

CHILD LABOUR AND INDIAN CONSTITUTION

Dr. Reeta Chouhan*

Dr. Anthonima K. Robin**

Introduction:

Millions of children in today's world undergo the worst forms of child labor. In modern era of material and technological advancement, children in almost every country are being callously exploited. The official figure of child laborers worldwide is 13 million. But the actual number is much higher. Of the estimated 250 million children between the ages of 5 and 14 who are economically active, some 50 million to 60 million between the ages of 5 and 11 are engaged in intolerable forms of labor. Among the 10 to 14-year-old children the working rate is 41.3 percent in Kenya, 31.4 percent in Senegal, 30.1 percent in Bangladesh, 25.8 percent in Nigeria, 24 percent in Turkey, 17.7 percent in Pakistan, 16.1 percent in Brazil, 14.4 percent in India, 11.6 percent in China.

ILO estimated that 250 million children between 5 and 14 work for a living, and over 50 million children under age twelve work in hazardous circumstances. United Nations estimate that there were 20 million bonded child laborers worldwide. Based on reliable estimates, at least 700,000 persons to 2 million, especially girls and children, are trafficked each year across international borders. Research suggests that the age of the children involved is decreasing. Most are poor children between the ages of 13 and 18, although there is evidence that very young children even babies, are also caught up in this horrific trade. They come from all parts of the world. Some one million children enter the sex trade, exploited by people or circumstances. At any one time, more than 300,000 children under 18 - girls and boys - are fighting as soldiers with government armed forces and armed opposition groups in more than 30 countries worldwide. ILO estimates that domestic work is the largest employment category of girls under age 16 in the world.

*** Asst. Prof. Department of Economics, St. Aloysius College (Autonomous), Jabalpur.**

****Asst. Prof. Department of Economics, St. Aloysius College (Autonomous), Jabalpur.**

The notion that children are being exploited and forced into labour, while not receiving education crucial to development, concerns many people. India is the largest example of a nation plagued by the problem of child labour. The position of India in terms of child labour is not an appreciable one; with a credible estimates ranging from 60 to 115 million, India has the largest number of working children in the world. (Human Rights Watch,1996). Whether they are sweating in the heat of stone quarries, working in the fields 16 hours a day, picking rags in the city streets, or hidden away as domestic servants, these children endure miserable and difficult lives. They earn little and are made to work more. They struggle to make enough to eat and perhaps to help feed their families as well.

The study shows that even In the ancient India child labour was found in the form of child slavery. Child slaves could be purchased or sold like commodities. It is revealed from the study that the child labour in ancient India was very common, they were engaged in different occupations. Similarly, the notion of child labour in medieval period was no exception. It is revealed that increasing pressure on land led to fragmentation of holdings. During this period a class of landless labourers came into existence. These labourers used their children to help in their economic activities. During the time of British period the uneven development of industrialization gave a new turn to overall socio-economic order in the 19th century. With the industrialization the exploitation of children was increased. They had to work morning till night for a pitiful earning. Near the middle of 19th century the employers were free to bargain with labour with the result that children were employed in cotton, jute mills and coal mines etc. They were made to work mercilessly despite their tender age and were virtually converted into slaves. During that time the first act was passed to lookout the problems of child labour then after some legislative enactment had been made for the welfare of the children.

In passing the 86th Amendment to the Constitution of India, education is a fundamental right. This has implications for fulfillment of the obligation of the State to ensure that every child is in school. Since most children who do not attend schools are engaged in some form of work or another, it is essential that there is a comprehensive plan to withdraw children from work and mainstream them into schools. In other words the labour department has a crucial role to abolish child labour in all its forms and ensure that children enjoy their right to education. This is indeed

achallenging task, but can be attained with concerted effort and a clear perspective

Rights of Children under International Law:

