



## CHILD LABOUR THROUGH CHANGING LEGAL FRAMEWORK

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*Bestow blessings on those  
Little, innocent lives  
Bloomed on earth,  
Who have brought the message  
Of joy from heavenly garden*

**-Rabindranath Tagore**

### INTRODUCTION

Children are the greatest promises of tomorrow, the dawn of humanity and buds of social development. Legal policy towards them has undergone a sea change: from a position where children were treated as non-entity and mere material objects to a position of human dignity where they are not only made free from exploitation and abuses but also enabled to develop their full potentiality with fair access to food, health and education.<sup>1</sup> Social change towards better world for children to enjoy their right to be child is an inspiring objective beneath this policy. Growth of human rights perception regarding child spearheaded the movement for creating child friendly environment for his wholesome development. How best a society and its legal system treat children, the most vulnerable section of the society, with care love and affection is the measure of humanism that it cherishes. A society that is caring for child exhibits the signs of development and maturity.<sup>2</sup> Children are the greatest promises of future, the dawn of humanity and birds of social development.<sup>3</sup>

In a civilized society, the importance of child welfare cannot be underestimated because the welfare of the entire community, its growth and development depends on the health and well-being of its children. Children are a “supremely important national asset,” and the future wellbeing of the nation depends on how its children grow and develop.<sup>4</sup> The significance of child care policy and the urgency with which it is to be implemented is reflected in the statement of Gabriel Mistral, the Nobel Laureate when he said:

“We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot; right now is the time his bones are being formed, his blood is being made and the senses are being developed. To him we cannot answer ‘tomorrow.’ His name is today.”<sup>5</sup>

<sup>1</sup> P.Ishwara Bhat, “Law, child Welfare and Social Transformation” in C.A.Gurudath ed., *Woman- Child Law and Society*, (Mysore: Vidyavardhaka Law College, 2006) p.145.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Gourav Jain v. Union of India*, AIR 1997 SC 3021.

<sup>4</sup> Mamta Rao, *Law Relating to Women and Children*, 3<sup>rd</sup> ed., (Lucknow: Eastern Book Co., 2012) p.529.

<sup>5</sup> Quoted in National Human Rights Commission Report, 2000, p.15.



The great concern exhibited at the international arena for the welfare of children led to the adoption of various instruments to protect children<sup>6</sup>. The former Secretary General of the United Nations Kofi A. Annan observed:<sup>7</sup>

There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.

It is a paradox to note that despite the concerns expressed about the welfare of the child and the importance of the child in society and nation, the fact remains that every age has exploited the tender age in many forms. It is unfortunate that the most rational of the animals, the human beings, resort to exploitation of their own off springs, which is not to be found in any of the so called lesser animals.

The problems relating to children are basically a gift of poverty and illiteracy; but there are certain other causative dimensions of the problem, including, at some places, the social structure. Besides these, to employers child labour is profitable as the wages of children are small, their complaints few, and they accomplish in some industries and occupations as much as adults. Employers, therefore, do not hesitate in exploiting children in their own interest without any consideration to their needs for healthy growth and development.<sup>8</sup> Poor parents seek to augment their meager income through employment of their children. Employers of children also stand to gain financially.<sup>9</sup>

#### **CONSTITUTIONAL MANDATE:**

The founding fathers of the Constitution have bestowed thoughts on the protection of the child from exploitation and providing an environment to children to grow to the fullest extent. During the Constituent Assembly, Prof.Sibbanlal Saxena, referring to the draft Article 18, the equivalent of the present Article 24 of the Constitution, said:

“I am glad that this article has been placed among fundamental rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in other countries, we find that many of them are concerned with economic rights... we have provided these things in our Directive Principles, although, I think, properly, they should be in this chapter. Even then, this Article 18 (now Article 24) is an economic right, that no child below the age of fourteen shall be employed in any factory.”

The constitutional policy on child protection is comprehensive as it is spread over children's entitlement arising from both prohibition of child labour and guarantee of right to education and state's duty to implement directive principles.<sup>10</sup> Art.24 of the Constitution

<sup>6</sup> Arts.25(2), 26 of the *Universal Declaration of Human Rights, 1948*; Art.10(3) of the *International Covenant on Economic, social and Cultural Rights, 1966*; Art.24 of the *International Covenant on Civil and Political Rights, 1966*; *Declaration on Social Progress and Development, 1969*; *Declaration on the Protection of women and children in Emergency and Armed Conflict, 1974*; *Declaration of the Rights of the Child, 1959*; *Convention on the Rights of the Child, 1989*; *The World Summit for children, 1990, etc.*

<sup>7</sup> Kofi A. Annan in foreword to *The State of the World's Children*, (UNICEF, 2000).

