

Child Labour: Pre-Mature Exploitation of Resource

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ABSTRACT: Efforts have been made at the global level to improve the lot of the weakest section of society—the children, the most vulnerable subject of exploitation. But their fates remain the same even today. India has several million children living under “especially difficult circumstances. India has the highest child labour force in the world. To eliminate child labour Indian legislature have passed a number of central and state legislations. But the vast potentialities of these laws mostly remained dormant or underutilised. The problem of child labour is basically a pointer to the complex social and economic ground realities. The author in this paper tried to examine the areas and the causes of child labour and advanced remedies to protect the rights of the child. The author is of the view that child labour is a deep rooted evil in India which cannot be eliminated but can be regulated progressively in organised, unorganised and even in self employment sector. The author feels that there is need to reform substantive and procedural laws to improve the lot of the innocent victims of child labour. In spite of provisions made towards child welfare at the national and international level, under constitutional and other ordinary laws of the land, the fate of child could not be changed because of the lack of implementation of laws. In the end the author has suggested that education is the only means to improve the lot of the children—the real assets of the nation.

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I. INTRODUCTION:-

Children are “Supremely important national assets”.¹ And are ‘the greatest gift to humanity.’² These juridical eulogies are not hollow claims: their imprints may be found in the constitution. The ‘state shall in particular, direct its policy towards securing the 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?’³

The aim is two fold—the state has an obligation to provide ideal condition for development but must also act to protect them against exploitation and against moral and material abandonment child labour is one of the most serious violations of children’s rights in the world today. These rights are clearly stipulated in the International Labour organization (ILO) conventions concerning child labour, the UN convention on the Rights of the child and the Universal declaration of Human Right no region of the World today is entirely free of child labour, it exists in both developing and developed nations.⁴

The Problem: An Overview

India has the highest child labour force in the world. To eliminate child labour Indian legislatures have passed many more central and state legislation. But the vast potentialities of these laws mostly remained dormant or underutilized. The problem of child labour is basically a pointer to the complex social and economic ground realities. It stems from illiteracy. Almost half of the Indians are illiterate. The children belonging to weaker section of society are treated as a source of economic support to parents. Total prohibition of child labour is neither practical nor desirable. Nowhere in the world has it succeeded. In most advanced countries, children are proud of earning their pocket money through various means. Not only to the parents, but it help children too, in acquiring a practical approach to life. By developing such earning qualities, they enrich their personality and character culminating towards family building. But today the main problem is that a very high percentage of children are working in hazardous industries which are highly injurious to their health. Total ban should strictly be imposed to protect them against exploitation. In India child labour are working in agriculture, auto-repair, workshops, carpet industry leather factories, matches and fireworks making, bangle factories, Beedi making, Cement industries, Mica-cutting, soap manufacturing, cloth industries, Building and construction industry.⁵

Following are the reasons behind the problem of child labour:-

- (a) Poverty is the root cause of the child labour but it is only partially true. Children are made to work to fill their stomach and to feed their family. But in this process, they miss out an education.
- (b) The lack of the education is the root cause of child labour. The government too is aware of the situation and is taking many steps to rectify the same. The state shall endeavor to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years⁶.

Abolition of Child Labour:-

The expression "Child" has been defined to mean a person who has not completed the age of fourteen years. This seems to be now the uniform meaning of the term 'Child' under other labour statutes.² The problem of child labour in India is very grave, the judicial pronouncements, news paper reports as well as the published work of eminent scholars have exposed the magnitude of the problem of child labour. There is no doubt the child labour should be abolished. But this step can not be contemplated unless back-up plans are kept in readiness. Lack of appropriate rehabilitation plans made a mess of the much publicized bonded labour issue. Mere schemes are not enough. The government should implement their socio-economic programmes and provide the financial security to the poor class.⁷

Being financially secured would mean being able to send the children to school instead to work. And education in turn could mean the end of exploitation and torture of hundreds of children. It is clear the government alone can not eliminate the child labour problem totally. Today the parents are not motivated enough to send their children for study. They should be made to realize that only education can give better livelihood at least for their younger generation. Our submission is that child labour should be linked with education. The government has launched the schemes like "Education for all" for education upon primary level.

