



LAWS ON CHILD LABOUR IN INDIA: AN OVERVIEW

Dayabir Singh

LL.B., LL.M.

dayabirsingh@gmail.com

Abstract-- Childhood is that stage of life when the human foundations are laid for a successful adult life. Many children, instead of spending it in a carefree and fun-loving manner while learning and playing, are scarred and tormented. They hate their childhood and would do anything to get out of the dungeons of being children and controlled and tortured by others. They would love to break-free from this world, but continue to be where they are, not out of choice, but force. Through this research article author endeavor to analyse various Articles of Indian Constitution meant for protection of child labour interests and to discuss various legislations made by Indian government against child labour. It is also tried to review Committees and Commissions appointed by Government on child labour and discuss the judgments given by the Judiciary in different contexts at the relevant times.

Keywords: Child Labour, Article 23 of Constitution of India, Article 43 of Constitution of India

INTRODUCTION

India is sadly the home to the largest number of child labourers in the world. The census found an increase in the number of child labourers from 11.28 million in 1991 to 12.59 million in 2001. M.V. Foundation in Andhra Pradesh found nearly 400,000 children, mostly girls between seven and 14 years of age, toiling for 14-16 hours a day in cottonseed production across the country of which 90% are employed in Andhra Pradesh. 40% of the labour in a precious stone cutting sector is children. NGOs have discovered the use of child labourers in mining industry in Bellary District in Karnataka in spite of a harsh ban on the same. In urban areas there is a high employment of children in the zari and embroidery industry. The problem of child labour in India is one of great magnitude compared to other developing countries of the world. Not only is it eating into the very vitals of the democracy but also is affecting our productive efficiency. As a child is forced to labour under sub-human and inhuman conditions, its health is shattered and growth shunted. Thus it affects our social production in the long run. It is in recognition of this fundamental fact that much thought has been paid to the subject of child labour both in the pre-independent and post-independent periods and by the framers of our constitution. Result of this is a plethora of legislation that aims at prohibiting the incidence of child labour. Certain other legislation, while accepting the reality of employment of children in certain selected areas, tries to regulate their work environment, pay, hours of work etc.

Innocent children are employed by industries and individuals who put them to work under grueling circumstances. They are made to work for long hours in dangerous factory units and sometimes made to carry load even heavier than their own body weight. Then there are individual households that hire children as domestic help and beat and physically torture them when they make a mistake. The children are at times made to starve and are given worn out clothes to wear. Such is the story of millions of children in India painful and yet true. In this context, there is a need to study the protection and provisions made by the Indian Constitution itself for child labour. Present study is an attempt to review Indian Constitution in view point of child labour protection.

CONSTITUTIONAL PROVISIONS REGARDING CHILD LABOUR

Several articles of Indian Constitution provide protection and provisions for child labour such as: Article 15 (3) The State is empowered to make the special provisions relating to child, which will not be violative of right to equality.



Article 21 No person shall be deprived of his life or personal liberty, except according to procedure established by law. The Supreme Court held that life includes free from exploitation and to live a dignified life.

Article 21A (Right to Education) The State shall provide free and compulsory education to all children of the age of six to fourteen years, in such manner as the State may, by law, determine. Where children are allowed to work, in such establishment, it is the duty of employer to make provisions for the education of child labourer.

Article 23 Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law.

Article 24 (Prohibition of Employment of Children in Factories, etc.) No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39 (e) The State shall, in particular, direct its policy towards securing the health and strength of the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39 (f) The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Article 51A (e) It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward as the case may be, between the age of six and fourteen years.

LEGISLATIONS AGAINST CHILD LABOUR IN INDIA

The Child Labour (Prohibition and Regulation) Act, 1986

The Act prohibits the employment of children below the age of 14 years in 16 occupations and 65 processes that are hazardous to the children's lives and health. These occupations and processes are listed in the Schedule to the Act. In October 2006, the Government has included children working in the domestic sector as well as roadside eateries and motels under the prohibited list of hazardous occupations. More recently, in September 2008 diving as well as process involving excessive heat (e.g. working near a furnace) and cold; mechanical fishing; food processing; beverage industry; timber handling and loading; mechanical lumbering; warehousing; and processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries as well as the agate industry were added to the list of prohibited occupations and processes;

The Factories Act, 1948

The Act prohibits the employment of children below the age of 14 years. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

The Mines Act, 1952

The Act prohibits the employment of children below 18 years of age in a mine. Further, it states that apprentices above 16 may be allowed to work under proper supervision in a mine.