<sup>8</sup> Mamta Rao, *op.cit.*, pp.529-30.

<sup>9</sup> M.P..Jain, *Indian Constitutional Law*, 6<sup>th</sup> ed., (Nagpur: Lexis Nexis- Butterworths Wadwa, 2010), p.1312.

<sup>10</sup> P.Ishwara Bhat, *op.cit.*, p.153.



mandates that 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. The state is required to direct its policy under Art.39(e) to ensure 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. The further requirement under Art.39(f) is 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 material abandonment. A more pragmatic formula for amelioration is to be found in Art.41, which provides that, “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 unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

Before the *Constitution (Eighty Sixth Amendment) Act, 2002*, Art.45 dealt with the provision of free and compulsory education. It required state to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years. However, right to education came to be recognized as a fundamental right due to judicial interpretation.<sup>11</sup> *The Eighty Sixth Amendment* inserted Art.21-A in the Constitution to the effect that “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.” Further it imposed a fundamental duty on every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years through Art.51A (k). In addition Art.45 was reworded to the effect that the state was to endeavour to provide early childhood care and education for all children until they complete the age of six years. To give effect to the new fundamental right *The Right of Children to Free and Compulsory Education Act, 2009* was enacted.

The cumulative object of all these provisions is to eliminate child labour and establish a regime wherein each child will have access to quality education and grow into a responsible citizen.

### **JUDICIAL RESPONSE AND THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986**

The constitutional prohibition that children below the age of 14 years should not be employed in any factory, mine or other hazardous employment was felt to be ineffective in the absence of legislation prohibiting its violation till the decision of the Supreme Court in

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<sup>11</sup> Right to education was read under Art.21 of the Constitution. In *Mohini Jain v. State of Karnataka*, [AIR 1992 SC 1858], the supreme Court held, “It is no doubt correct that “right to education” as such has not been guaranteed as fundamental right under Part III of the Constitution but by reading the above quoted provisions (Arts.21, 38, 39(a) and (f), 41 and 45) cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.” Further, in *Unni Krishnan v. State of A.P.*, [(1993)1SCC 645], it was held that ‘every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.



the case of *Peoples Union for Democratic Rights v. Union of India*.<sup>12</sup> In that case the court found the law wanting. As a fact the Supreme Court found out that the children below the age of 14 were employed in the construction work. On behalf of the Union of India and Delhi administration it was argued that the *Employment of Children Act, 1938* was not applicable to construction industry as it is not specified in the Schedule. The court observed:

“We have Article 24 of the Constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment. This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate *proprio vigore* and construction work being plainly and undoubtedly hazardous employment, it is very clear that by reason of this constitutional prohibition, no child below 14 years can be allowed to be engaged in construction work. Therefore, there can be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the *Employment of children act, 1938*, no child below the age of 14 years can be employed in construction work and the Union of India as also every State Government must ensure that this constitutional mandate is not violated in any part of the country.”

The court directed that the Schedule to the *Employment of Children Act, 1938* should be suitably amended to include the construction industry in it.

This decision was an eye opener, the deficiency in the legal regime was brought home to the legislature. Taking this into consideration efforts were made to regulate the conditions of child labour in order to avoid exploitation in areas where child labour could not be avoided. *The Child Labour (Prohibition and Regulation) Act, 1986* was enacted. The Act is in four parts. Part-I deals with definitions, Part-II with prohibition of employment, Part-III with regulation of conditions of work and Part-IV with miscellaneous provisions. This Act repealed the *Employment of Children Act, 1938*. Sec.3 of the Act provides that no child<sup>13</sup> shall be employed or permitted to work in any occupations set forth in Part A of the

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<sup>12</sup> (1982) 3 SCC 235. Following the constitutional dictates, the Supreme court once again in *Labourers, Salal Hydro Project v. State of J & K* [(1983) 2 SCC 181] held that construction work is a hazardous employment attracting art.24 of the Constitution. The courts concern and the complexity of the problem express itself in the following observation of the Court, “We are aware that the problem of child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed in order to be able to make two ends meet. The possibility of augmenting their meager earnings through employment of children is very often the reason why parents do not send their children to schools and there are large drop-outs from the schools. This is an economic problem and it cannot be solved merely by legislation. So long as there is poverty and destitution in this country, it will be difficult to eradicate child labour. But even so an attempt has to be made to reduce, if not eliminate the incidence of child labour, because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. We must concede that having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact; any such move may not be socially and economically acceptable to large masses of people. That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments. Clearly, construction work is a hazardous employment and no child below the age of 14 years can therefore be allowed to be employed in construction work by reason of the prohibition enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government. The Central Government would do well to persuade the workmen to send their children to a nearby school and arrange not only for the school fees to be paid but also provide, free of charge, books and other facilities such as transportation.”

