

Real practices of Discrimination and Child Labour in work place: A theoretical study in Indian Context

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Abstract: *Development of any country depends on maximum utilization of scarce resources. Resources will be fully utilized by skill employees. But in present business scenario, developing and under develop countries are facing problem about proper utilization of skill labour and economical utilization of different natural resources due to custom, religious, color related problem among individual. These problems act as a bar for economical development. Moreover, economical backward countries also facing child labour problem. Although discriminatory labour practices and child labour practices in work place are prohibited by various international organization (ILO, UN etc) and countries laws. Objective of present study is to identify the real practices of these two social diseases in India. Investigations of different case laws (from 2010 to 2014) are used as methodology for find out the real practices. Result reveals that discriminatory labour practices and child labour practices are continuing in India till now.*

Keyword: *Discrimination, Child Labour, ILO, UN, Economical Development etc.*

I. Introduction

Discrimination is an action that denies social participation or human rights to categories of people based on prejudice (Cambridge dictionary online). It is based on different criteria like race, sex, religion etc. Any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, natural extraction or social origin is called discrimination [Art.1(1)(a) of ILO convention No.111]. This activity deprives some groups or sections of different benefits of society."Discriminatory behaviors take many forms, but they all involve some form of exclusion or rejection" (United Nations). Different member countries of ILO like India ratified the provision of this convention by formulating laws.

India has ratified this convention on 3rd June 1960. Several Articles of the Indian constitution support this convention. Article 14 of the constitution deals with equality before law i.e." the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Discrimination on the ground of race, sex, caste and place of birth is also prohibited as per Article 15 of the constitution. Equality of opportunity in the matter of public employment, abolition of untouchability and freedom of speech are also depicted in article no. 16, 17 and 19 respectively. Personal life and liberty is also protected as per Art. 21. Principle of equal pay for equal work for both men and women is legitimized under the Art 39 (d) of the constitution. Discrimination is also prohibited by different laws like- 'The equal remuneration Act 1946', 'The maternity benefits Act 1961' etc.

Another side Child defines as anyone below the age of 18 years (Article 1 of the United Nations Convention on the Right of the Child). As per *ILO*, the term "child labour" is defined "as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development". The Indian Penal Court (IPC) defines the child as being 12 years of age. Indian Traffic Prevention Act 1956 defines a "Minor" as a person who has reached the age of 16 years.

Section 376 of IPC which punishes the accused of the crime of rape defines the age of consent to be 16 years of age. Section 82 and 83 of the IPC states that a child under the age of 7 years cannot be guilty of an offence and further a child under the 12 years is not considered to have attained sufficient maturity. Juvenile justice Act 2002 defines a male minor as being below 16 years and a female minor as being below 18 years of age. As per The Mines Act 1952, Child is a person who has not completed his 15 years. The Merchant Shipping Act 1958 & The Factories Act 1948 say child mean who are below the age of 14 years. From the above definitions, it could be seen, in the Indian context the age of an Individual in order to be determined as a "Child" is not uniformly defined.

Child labour has different forms like, Workers of formal economy, workers of informal economy, agricultural workers, domestic workers, slavery and forced labour, prostitution and child trafficking etc. So discrimination and child labour practices should be prohibited. This paper is designed as following ways: Section I highlights introduction of the study, Section-II provides literature reviews, methodology and data sources are

depicted in section III, section-IV is devoted for real practices of discrimination and child labour in work place, section-V represents conclusion of this study.

II. Literature Review

Discrimination i.e. social inequality exists in different sectors like private and public across the world (Anyim, Ekwoaba & Olusanya, 2013). It has negative impact on the efficiency of the workers' performance. (Abbas, Hameed & Waheed, 2011). International Labour Organization suggested convention No.111 [Discrimination (Employment and Occupation) Convention, 1958] to eradicate discrimination from occupation and employment.

Total number of child labour of a country influences the economic growth of that country (Dargemir & Hakan, 2010). Main causes of child labour are lack of education and poverty. Education and child labour has negative relationship (Alber et al., 1998). Parental education plays a vital role for children education. Parental education positively affects school attendance, negatively affects child labour (Hsin & Amy, 2005). The United Nations Global Compact suggested a principle (No 5) for *effective abolition of child labour*. International Labour Organisation formulated different conventions and recommendation for eradication of child labour from the globe. These are *Minimum Age convention No 138*, *Worst form of child labour convention No 182*, *Forced Labour Convention No 029*, *Abolition of forced labour convention No 105* & *Worst form of child labour recommendation No 190*.

III. Methodology and Data Source

Data Source: various cases of this paper collected from India Kanoon website (from 2010 to 2014 for discriminatory practices and from 2010 to 2012 for child labour practices) and legal provisions are collected from UN and ILO official website.

Methodology: Case laws are collected and match with legal provision for depict the real position of discrimination and child labour practices in work place of India.

Real Practices: Any type of discrimination is prohibited as per ILO convention and our constitution but during the period January, 2010 to May, 2014 nineteen cases are filed at different High courts, Tribunals and The Supreme Court of India. Most of responded cases are on the basis of sex (gender) i.e. violation of Article 16(2).

Discrimination arises due to violation of human rights and freedoms. The United Nations was the first organ which recognized Human rights and freedoms internationally. "Every one is entitled to all the rights and freedoms set forth without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth of other status" (Article 2 of UN preamble). Discrimination based on certain criteria like, (i) sex i.e. gender, (ii) race, (iii) colour, (iv) religion, (v) language etc.

