

Protection of Children against Exploitation with Special Reference to Child Labour (Prohibition and Regulation) Act, 1986

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Abstract: Child labour is issue all over the world, both in developed and developing countries. Though several attempts were made and are being made to mitigate child labour at national and international levels, yet, the magnitude has been increasing at an alarming rate, particularly in the third world countries. India possesses the highest child labour force in the world. The causes of child labour are numerous and varied. No single factor alone is responsible for the social problem. The various causes of the child labour are all intrinsically interrelated. Some of the causes of the child labour are: poverty, increase profits, easily amenable, lack of education facilities, illiteracy and ignorance of parents, laxity in enforcement of protection labour legislation, un-organised nature of job etc. The Child Labour (Prohibition and Regulation) Act, 1986 in which the employment of child labour is prohibited in industries and the working condition of the child labour shall be regulated in India. In this paper will be give the overview of the provisions child labour under the Prohibition and Regulation Act, 1986, causes, suggestions and conclusion.

Key Words: *Child Labour, Prohibition and Regulation Act, 1986.*

Introduction

The most powerless segment of human society that needs the most careful and tender control is that of children. On the amount of their susceptibility and necessity, they can be abused, ill-treated and direction into unwanted networks by anti-social basics in the community. Extending proper care and protection to children at all times is one of the most main duties of the state because it is on children's physical and mental well-being that the future of the nation depends.¹ Child labour has existed in one form or another in all the societies of the world. The prevalence of child labour has been more or less in all periods of time, though varied in its nature and dimensions, depending on the existing socio-economic structure of society.² In the past, child labour has been a part of the social

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¹M.N. Rehman, *Society, Economy and Education of Deprived* (Anupama Publishers, Delhi, 1992) .

² K.P. Kangle, *The Kautilya Arathasastra, Part-II* 271 (University of Bombay, 1963).

organisation in which all members pooled their labour to produce for the subsistence and survival.³This was particularly true of rural subsistence farming where the work of the child formed part of the labour necessary for the reproduction of the system and value of labour taken as part of child's socialization for reproduction of the labour power.⁴

Child labour is recognized serious problem in the world. Today an important issue in human resource development is prevalence of child labour. The problem of child labour exists in almost all the countries of the world, the difference, if any, is only of degree or form.⁵

Concept of Child Labour

The term 'child labour' is used as a synonym for 'employed child' or 'working child.' It is very difficult to give precise definition of child labour. However, child labour can be defined as that segment of the child population which participates in work, either paid or unpaid. Any work by children that interferes with their full physical development, the opportunities for a desirable minimum of education and their needed recreation is called child labour.⁶

Causes of Child Labour

In India many children between ages six and fourteen are not in schools. They stay at home to care cattle, tend younger children, collect firewood, and work in the field. They find employment in cottage industries, tea stalls, restaurants, hotels, or as household workers in middle class homes. Many children are bonded labourers and working as agriculturists for local landowners.⁷

Child labour is multi-dimensional problem. Poverty caste, tradition, size of the family, labour scarcity, wage rates. Illiteracy, ignorance, schooling facilities, etc., are the major factors for the occurrence of child labour. Parents view that more children mean more earnings and hence they force their children to work. Poverty and child labour go together and tend to reinforce each other in poor families.⁸

In rural areas young boys assist their parents in agricultural as well as non-agricultural activities. The girl children have to provide help to their mother, along with agricultural activities, in looking after young siblings, sweeping house and cooking food, etc., in order

³ParveenNangia, *Child Labour Causes Effects Syndrome*6-7 (JanakPublishers, New Delhi, 1987).

⁴*Id* at 7.

⁵Myron Weiner, *The Child and State in India*3 (Oxford University Press, Delhi, 1991).

⁶E. Stein and J. Davis (eds.), *Labour Problem in America, France and Richer* 54 (New York. 1940).

⁷Myron Weiner, *The Child and State in India*3 (Oxford University Press, Delhi, 1991).