The Juvenile Justice (Care and Protection) of Children Act, 2000

This Act was last amended in 2002 in conformity with the UN Convention on the Rights of the Child covers young person below 18 years of age. Section 26 of this Act deals with the Exploitation of a Juvenile or Child Employee, and provides in relevant part, that whoever procures a juvenile or the child for the purpose of any hazardous employment and keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable for fine. In some States, including Karnataka and Maharashtra, this provision has been used effectively to bring to book many child labour employers who are otherwise not covered by any other law and to give relief and rehabilitation benefits to a large number of children.

The Minimum Wages Act, 1948

Prescribes minimum wages for all employees in all establishments or to those working at home in certain sectors specified in the schedule of the Act. Central and State Governments can revise minimum wages specified in the schedule. Some consider this Act as an effective instrument to combat child labour in that it is being used in some States (such as Andhra Pradesh) as the basis on which to prosecute employers who are employing children and paying them with lower wages.

The Right of Children to Free and Compulsory Education Act, 2009

Provides for free and compulsory education to all children aged 6 to 14 years. This legislation also envisages that 25 per cent of seats in every private school should be allocated for children from disadvantaged groups including differently abled children.

VARIOUS COMMITTEES AND COMMISSIONS ON CHILD LABOUR

Along with legislation, a series of committees and commissions have been appointed by the Government of India, either specifically on the question of child labour or on labour conditions in general to enquire into the causes or consequences of the problem and to suggest measures to reduce the incidence of child labour and to ameliorate the conditions of the child workers.

The Royal Commission on Child Labour observed that the employment of children continued to be a problem and found out that in many cities large number of young boys was employed for long hours and the employees imposed corporal punishment and other disciplinary measures against them.

The Labour Investigation Committee submitted in its report in the year 1946 observed that in various industries, especially smaller industries, the statutory prohibition of employment of children was not seriously enforced. (GoI, 1946).

According to the National Commission on Labour "the employment of children is non-existent in organized industries. It persists in varying degrees in the unorganised sector.

The Gurupadaswamy Committee, in its 1979 report, identified the sectors of the economy with substantial number of working children.

The National Authority for the Elimination of Child Labour (NACEL) was constituted on September 26, 1994 under the chairmanship of Union Labour Minister. The NACL in its 1995 meeting adopted a programme of securing convergence of services of Ministries of Governments.

GLOBAL CONCERN ON CHILD LABOUR

At the international level the ILO sets the pace and standards for the welfare and safety of the working class. It may be remembered here that one of the objectives of the ILO itself is the abolition of child labour. Child labour has been a major preoccupation of ILO since its foundation in 1919.



The linkage of child rights with human rights is an obvious one and has been emphasized by world leaders. The world summit for children was held at the United Nations headquarters in New York on September 30th of 1990 (UNICEF, 1990). The success of World Summit on Children of 1990 and the political commitment expressed by Commonwealth Heads of Government and regional organisations like OAU and SAARC have opened a new chapter with regard to cooperation in realising child rights.

With the support and assistance of ILO in 1993, India has launched an extensive action-oriented programme of reduction and elimination of working children and their rehabilitation in thirty centers of the country. The programme is implemented under the auspices of International Programme on the Elimination of Child Labour (IPEC), an agency of ILO.

The UNICEF is also renders fruitful service for the cause of child welfare, rehabilitation of child labour, prohibition of child labour, popularisation of universal education protection of girl children etc. (Ramnarayana, 1992). UNICEF acknowledges the need to seriously address child labour as a key component of the organisation policy.

JUDICIAL ACTIVISM REGARDING CHILD LABOUR

Unni Krishnan Vs Andhra Pradesh¹

The Supreme Court in its judgment held that children up to the age of 14 had a fundamental right to free education.

Neeraja Chaudhary Vs State of Madhya Pradesh²

In this case the Supreme Court of India stated that the Child Labourers should be rescued and provisions for their rehabilitation should be made.

U.P. Bandhua Mukti Morcha Vs Union of India³

In this case the Supreme Court of India stated that if no steps are taken under Bonded Labour System Act – 1976 by the Government then it would be a violation of Article 23 of the Constitution. Article 23 states that children should not be forced to work at cheap wages due to their economical or social disadvantage.

Sheela Barse Vs Secretary, Children Aid Society and Others⁴

The Supreme Court held, "If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way.