Child Labour (Regulation and Prohibition) Act, 1986:-

The child labour (Prohibition and Regulation Act was passed in December, 1986. This Act repealed the Employment of Children's Act, 1938. All rules made in this Act were in addition to the Factories Act, 1948; the plantation labour Act, 1951 and the Mines Act, 1951.

The Act was passed to prohibit the employment of children in hazardous jobs and to regulate the conditions of work for children in other jobs of non-hazardous nature. It bans the entry of children in the following processes. Beedi making, carpet weaving, cement manufacturing, cloth industry, matches, explosive and fireworks making, mica cutting, tanning, building and construction industry. The Act consists of four parts and a schedule. First part deals with preliminary definitions. Second part entails prohibition of employment of children in certain occupations and process. Part third regulates child labour in these establishments where none of the occasions or process listed in the schedule are carried on. Fourth part of the Act deals with miscellaneous items viz; Penalties, procedure relating to offences and appointment of inspectors. The schedule enumerates occupations and process where employment of children is prohibited.

The Act prohibits the employment of children below 14 years in any of the occupations and process specified in schedule.⁸ and who ever employ and child or permits any children to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not less than 3 months but which may extend to one year or with fine which shall not be less than 10 thousand rupees but which may extend to twenty thousand rupees or with both.⁹

In spite of numerous salubrious provisions the Act suffers to some major shortcomings. Firstly Act does not abolish child labour per se. Secondly the legislation is not compatible with the true spirit of constitutions. The provisions relating to punishment undertake act carries a low different effect. The implementation and enforcement of the Act according to Labour Ministry Report is near dismal. Though the states of Gujarat, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh have taken effective steps and launched prosecutions.

Constitutional Safeguards:-

Our constitution makers, wise and sagacious as they were known that India of their vision would not be a reality if the children of the country are not nurtured and educated. For this their exploitation by different project makers for their personal gain had to be first indicated. It is the need which has found manifestation in Article 24, of our constitution on the fundamental right against exploitation. The farmers were aware that this prohibition alone would not permit the child to contribute its might to the nation building work unless it receive atleast basic education. Article 45 was, therefore, inserted in our constitution casting a duty on the state to endeavour to provide free and compulsory education to children.¹⁰

Our Constitution contains some other provisions also desiring that a child must be given an opportunity and facility to develop in a healthy manner.

Art. 24, "Prohibition of employment of children in factories etc.

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Art. 39(e) says that the health and strength of workers, men and women 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;

Art. 39(f) provides that the 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 national abandonment.

Art. 41 Right to work, to education and to public assistance in certain cases:

The state shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of employment, old ages sickness and disablement and in other cases of undeserved want.

Art. 45, Provision for free and compulsory education for children :

The state shall endeavour to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for children until they complete the age of fourteen years.

Art. 47, Duty of the State of raise the level of nutrition and the standard of living and to implan public health:

The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the state shall endeavour to bring about prohibition of the consumption except of medicinal purposes of intoxicating drinks and drugs which are injurious to health of the aforesaid provisions, the one finding place in the Article 24 has been a fundamental right. Article 45 too has been raised to a high pedestal by Unni Krishnan Case which was decided on 4.2.1993. Though other articles are part of directive principles, they are fundamental in the governance of our country and it is the duty of all the organs of the State to apply these principles. Judiciary, being one of the organs of the State, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of great public concern and significance. But the mere abolition of child labour would not be a panacea for the growing child. India being a social welfare state should be guided by the provision of Art. 41 regarding right to work, to education and public assistance in certain cases for preventing the child from going to hazardous industries in rainy days. Art. 45 regarding free and compulsory education and Art. 47 regarding the raising of the level of nutrition to improve public health should be given a practical shape within the resources of the nation. We hope the recent constitution Review Commission under the Chairmanship of Justice Venkatchalia¹¹ will sincerely consider these provisions for the all round development of the children. As far as education, it is suggested that a uniform primary education will do least the education would be a factor widen the gap between the haves and have nots.

Legislative Safeguards:-

The constitutional commitment reflected in numerous legislations enacted time to time. Today we have more 300 central and state legislations on child labour. These legislations mainly dealing with minimum age, minimum wage and hazardous employments. A brief perusal of some of the important legislations will be well in order for the present study.