⁸ M.S. Raj and D.J. Chauhan, "Child Labour in India: Causes, Magnitude and Way Out" R.K.Sen (ed.) *Problems of Child Labour in India* 20 (Deep & Deep Publications Pvt. Ltd., New Delhi, 2000).

to release their mother work. The girl child worker faces a lot of troubles compared to male child. Non-availability of school facility in village and unwillingness of the parents to send their children to neighbouring villages to attend to schools increase number of child labours. Employees view the employment of children as advantageous on the ground of availability of cheap labour force.⁹

Migration from rural areas to urban areas also encourages child employment.¹⁰ The nature of the urban working children is very complex, particularly in India. Because, most of the urban working children are found in unorganised manufacturing sector and in marginal occupations on the street and unfortunately both these areas have been constantly neglected by the social scientists and other researchers interested in this problem-these areas are truly termed as ‘unexplored areas’ by social scientists.¹¹

The nature of the problem of urban child labour in India, different kinds of childhood activities could be kept in mind. They are (i) domestic work; (ii) non-domestic work; (iii) non-monetary work; (iv) used or bonded labour; (v) wage labour; (vi) marginal economic activities; and (vii) idleness and unemployment etc.¹²

Existing Legislative Measures of Child Labour

The child labour problem was also seriously taken into account in the United Nations Declaration of the Rights of the Child (1959), International Labour Organisation Resolution for the Progressive Elimination of Child Labour and Transitional Measures (1979).¹³ In 1979 is declared, as the year of the child by the U.N.O. child labour is totally unprotected from the capricious employers. It is the paramount duty of the Government management, trade unions, and society as a whole to work committedly for improving the future generations.¹⁴

The programmes of ILO focus their attention on the main issues: prohibiting child labour; helping at work; attacking the basic causes of child labour; helping children to adopt to future work life; and protecting children of working mothers.¹⁵

⁹*Ibid.*

¹⁰S. Arvind Sachdeva, Rajeev Malhotra, et. al., “Child Labour in India: Nature, Strategies and Policy Options” (IDPAD International Conference on Child Labour in South Asia, New Delhi, 2001).

¹¹Mahaveer Jain, “Child Labour in India: A Select Bibliography” 13-15 (National Labour Institute, Noida, 1995).

¹²*Ibid.*

¹³Tapan Kumar Shandilya, Nayan Kumar, et. al., *Child Labour Eradiction 77* (Deep & Deep Publication Pvt. Ltd., New Delhi, 2006).

¹⁴Dr. T. Koteswara Rao, “Child Labour Dimensions and Disparities- A Case Study of A.P.” Dr. M. Prasada Rao (ed.) *Child Labour Problems & Policy Issues* 309 (The Associated Publishers, Ambala Cantt., 1st edn., 2006).

¹⁵Economic and Social Commission for Asia and Pacific, No. 1, September 1980, p. 18.

“To prevent and protect children from child labour, the first law was enacted in India in the Indian Factories Act, 1881 and since then several protective measures were enforced through new laws from time to time. Article 15(3), Article 24, Article 39(e), Article 39(f) and Article 45 of the Constitution of India provides all state for the healthy development of children and free and compulsory education for all children until they complete the age of 14 years. Besides the constitutional provisions employment of children is also regulated by the Factories Act, 1948, Mines Act, 1952, Motor Transport Act, Plantation Labour Act, 1951, Merchant Shipping Act, 1958, Apprenticeship Act, Bidi & Cigarettes Act, 1956 and Shops & Commercial Establishment Act, 1952 etc.”¹⁶