The concept of equality of all human beings, as embodied in the Universal Declaration of Human Rights of 1948 stipulates under Article 25 para 2 that childhood is entitled to special care and assistance. The above principle along with other principles of the Universal Declaration concerning child were incorporated in the Declaration of the Rights of the Child of 1959. The International Covenant on Civil and Political Rights under Articles 23 and 24 and the International Covenant on Economic, Social and Cultural Rights under Article 10 made provisions for the care of the child. However the International Labour Organization (ILO) provides universal standards and guidelines. The ILO, a specialized agency of the UN, aims to provide guidance and standards for labour practices around the world. The International Convention and other international instruments, which deal with the subject of child labour are as follows:

1. Convention on the Rights of the Child, 1989.
2. Worst Form of Child Labour Convention, 1999; and
3. Worst Form of Child Labour Recommendation

The International Program on the Elimination of Child Labour (IPEC) is a global program launched by the International Labour Organization in December, 1991. India was the first country to join it in 1992 when it signed a Memorandum of Understanding (MOU) with ILO. The MOU that expired on 31.12.1996 has been extended from time to time and has recently been extended till 31st December, 2006. The long-term objective of IPEC is to contribute to the effective abolition of child labour. IPEC-India has, during the period 1992-2002, supported over 165 Action Programs.

The Govt. of India and the US Department of Labour have also initiated a US\$ 40 million project aimed at eliminating child labour in 10 hazardous sectors across 21 districts in five States namely, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and NCT of Delhi. This project, popularly known as INDUS, is being implemented by ILO. An estimated 80,000

children will be withdrawn and rehabilitated through this project. Support activities will also be directed to 10,000 families of former child workers. On 20 November 2009, the global community celebrates the 20th anniversary of the adoption by the United Nations General Assembly of the Convention on the Rights of the Child, the unique document that sets international standards for the care, treatment and protection of all individuals below age 18.

Constitutional Provisions:

India has all along followed a proactive policy in the matter of tackling the problem of child labour. India has always stood for constitutional, statutory and development measures required eliminating child labour. There are numerous legislations in India that deals with the varied aspects of child labour. Several committees, sub-committees and commissions have been appointed from time to time by the government to find out ways and means to prevent child labour. Similarly, more than twenty Acts enacted in this regard have provisions for safeguarding the rights of working children. Besides, the government has also appointed a 'Task Force on Child Labour' which has been set up on the recommendation of the Central Advisory Board on Child Labour. On the recommendations of this Task Force, the government has formulated the National Policy on Child Labour in 1987. Also the Supreme Court passed orders on December 10 1996, banning the employment of children in hazardous occupations with action to be taken against those employing children. All these efforts seem to be directed towards the well-being and proper development of children.

The Indian Constitution has consciously incorporated provisions to secure compulsory universal elementary education as well as labour protection for children. Labour Commissions in India have gone into the problems of child labour and have made extensive recommendations. The Constitution of India too provides certain rights to children and prohibits child labour. Such provisions are as follows:

1. No child below the age of 14 years shall be employed in any factory or mine or engaged in any other hazardous work.
2. State, in particular, shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.

3. 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 exploitations and against moral and material abandon.
4. The state shall endeavor to provide, within the period of 10 years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of 14 years.
5. The state shall provide free and compulsory education to all children between the ages of six to 14 years in such a manner as the state may by law determine.
6. Who is parent or guardian to provide opportunities for education to his child or the case may be, ward between the age of six and 14 years.

There are a wide range of laws, which guarantee to a substantial extent the rights and entitlement as provided in the constitution and in the UN convention. Some of them are given below:

- The Apprentices Act, 1861
- The Child Labour Act, 1986
- The Child Marriage Restraint Act, 1929
- The Children (pledging of labour) Act, 1929
- Children Act, 1960.
- The Guardian and Wards Act, 1890
- The Hindu Minority and Guardianship Act, 1956
- The Hindu Adoption and Maintenance Act, 1956
- The Immoral Traffic (Prevention) Act, 1956
- Juvenile Justice Act, 1986
- The Orphanages and other charitable Homes (supervision and control) Act, 1960
- Probation of offenders Act, 1958
- Reformatory schools Act, 1857
- The women's and children's institutions (licensing) Act, 1956
- The young persons (Harmful publications) Act, 1956

The first Act in India relating to child labour was the Enactment of Children (Pledging of Labour) Act of February 1933. In 1979, Government formed the first committee called Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it. The Committee examined the problem in detail and made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children.