(a) Factories Act, 1948:-

The Factories Act, 1948 prohibits the employment of children below 14 years of age in factories. A child is not permitted to work during night(10 p.m to 6.0 a.m.) and not more than 4½ hours in a day.¹² Restriction have also been laid down on the employment of children in certain dangerous occupations. A special register has to be maintained by the employer in respect of child labour to satisfy inspecting authorities that provisions regarding child labour are implemented. A young person can be employed in factories only if his fitness and age are duly certified by a medical practitioner. Such fitness certificate remain valid for a year only. The adolescent or the child must be issued a token marked "p" (Protected Person) which he must carry during working hours". Rests, shelters, canteens etc. are also to be provided for workers, including child labourers. The Act also imposes penalty on a parent or guardian for permitting double employment of children.

(b) Minimum Wages Act ,1948:

The minimum Wages Act, 1948 provides for fixation by State Governments of minimum time rates of wages, minimum piece rate of wage, guaranteed time rates of wages for different occupations and, localities or class of work and adult, adolescents, children and apprentices. The Act is aimed at occupations which are less well organised and more difficult to regulate and where sweated labour is more prevalent or where there is much scope for the exploitation of labour.¹³

(c) The Plantation Labour Act, 1951:

Under the Act 'child' means a person who has not completed his fifteenth year. It covers all tea, coffee, rubber, cinchona and cardamom plantations which measure 117 hectares or more, in which 30 or more persons are employed. The employment of children between the age of 12 is prohibited under the Act. However, the Act permit the employment of child above 12 years only on a fitness certificate from the appointed surgeon. The certificate of fitness is valid for one year at time. This is the only act wherein statutory provisions for education housing and medical facilities have been enjoined upon employer.¹⁴

(d) The Mines Act, 1952:

Child means a person who has not completed his fifteenth years. This Act also extends to the whole of India and includes an excavations where any operation for the purpose of searching for or obtaining minerals is carried out. The Act provides that no child shall be employed in any mines nor shall any child be allowed to be present in any part of a mine which is below ground or in any open cast working in which any mining operation being carried on. A young person (between 16 to 18) years is allowed to work in any part below ground if he has a medical certificate from certifying surgeon about his fitness. An employer contravening the provisions of child labour is punishable with imprisonment upto 3 month or a fine upto 10,000 or with both. It also provides for penalties for use of false certificates fitness and double employment of children.¹⁵

(e) The Merchant Shipping Act, 1958:

The Act prohibits employment of children below the age of 14 in a ship except a trainingship, home tradeship or ship less than two hundred ton gross, or a ship where other family members work.¹⁶ It also prohibits employment of young persons below the age of 18 as trimmers and stokers except under certain specific conditions. The responsibility of administering the Act rests with the Director General of Shipping.

(f) Motor Transport Workers Act, 1961 :

The Motor Transport Act 1961, extends to the whole of India and applies to every motor transport undertaking employing or more transport workers. Child means a person below 15 years. The Act prohibits the employment of children below 15 years of age in any capacity in the motor transport undertaking. The State Governments are, however, empowered to apply all or any of the provisions of this Act to any motor transport undertaking employing less than 5 workers.

(g) The Apprentices Act, 1961 :

The Act extends to the whole of India. The Act lays down that no person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he is atleast 14 years of age and satisfied such standards of education and physical fitness as may be prescribed.

(h) The Atomic Energy Act, 1962

This Act extends to the whole of India. The Act covers all workers in factories and mines producing atomic and other mineral products emitting radiation or all working places where radiation takes place. Children below the age of 18 are provided to work except when they are permitted by the competent authorities.

(i) The Beedi and Cigar Workers (Condition of Employment) Act 1966:

This Act extends to the whole of India and prohibits employment of children below the age of 14 years in any industrial premises. The employment of young persons those between 14 and 18 years age, is prohibited between 7 p.m. and 6 a.m. The administration of the Act rests with the State Governments.