In India most of the discrimination during above mention period based on gender i.e. violation of Article 16 (2) of the Indian constitution. Gender discrimination exists at all levels of work place as well as in selection procedure (Aneja, 1973). In the case of G.Gunavathy Vs the State of Tamil Nadu (2nd May, 2010 ,Madras High Court) reveals that gender based discrimination thrives by means of restricting the female candidates from applying for the post of helper of electricity department in Tamil Nadu. Under the case Wing commander Anupaman Joshi Vs Union of India & Ors. (12th March 2010 ,Delhi High Court) and Wing Commander Manisha Krishna Vs Union & Ors, (11th August 2011 ,Delhi High Court) Anupaman Joshi and Manisha Krishna officers of Air force applied for the post of permanent commander along with related benefits and privileges. But their applications were denied on the bases of gender.

Different attitude of society neglected women's rights (Das, 2005). In Anwar Vs coal India Ltd (25th February 2010 ,Kolkata High Court) case coal India did not want to provide employment opportunity to female candidate of deceased employee. Discrimination of a woman employee in a state government (Tamil Nadu) office occurred which was reflected through the case of Smt. V. Banwai Vs the Inspector of Labour (5th April, 2010 ,Madras High Court).

In the case of Dr.Neelam Bhalla Vs Union of India (21st August 2012 ,Central Administrative tribunal, New Delhi) the applicant official promotion was not granted without transfer. Sunitha K. Vs the commissioner (5th March 2013, Central Administrative tribunal-Eenakulam) case related with transfer of women workers without any guideline. In Rameshchander Vs state of Hararyana & another (22nd May 2013 ,Punjab-Haryana High Court) case related to the discrimination of transfer policy of women employee of library in the state of Haryana. Gender discrimination also reflected through the case of Air India cabin crew assn & Ors Vs Union of India & Ors (17th Nov. 2011, Supreme Court of India) where role of air hostess is assigned to the female employee and the role of flight pilot vested to the male workers. In the case of Subsahchand Goutam Vs Govt of Delhi (23rd May 2013, Central Administrative tribunal, Delhi) gender discrimination arises in the department of women and child welfare.

Discrimination among employees also arises on the basis of maternity benefits. In the case of *smt. Shakuntala Vs state of Rajasthan & Ors* (14th February 2011, Rajasthan High Court). Very clearly foregrounds the violation of rule 103 the petitioner who sought 6 months maternity leave, while was granted only two months leave with pay. The rest is granted without pay. This leads to the violation of rule no. 103. Under the case *Arulin Ajitha Rani Vs state represented* (9th July, 2012, Delhi High Court) brings out the case of gender inequality advocating the right for gender equality in Municipal Corporation of Delhi the woman workers are deprived of the privilege of maternity leave on the ground that their services are not regularized. Moreover, any type of child labour is prohibited as per ILO conventions and our constitution but during the period 2010 to 2012 eighteen cases are seen to have been filed at different High Courts, Tribunals and The Supreme Court of India. All reported cases are on the basis of child labour engagement in the establishment i.e. violation of Article 24.

In the case of *Ambica Tea & Cold Drink House Vs State* (16th June 2010, Gujrat High Court) and *Smt. Sarala Devi Vs State of U.P. and others* (29th June 2010, Allahabad High Court) reveal that child labour were engaged in their establishment. Child labour are also engaged for hazardous activities by the owner of establishment, *State of Uttaranchal Vs Balwant Singh Chauhal & Ors* (on 18th January 2010, The Supreme Court of India) and *State Vs Unknown* (on 18th March 2010, Gujarat High Court) reveal it. *Bachpan Bachao & Org Vs Union of India & others* (24th December 2010, Delhi High Court) and *Bachpan Bachao Andolan Vs Union of India & org* (18th April 2011, The Supreme Court of India) cases highlight the physical and sexual harassment of child labour. Even in the case *Bablu Chaurasi Vs Unknown* (1st December 2010, Kolkata High Court) child labour was died by the beaten of employer.

Child labour also engaged in factory for manufacturing work which is disclosed by the case *Binod Kumar Gupta Vs The State of Bihar* (16th June 2010, Patna High Court). Some time child labour are engaged by forced, *Sourash Agarwal Vs State of U.P. and others* (27th July 2010, Allahabad High Court), *Mr Manish Bhatnagar Vs Gupta* (26th August 2011, Central Information Commission), *Siddapa S/O, Yallapa Halagi Vs The Senior Labour Inspector* (16th February 2012, Karnataka High Court) and *Public Union for Civil Liberties Vs State of Tamil Nadu* (15th October 2012, The Supreme Court of India) cases reflect this matter.

In the case of *Rapildeo Ram & Anr. Vs The state of Bihar* (31st August 2012, Patna High Court) children were came in Delhi for illegal purposes. Children were also engaged in domestic work, it reflected by the case *Kalyankumar Vs State of Bihar* (14th May 2012, Patna High Court). In Allahabad High Court a case name as *Md. Yasin Vs State of U.P and others* (1st February 2010) was filed for engagement of child labour in a Dhaba.

IV. Conclusion

United Nations, International Labour Organization and different provisions of Indian laws impose restriction on discriminatory practices of labour and child labour practices in work place. But various cases on discriminatory labour practices and on child labour practices reveal that these two social evils continuing in India. Our next may be devoted to identify the genesis of these practices.

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