Based on the recommendations of Gurupadswamy Committee, The Child Labour (Prohibition and Regulation) Act, 1986 was passed. This Act prohibits the employment of children below the age of 14 in factories, mines and in other forms of hazardous employment, and regulates the working conditions of children in other employment. Sec.3 of this Act imposes prohibition on employment of children in dhabas, restaurants, hotels, motels, tea shops, resorts, spas or other recreational centre's etc. Recently, child labour is totally banned by the government with free education and other facilities to the child upto the age of 14. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

According to a 2001 census, an estimated 185,595 children are employed as domestic help and in small roadside eateries. India has announced a National Policy of Child Labour as early as 1987, and was probably the first among the developing countries to have such a progressive policy. Through a notification dated May 26, 1993, the working conditions of children have been regulated in all employment not prohibited under the Child Labour (Prohibition and Regulation) Act, 1986. Further, following up on a preliminary notification issued on October 5, 1993, the government has also prohibited employment of children in occupations such as abattoirs/slaughter houses, printing, cashew de-scaling and processing, and soldering. Child labour would be abolished in hazardous occupations by the year 2000, reflects a national consensus and commitment. After this declaration, several far-reaching initiatives have been

taken by the Government to effectively tackle the problem India's National Policy on Education, 1986 gives the highest priority to the program of universal elementary education, and recommends that free and compulsory education of sufficient quality be provided to all children up to the age of 14 years before we enter the 21st century. The present thrust is on three aspects, namely, universal access and enrollment, universal retention of children up to 14 years of age, and substantial improvement in the quality of education to enable all children to achieve essential levels of learning. All these aspects have been incorporated in the various initiatives taken up by the Ministry of Human Resource Development.

Indian higher judiciary has played good role in protecting rights of children and specifically in the case of child labour. The Supreme Court of India, in its *M.C. Mehta Vs State of Tamil Naidu* has given certain directions regarding the manner in which children working in the hazardous occupations are to be withdrawn from work and rehabilitated, and the manner in which the working conditions of children working in non-hazardous occupations are to be regulated and improved. The entire expenditure on education is to be borne by the concerned employer; as a follow up of the directions of the Supreme Court, all the State Governments were sent detailed guidelines on December 26, 1996 indicating the manner in which the directions of the Supreme Court were to be implemented. A meeting of the NAECL was convened on 31st December 1996 to discuss the directions of the Supreme Court on child labour. It was decided in the meeting that the Ministry of Labour should immediately release funds to the State Governments so as to enable them to conduct surveys of working children before June 10, 1997.

Indian Government Policy on Child Labour:

From the time of its independence, India has committed itself to be against child labour. Article 24 of the Indian constitution clearly states that "No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment" (Constitution of India cited in Jain 1985, 218). Article 39 (e) directs State policy such "that the health and strength of workers . . . and 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" (Constitution of India cited in Human Rights Watch 1996, 29). These two articles show that India has always had the goal of taking care of its children and ensuring the safety of workers.

The Bonded Labour System Act of 1976 fulfills the Indian Constitution's directive of ending forced labour. The Act "frees all bonded laborers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded laborers by the state" (Human Rights Watch 1996, 30). In regard to child labour, the Indian government implemented the Child Labour Act in 1986. The purpose of this act is to "prohibit the employment of children who have not completed their 14th year in specified hazardous occupations and processes" (Narayan 1988, 146). ILO convention No. 138 suggests that the minimum age for employment should not be less than fifteen years, and thus the Child Labour Act of 1986 does not meet this target (Subrahmanya 1987, 105).