<sup>13</sup> Sec.2(ii) of the Act defines “Child” to mean a person who has not completed his 14 years of age.



Schedule, or in any workshop wherein any of the processes set forth in Part B of the Schedule are carried on. The Central Government is empowered to amend the Schedule and add any occupation or process to the Schedule.

The major occupations set forth in Part A are those connected with:

1. Transport of passengers, goods or mail by railways;
2. Cinder picking, cleaning of an ash pit or building operation in the railway premises;
3. Work in a catering establishment at a railway station, involving movement from one platform to another, or into or out of a moving train;
4. Work relating to construction of a railway station in close proximity to railway lines; and
5. A port authority within the limits of any port.

The processes enumerated in Part B are those relating to

1. Beedi making
2. Carpet weaving
3. Cement manufacture
4. Cloth printing, dyeing and weaving
5. Manufacture of matches, explosives and fireworks
6. Mica cutting and splitting
7. Shellac manufacturing
8. Tanning
9. Wool cleaning
10. Building and construction industry.

Through an amendment in 2006 employment of children as domestic workers or servants, and the employment of children in *dhabas*, restaurants, hotels, motels, tea shops, resorts or other recreational centres is prohibited.

The prohibition of Sec.3 is not absolute as it does not apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from the government. In practice, since nearly 80% of India's full time and part time child workers are trapped in a situation where the parents of working children and the families work jointly within family economic enterprises like farms, household industries and petty trade, by virtue of this proviso to Sec.3, they fall outside the ambit of the Act.<sup>14</sup> Further, cunning acts of employers in establishing looms and other equipments in the houses of children make them escape from the clutches of law. In view of the fact that a work does not cease to be hazardous work only on account of being put in family atmosphere and in view of rampant abuse of this proviso, it is appropriate to drop this proviso to make the law more effective. Moreover, the requirement of having a workshop for conducting prohibited process in Sec.3 is problematic because if the same work is done in an informal place other than workshop it will not attract legal prohibition. Since the

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<sup>14</sup> P.Ishwara Bhat, *op.cit.*, p.156.



basic approach of the act resembles that of the Act of 1938, not much substantive development is witnessed.<sup>15</sup>

In the post 1986 Act period the Apex court has held in the case of *M.C.Mehta v. State of Tamil Nadu*,<sup>16</sup> that the children under Article 45 of the Constitution be subjected to free and compulsory education until they complete the age of 14 years. The Court, however, observed that the Directive principles of State Policy had still remained a far cry and though according to this provision all children up to the age of 14 years were supposed to be in schools, economic necessity forces grown up children to seek employment. It is a matter of surprise that the Supreme Court in this case allowed the children to be employed in match factories of Shivakashi in Tamil Nadu and said that the children must be provided basic diet during working period. This judgment is not in accordance with the constitutional spirit.

Delivering a significant judgment aimed at abolition of child labour in *M.C.Mehta v. State of Tamil Nadu*,<sup>17</sup> in occupations specified in the *Child Labour (Prohibition and Regulation) Act, 1986*, and implementation of free and compulsory education for all children until the age of 14 years as prescribed by the then existing un-amended Article 45 of the Constitution, the Supreme Court gave a series of directions to all States and Union Territories for compliance. The Court directed the employers of child labour to pay a compensation of Rs.20,000/- for every child under the provisions of the *Child Labour (Prohibition and Regulation) Act, 1986*. The court said:

“The inspectors would see that for each child employed in violation of the act, the employer concerned pays Rs.20,000/-, which would be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed by him.”