The Child Labour (Prohibition and Regulation) Act, 1986

The main provisions of the Act are: “(i) it prohibits the employing of children in such employments as are mentioned in the Schedule as Process and Occupations. Many of these are hazardous and risky in nature but the term hazardous has not been defined; (ii) It intends to regulate employment of children in all establishments except those prohibited ones; (iii) It provides for a Child Labour Technical Advisory Committee to advise the Central Government in matters of further prohibition, regulation etc.;¹⁷ (iv) Regulatory provisions made for fixing the number of hours, period of work. Prohibition of overtime, double employment, provision of weekly holidays etc.; (v) Requirement of the employer to give notice to inspectors, maintenance of register, display of notice; provisions for health and safety, (vi) It provides for minimum penalty of imprisonment for three months and maximum one year and minimum fine of Rs. 10,000 and maximum fine of Rs. 20,000. (vii) Any person can file a complaint but only a Metropolitan Magistrate can take cognizance of any offence; and finally; and (viii) The provisions made under the present Act is declared to be in addition to the provisions and protections of children already existing in other enactments.”¹⁸

“Under the Child Labour (Prohibition and Regulation) Act, 1986 laying down those children below fourteen years can work in non-hazardous occupations and process is a mockery in providing justice to the children.” The Chairperson of National Commission for Protection of Child Rights said, “The child labour policy itself is flawed and existing

¹⁶ Dr. R.N. Misra, *Problems of Child Labour in India* (Commonwealth Publishers, New Delhi, 1st edn., 2004) 18.

¹⁷ Veghese Jose, *Law on Employment of Children* (Capital Foundation Society, New Delhi, 2010) 17.

¹⁸ *Ibid.*

child labour law was violating the fundamental right to education. Thus there is a need to amend the Act to make it in consonance with the Right to Education.”¹⁹

It should be more children oriented and rights based in order to be effective. The laws and policies now have to confirm to the international standards laid down in the U.N. Convention on the Rights of Child.²⁰

The Child Labour (Prohibition and Regulation) Amendment Act, 2016

The central legislature has made substantial changes in the provisions of the Child Labour Act in the year 2016 and the said “amendments have been made effective from July 30, 2016.” The amendment the name of the Child Labour Act has been changed to Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. A complete prohibition has been imposed on employment of child labour (*i.e.* a person below the age of 14 years) in any establishment whether hazardous or not. A child is permitted to work only to help family, in family enterprise or as child artist after school hours or during vacations. The amendment has introduced the concept of adolescent labour for the first time. An adolescent has been defined as a person between the ages of 14-18 years. The amendment permits employment of adolescent labour except in hazardous processes or occupation. The offences under the Act have now been made compoundable and cognizable notwithstanding the provisions of the Criminal Procedure Code.”²¹

“The Child Labour Act provides for rehabilitation of children and adolescent who have been victims under the provisions of the Child Labour Act. It provides for setting up of the Child and Adolescent Labour Rehabilitation Fund in which all the amounts of penalty have to be realized. Liability has been affixed upon the parents and guardian of the affected child/children separately from the employers. The Act provides for increased penalty and imprisonment which shall not be less than 6 months and may extend upto 2 years and fine which may vary between Rs.20, 000 to Rs. 50,000. Previously, the violations under the Child Labour Act were punishable with imprisonment of not less than three months which could extend to one year or/and with fine of ten thousand rupees which could extend to twenty thousand rupees.”²²

¹⁹KavitaChowdhary, *Rights Body Seeks Amendments to Ineffective Child Labour Act* 221 221(Today Children in News ‘Butterflies’ 2009).

²⁰*Ibid.*

²¹RudraShrivastva, “India: Child Labour (Prohibition and Regulation) Amendment Act, 2016 of India”, *Sighania&Partners*, available at:

<http://www.mondaq.com/india/x/602434/employee+rights+labour+relations/Child+Labour+Prohibition+And+Regulation+Amendment+Act+2016+Of+India> (Visited on January 17, 2018).

²²*Ibid.*

Judicial Responses against Child Labour

In *People Union for Democratic Rights v. Union of India*²³, the Supreme Court considered “the meaning and scope of the phrase-hazardous employment. In this case inter alia, the question before the Supreme Court was that whether the employments in hazardous concerns and whether violated the Employment of Children Act, 1938. The Union of India, the Delhi Development Authority contended that this Act is not applicable in case of employment in the construction work since construction industry is not a process specified in the Schedule and is, therefore, not within the provision of sub-section (3) of Section of the Act, which prohibits the employments of children under the age of 14 years in hazardous concerns.”