M. C. Metha Vs State of Tamil Nadu, 1991⁵

The Supreme Court has not allowed children to work in a prohibited occupation. According to the judges, "the provisions of Article 45 in the Directive Principles of State Policy has still remained a far cry and according to this provision all children up to the age of 14 years are sponsored to be in school, economic necessity forces grown up children to seek employment."

¹ 1993 1 SCC 645

² AIR 1984 SCC (3) 243

³ AIR 1984 SC 802

⁴ 1987 SCR (1) 870

⁵ 1991 AIR 417



THE PROBLEM

Child Labor has become a big problem in India. It is no doubt, a socio-economic problem. A national survey had shown that more than 16 million children between eight to fourteen are largely appointed in hotels and boarding houses, in tea-shops, restaurants, in commercial firms, in factories and fisheries. They are engaged into all sorts of work for the sake of earning something for the family. As a result, they are also deprived of primary education, without which chance of success in life is remote. Children are employed in agricultural labor; they drive carts and take care of cattle. Girl children have to act as maid servants and baby sitters. They cook and clean, they wash clothes and collect fuel. It is true that a number of laws have been imposed to prevent child labor. But they are more flouted than obeyed. The ban has been imposed to save the children from hazardous works and to restore their care-free childhood. But some opines that if the ban is imposed without the arrangements of proper rehabilitation of the child workers, it would be of no effect. There is no state which is free from the evil of the curse of child labor is not continued to India alone. It has widely spread to such developing countries as Nepal, Pakistan, Bangladesh, Burma and Sri Lanka. Poverty is not the only factor responsible for children being engaged as labor. They came cheaper and their parents don't have employment opportunities. Appropriate social security measures should be adopted for ensuring the enactment of the law. Indian Government must come forward to remove this curse with adequate financial help to the poor family. The Government must arrange for free education and treatment for the children. Child Labor Act must be properly maintained and followed to protect child labour. Children who are bonded with their family or inherit debt from their parents are often found in agriculture sector or assisting their families in brick kilns, and stone quarries. Individual pledging of children is a growing occurrence that usually leads to trafficking of children to urban areas for employment and have children working in small production houses versus factories. Bonded labourers in India are mostly migrants' workers, which open them up to more exploitation. So they mostly come from low caste groups'. Bonded labourers are at very high risk for physical and sexual abuse and neglect sometimes leading to death. The often is psychologically and mentally disturbed and have not learnt many social skills or survival skills. In 2000 the ILO estimated 5.5 million children had been forced in labour in Asia. While the bonded labour liberation Front placed 10 million bonded children in India alone. In 1998 the government of India labeled bonded child labour as marginal problem with only 3000 or so cases. A survey in Tamilnadu in 1995 found 125,000 bonded labourers in the state alone. child bonded labour in India is mostly in the agriculture sector but has recent times been moving into other sectors such as beedi-rolling, brick kilns, carpet weaving, commercial sexual exploitation, construction, fireworks and matches factories, hotels hybrids cotton seed production, leather, mines, quarries, silk and synthetic gems etc.

CONCLUSION

Despite rates of child labour declining over the last few years, children are still being used in some severe forms of child labour such as bonded labour, child soldiers, and trafficking. Across India child labourers can be found in a variety of industries: in brick kilns, carpet weaving, garment making, domestic service, food and refreshment services (such as tea stalls), agriculture, fisheries and mining. Children are also at risk of various other forms of exploitation including sexual exploitation and production of child pornography, including online. Government has accordingly been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Since



poverty is the root cause of this problem, and enforcement alone cannot help solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families.

Child labour and exploitation are the result of many factors, including poverty, social norms condoning them, lack of decent work opportunities for adults and adolescents, migration and emergencies. These factors are not only the cause but also a consequence of social inequities reinforced by discrimination.

SUGGESTIONS

Child labour and other forms of exploitation are preventable through integrated approaches that strengthen child protection systems as well as simultaneously addressing poverty and inequity, improve access to and quality of education and mobilize public support for respecting children's rights.

Teachers and others in the education system can be frontline supporters to protect children and can alert other stakeholders such as social workers to situations where children display signs of distress or indicate they work long hours. Getting children out of work and into school also requires broader changes in public policy to empower families to choose education over exploitative labour.

A key message in the UN Convention on the Rights of the Child is that children have a right to voice their views on matters affecting them and to have these taken into account. Children have the power to play a significant role in preventing and responding to child labour. They are key actors in child protection and can give valuable insights into how they perceive their involvement and what they expect from the government and other stakeholders.

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