A recent advance in government policy occurred in August of 1994, when then- Prime Minister Narasimha Rao announced his proposal of an Elimination of Child Labour Programme. This program pledges to end child labour for two million children in hazardous industries as defined in the Child Labour Act of 1986, by the year 2000. The program revolves around an incentive for children to quit their work and enter non-formal schooling: a one hundred rupee payment as well as one meal a day for attending school (Human Rights Watch 1996, 119-120). Where the funds for this program will come from is unknown. The government needs eight and a half billion dollars for the program over five years, and yet "about 4 percent of the five-year estimated cost was allocated for child labour elimination programs in 1995-1996" (Human Rights Watch 1996, 120).

All of the policies that the Indian government has in place are in accordance with the Constitution of India, and all support the eradication of Child Labour. The problem of child labour still remains even though all of these policies are existent. Enforcement is the key aspect that is lacking in the government's efforts. No enforcement data for child labour laws are available: "A glaring sign of neglect of their duties by officials charged with enforcing child labor laws is the failure to collect, maintain, and disseminate accurate statistics regarding enforcement efforts" (Human Rights Watch 1996, 131). Although the lack of data does not mean enforcement is nonexistent, the number of child labourers and their work participation rates show that enforcement, if existent, is ineffective.

Suggestions:

Now days child labour problem is prevailing in almost all over of the world and it require it special and immediate action to save the future generation of persons in the nation building from exploitation . Children's programme should find prominent place in our National policy for the development of human resources so that our children grow up to become robust citizens , physically fit, mentally healthy and morally sound.

Though there is legislation governing child labour, it does not seem consistent with the definition of child. The Government should take proper effective steps to decrease the population and give the employment to the parents of child labour. Necessary practical steps should be taken to educate the children. Provided the necessary sufficient funds to the organizations working for the education and removal of child labour. There should be effective implementations of child protective laws. There should be necessary prosecution of child labour defaulters. The involvement of the religious leaders, trade unionist and non-government organizations and to tackle the child labour by forming advisory committees on child labour on block level should be there. The authorities should not bend before the pressure of the politicians while tackling the problems of child labour.

The welfare scheme envisaged by the Supreme Court enshrined in the judgment is really the need of the time. It can be concluded by saying that The Child Labour (Prohibition and Regulation) Act is an Act, which has been passed to adopt all the international principles as regards child labour, which have been approved by the United Nations. Further, the elucidation and analysis given by the Supreme Court as well as other courts have made the Act an important legislation, which has helped in restricting the evil of child labour to its minimal.

Conclusion:

Child labor is a global problem. If child labour is to be eradicated, the governments and agencies and those responsible for enforcement need to be analyze every aspect related to it. The various steps taken in this direction and the laws passed about it haven't controlled the ongoing child labour. This is possible only with the co-operation of all sections of the society and the law enforcement agencies and by removing or minimizing the causes of child labour. The main thrust

should be on controlling the population of the country, education of the children and providing sufficient funds for its removal from the gross domestic product of India.

Although there are many Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments or processes, but there is no procedure laid down in any law for deciding in which employments or processes the employment of children should be banned. There is no law to regulate the working conditions of children in most of the employments where they are not prohibited to work and consequently are working under exploitative conditions. Therefore, the Child Labour (Prohibition And Regulation) Act, 1986 intends to ban the employment of children i.e. those who have-not completed their fourteenth year of age in specified occupations and processes, regulate the conditions of work of children in employments where they are not prohibited from working, lay down enhanced penalties for employment of children in violation of the provisions of this Act and other Acts which forbid the employment of children etc.

There are more than 250 Central and State laws relating to children but no substantial improvement in the condition of children has been reported. It is due to the lack of social will and vested interest. What is most urgent is the concern on the part of government to implement these legislations. It needs strong political and social will. There is a wide gap between the prevailing situation and accepted norms; these gaps cannot be abridged except by a radical emphasis on giving a prominent priority to the implementation of child labour act.

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