(j) Shops and Establishment Acts:

The working conditions of employees in shops and commercial establishments are governed largely by the shops and establishment Acts of state governments and rules framed thereunder. These Acts, and rules inter alia regulate the daily and weekly hours work, rest intervals, opening and closing hours of establishments, payment of wages, overtime pay, holidays with pay, annual leave, employment of children and young persons. The minimum age for employment of children in different States varies from 12 years to 14 years. These Acts also prohibits the employment of young persons during night, the time varying from 7 p.m. to 6 a.m. The hours of work for children are also fixed. These vary from 3 to 7 hours per day in different states, with half an hour to one break after 3 to 4 hours. From time to time, amendments have been made in most of the statute, because of the progressive outlook of the Government for improving the conditions of the children which regulate the working conditions of child labourer and mitigate adverse effect of employment for their health, education and training etc.

These Acts give an impression that the government is doing its best to check the exploitation of children by employer and others, but real picture in the field is otherwise because these enactments have their own limitations as their applicability is generally employment based, i.e., on the basis of number of persons employed in an undertaking duly registered under the relevant Acts. The protective provisions of these enactments do not cover children employed in smaller establishment.

Judicial Response:-

In our country like many others, children are an exploited lot. Child labour is a big problem without a proper and safe solution. Judiciary in India under its policy for attainment of social justice has been very attendant to give effect the rights of children in general and child labour in particular.

A scanning of numerous rulings reveal that before the historic pronouncement of M.C. Mehta case¹⁷ emphatically touched the issues of Juvenile Justice, Child welfare, minimum wages, freedom from bondage and dignity, health and children of the country. Unni Krishan J.P. V. State of A.P.¹⁸, holding the right to free education up to the age of 14 years as a fundamental right within the meaning and scope of Article 21 of the Indian constitution.

A new trial has been blazed in labour jurisprudence by the Supreme Court in Mohini Jain¹⁹ case where the Supreme Court has been extending the scope of fundamental rights by including certain rights which have not been expressly stated to be fundamental rights in part III of the constitution. The Supreme Court in Mohini Jain and in Unni Krishan cases make it imperative that education is brought into the ambit of the fundamental rights rather urgently. The logic of the Unni Krishan case is that the priorities in terms of allocation of available funds have so far been inverted, or in another words, the funds have not been deployed for attainment of universal elementary education to the extent of the desirability.

In Bandhua Mukti Morcha V. Union of India.²⁰ The court has adapted a practical approach in para 10 regarding the elimination of child labour, article 24 of the constitution prohibits employment of the child below the age of 14 in any factory or mine or in any other hazardous employment.

In Chhotu Bhai case,²¹ the writ petitions sought the quashing of notice calling upon the petitioners to pay a sum of Rs. 20,000 each as compensation for having employed child labour. The High Court quashed the impugned notices and allowed the petitioners. The court was fully alive of the practical aspect of the situation of the survey on the basis of which the notices were issued. Since the survey, in the opinion of the court, was not conducted diligently, petitioners were allowed. In K. Chandra Segarm v. State of Tamil-Nadu,²² Legal Aid and Advice Board emphasised that there should be proper supervising for proper implementation of labour laws in the state.

II. CONCLUSION AND SUGGESTIONS:-

In the light of the discussion there is sufficient evidence of our judiciary's dynamic role in recognizing, protecting and even imparting great meaning to the definition of human rights of children through various directions to the states. But unfortunately there have been countless instances to substantiate the charge of inaction against the government machinery and pronounced lack of will against our body politic, which together have been very advancing alibies and an inking over the implementation of enactments and valuable judicial initiative in such an important area.

There are suggestions for the abolition of child labour. But without proper implementation of socio-economic programme of the government the abolition of child labour is not possible unless financial security to poor is not ensured. They will not be able to send their children to school. Education could end the exploitation and torture of thousands of children. It is also convincing that government alone cannot eliminate the gigantic child labour problem but the social ethos can be changed gradually. The parents are not motivated to send their children for schooling. What they look for is in terms of gain through the child labour. But they should be made to realize that only education can give a better livelihood at least for their younger generation. It is submitted that preference should be given in employment to the children whose parents had never been in government job in accordance with their abilities. It is suggested that the incentives to the parents will make them realize the importance of the child education which may in the long run be proved to be life saving drug, free from all kinds of adulteration, for preventing the innocent buds from being withered unbloomed.

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