.

Besides economic measure, education of both adult and children should be given top most priority. Efforts for raising adult literacy should be stepped upto make the illiterate and ignorant parents aware of the long-term value of education of their children and also avail of the various economic packages provided by the Government. This will result in higher standards of living which may keep them away from sending their children to work.

The vacation of the schools in rural areas should be adjusted with agricultural timings which shall facilitate the children to take advantage of schooling facilities.

Strict provision should be made for free and compulsory in implementation of fundamental right of primary education upto 14 years of age for each child.

Banning child labour altogether is a long-term measure but combating exploitation is the immediate need – release of children from dangerous occupations of bondage and their reassignment in safer and less tedious tasks. This way, families who depend upon the earnings of children would not be pushed further below subsistence level.

Another important measure is creating a public awareness about the magnitude of the problem. Various organizations like schools, NGOs, village panchayats, mass media and other local means like folkdances could be used for the purpose.