In *Bandhua Mukti Morcha v. Union of India*,²⁴ “the petitioner was an organization completely focused on the cause of bonded labourers in the country. The petitioner conducted a study of a few stone quarries in Faridabad District near Delhi and observed that a number of labourers from different states of the country were employed in those stone quarries under inhuman and unbearable conditions. He also found that the majority of them were bonded labourers. A letter sent to one of judges of the apex court. The letter contained signatures and thumb marks of the bonded labourers. The petitioner alleged violation of the provisions of the Constitution and non-implementation of the laws dealing with the labourers employed in those stone quarries. It was disclosed that all these workers were bonded labourers who were not permitted to leave the job. Most of the labourers complained that they got very little wages from the mine lessees or owners of the stone crushers because they were bound to purchase explosives with their own money.”

In *Labourers Working on Salal Hydro Project v. State of Jammu and Kashmir and others*,²⁵ Justice Bhagwati observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction works by reason of the prohibition, enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government.

In *M.C. Mehta v. State of Tamil Nadu and others*,²⁶ the Honourable Supreme Court “observe that working condition in the match factories are such that they involve health hazard in normal course and apart from the special risk involved in the process of manufacturing, the adverse effect is a serious problem. Exposure of tender aged these

²³AIR 1982 SC 1473.

²⁴AIR 1987 SC 802.

²⁵AIR 1984 SC 177.

²⁶AIR 1991 SC 417.

hazardous requires special attention. We are of the view that employment of children in match factories directly connected with the manufacturing process like uplift of final production of match sticks or fireworks should not, at all, be permitted as Article 39(f) prohibits it.”

In *Rangangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu and others*²⁷ in this case the Supreme Court opined that tobacco manufacturing was indeed hazardous to health. Child Labour in this trade should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner that is to be decided by the State Government but it should be within a period not exceeding three years.

In *HemenderaBhaiv. State of Chhattisgarh*²⁸ in this case the petitioner facing a criminal proceeding under Section 482 of the Criminal Procedure Code and Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986. The learned counsel of the petitioner submitted that the learned magistrate without taking cognizance of the offence alleged against him criminal proceeding which did not have any reasonable cause and therefore he prayed that the criminal proceeding should be quashed. For supporting his argument the learned counsel of the petitioner relied on the two decision of the apex court in which cognizance taken by magistrate has been analyzed.

Conclusion

Children are the supreme asset of any nation and greatest gift to humanity. They are potential and useful human resources for the progress of the country. The government and non-government organization and others have all come together for the cause, primarily focusing on the unique problems concerning the children in India. They include issues related to children and work, tackling the problem of child labour, elimination of discrimination towards girl child, uplifting street children, identifying the special needs of children with disabilities, and providing education to every child as its Fundamental Right. Children from good atmosphere are of good behaviors and they can better handle any situation successfully. The atmosphere for a child involves the family, teachers and school.

Suggestions

- If we implement compulsory education we can get solution to four problems, namely-unemployment, poverty, exploitation of child and illiteracy. But so far as present position is concerned, no doubt Right of Children to Free and Compulsory

²⁷(1992) 1 SCC 221.

²⁸AIR 2012 SC 645.

Education Act has been passed which provides for the compulsory education for child between 6 to 14 years of age as also been enshrined under Article 21 A of the Constitution of India.

- The major problems pertaining to child labour are concerned with the minimum age, medical examinations, the working hours and prevention of night work. The Child Labour (Prohibition and Regulation) Act, 1986 and amended it number of times and long list of process and occupations for the prohibition of child.
- The Child Commission monitors the child labour situation in the country through its special rapporteurs, visits by members, sensitization programs and workshops, launching projects, interaction with the industry association and other concerned agencies, coordination with the State Government and NGOs to ensure that adequate steps are taken to eradicate child labour.