The other outstanding features of the judgment are as under. The child labour rehabilitation-cum-welfare fund could be district-wise or area-wise and the fund so generated shall form the corpus whose income shall be used only for the child concerned. To generate greater income, the fund can be deposited in high-yielding schemes of nationalized banks or public bodies. As the income accruing from the corpus fund of rs.20,000/- would not be enough to dissuade the parents/ guardians from seeking employment of the child, the appropriated government is to deposit Rs.5,000/- for each child in case the concerned government is not in a position to provide a job to an adult in the family. In case of getting employment for an adult, the parent/ guardian shall have to withdraw his child from the job. Even if no employment would be provided, the parent/ guardian shall have to see to it that his child is spared from the requirement to do the job, as an alternative source of income would have become available to him. The employment given or payment made would cease to be operative if the child is not sent by the parent/ guardian for education. The States were directed to conduct a survey within six months. The survey of child labour engaged in hazardous occupation prohibited under Article 24 to the constitution, which forms the core sector, should be taken up first. The

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<sup>15</sup> *Ibid.*

<sup>16</sup> (1991) 1 SCC 283.

<sup>17</sup> (1996) 6 SCC 756.



secretary, Union Ministry of Labour is requested to appraise the court of the compliance of these directions.

An analysis of the decision compels one to conclude that the same provisions were on the statute book for decades and could not be translated into reality. The judgment is only declaratory in nature. While the Supreme Court ruling works at the consciousness- raising level, it may not do well in terms of real action. When judicial ruling takes on shades of an executive order, it risks being violated, or worse, ignored. The conduit of judiciary may not infuse additional sanctity into provisions commanding effective implementation.

### TEASING MAGNITUDE OF THE PROBLEM

The doctrine of *res ipsa loquitur* applies the problem of child labour and exploitation of children. The problem is writ large in every part of the country. The incidence of child labour is scaring and needs serious attention. Despite being an IT giant and the world's fastest growing economy, India has over 60 million child labourers. The International Confederation of Free Trade Unions, says there are as many as 60 million children working in India's agricultural, industrial and commercial sectors.<sup>18</sup> Two out of every three working children are physically abused. Over 50 percent children were being subjected to one or the other form of physical abuse. 50.2 percent children worked seven days a week. 53.22 percent children reported having faced one or more forms of sexual abuse. 21.90 percent child respondents reported facing severe forms of sexual abuse and 50.76 percent other forms of sexual abuse. Every second child reported facing emotional abuse.

According to the Census 2001 figures there are 1.26 crore working children in the age group of 5-14 as compared to the total child population of 25.2 crore. There are approximately 12 lakhs children working in the hazardous occupations/processes which are covered under the Child Labour (Prohibition & Regulation) Act i.e. 18 occupations and 65 processes. As per survey conducted by National Sample Survey Organisation (NSSO) in 2004-05, the number of working children is estimated at 90.75 lakh. As per Census 2011, the number of working children in the age group of 5-14 years has further reduced to 43.53 lakh. It shows that the efforts of the Government have borne the desired fruits.<sup>19</sup>

### CONCLUSION

The problem of child labour continues to pose a challenge before the nation. Government has been taking various pro-active measures to tackle this problem. However, considering the magnitude and extent of the problem and that it is essentially a socio-economic problem inextricably linked to poverty and illiteracy, it requires concerted efforts from all sections of the society to make a dent in the problem.<sup>20</sup>

Starting from the concern exhibited by the constitutional forefathers, periodically the problem of child labour is addressed and attempts are made to place a legal regime that will effectively eradicate the stain of child labour from the society. Various child welfare schemes are also launched to supplement the legal regime. Despite right to free and compulsory

<sup>18</sup> [http://www.indiatribune.com/index.php?option=com\\_content&id=2884:over-60-million-child-laborers-in-india&Itemid=400](http://www.indiatribune.com/index.php?option=com_content&id=2884:over-60-million-child-laborers-in-india&Itemid=400) accessed on 10-4-2015.

<sup>19</sup> <http://labour.nic.in/content/division/child-labour.php> accessed on 10-4-2015.

<sup>20</sup> *Ibid.*



education up to fourteen years of age being elevated to the status of a fundamental right and a specific legislation enacted to give effect to it, it is unfortunate to note that only marginal changes have taken place at the field level. There is no way the country can turn a blind eye to the problem.

The compelling requirement in the following statement of V.R.Krishna Iyer J., is to be felt by every law enforcement authority and every adult across businesses and avocations if they want to provide a better world to children and call themselves civilized:

“The hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole.”<sup>21</sup>

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<sup>21</sup> V.R.Krishna Iyer J., *Jurisprudence of Juvenile Justice: A Preambular Perspective*, quoted by Mamta Rao, *Law Relating to Women and Children*, 3<sup>rd</sup> ed., (Lucknow: Eastern Book Co., 2012) p.529.