



CRITICAL ANALYSIS OF LAWS RELATING TO CHILD LABOUR IN INDIA

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INTRODUCTION

Every child has right to lead a decent life and is entitled for the basic human rights. The physical, mental and social wellbeing of a child depends upon the family to which she/he belong. Family and school are two important institutions which play significant role for integrated development of the child. According to the United Nations Convention on the Rights of Child,¹ child means a person male or female who is below 18 years of age. Keeping in view the problems and challenges faced by the Indian children, laws have been introduced and various policies and programmes are being implemented for the welfare of children in India.

The Child has been the subject of special laws and legal provisions. Because of its tender years, weak physique, and inadequately developed mind and understanding, every child needs protection against moral and physical harm and exploitation by others. In the formative years of its life, the child needs special care service to realize its full potential for growth and development. There are about 300 Central and State Statutes concerning children. Majority of them have been enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our Constitution.²

This paper shall attempt to discuss in brief the problem of child labour in India, International Conventions relating to protection of child, the mandates envisage in our Constitution. The paper also highlights the laws dealing with the protection of child labour in India and critical appraisal of the Indian laws and policies on child labour. In conclusion few observations and recommendations are given as to the possible future direction for uplifting the welfare of the millions of deprived young once. However, it is felt that laws only on paper is not the solution to problem of child labour, serious implementation of child welfare policy and participation from the general public is essential to stop this menace of child labour.

INTERNATIONAL CONVENTION AND REGULATIONS DEALING WITH HAZARDS OF CHILD LABOUR

The International Labour Organization (ILO) is a specialized agency of the United Nations that deals with labour issues. Its objective is to promote opportunities for women and

¹ Available at: www.unicef.org/crc/ (Visited on March 19,2015)

² Provisions of Fundamental Rights and Directive Principles of State Policy under Indian Constitution provides for welfare of child labour.



men to obtain decent and productive work in conditions of freedoms, equity, and security.³ The main goal is not to stop all kinds of work performed by children but to establish and enforce international labour standards, which take the form of either a Convention or a Recommendation.

UN Convention on the Rights of Child, 1989 is the most important international instrument concerned with the rights of children in general. Besides this, there are other Conventions which specifically deal with child labour. Some of which India has ratified and the others it has abstained from ratifying. Nonetheless, India has tried to include the provisions of these unratified instruments in its national policies to realize child rights. There are eight core ILO Conventions with respect to labour.⁴ Out of these India has ratified four. The two main Conventions with regard to child labour that India has not yet ratified are Minimum Age Convention, 1973⁵ and Convention Worst Forms of Child Labour, 1999.⁶

India is yet to ratify conventions 182 banning and prohibiting the ‘worst forms of child labour’⁷ and banning employment of individuals under 18 in certain sectors. The reason is that India ratifies a Convention when it is fully satisfied that the national laws and practices are in conformity with the relevant ILO Convention. Moreover, the government ascribes the reason for non-ratification to the unique socio-economic conditions of the country. Children are compelled by circumstances to supplement their family income. So, the government cannot put a blanket ban on child labour or increase the minimum age for employment as required by the ILO Convention. The Child Labour Prohibition and Regulation Act 1986 prohibits employment of children below 14 in hazardous occupations and regulate employment of children in nonhazardous occupations but it legally permits child labour in the non-hazardous sectors. ILO Conventions are vital towards complete eradication of Child Labour in India but ratification of ILO Conventions without proper policy implementation neglects the rights of those who are in need of protection and rehabilitation.

CONSTITUTIONAL SAFEGUARDS FOR INDIAN CHILDREN

Constitution of India contains provisions for upliftment, development and protection of children; these are mainly included in Part III and Part IV of the Constitution, i.e., fundamental rights and directive principles of state policy. Indian Constitution deals categorically with the welfare of the child and prohibition of practices like child labour. Thus, the concern for children in general and child labour in particular is reflected through the Articles of the Constitution of India. The relevant articles are given below:

³ Available at: <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> (Visited on March, 15, 2015).

⁴ Available at : www.ilo.org/global/standards/...to...labour.../conventions.../lang--en/ (Visited on March 21, 2015).

⁵ Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312283:NO (Visited on March 20, 2015).

⁶ Available at : http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (Visited on March 20, 2015).

⁷ *Ibid.*



Article 15(3)- Nothing in this article prevents the State from making any special provision for women and children.⁸ Thus, is article empowers the State to make special provisions for the children.

Article -21A - The State shall provide free and compulsory education to all children of the age 6- 14years in such manner as the State may, by law determine.⁹

Article 23- Prohibits traffic in human being and begar and other similar forms of forced labour¹⁰

Article-24- No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.¹¹ This is very important constitutional provision which prohibit the child labour in hazardous employment.

Article-39(f)- Enjoins the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.¹²

Article 39(e) and (f)- Requires the State and secure that the tender age of children are not abused and to ensure that they are not forced by economic necessity to enter avocations unsuited in their age or strength. Those children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected.¹³

Article-45- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.¹⁴

Article 51A(k)-Makes it a fundamental duty of the parent or Guardian to provide opportunities for education to the child or ward between the age of 6 and 14 years.¹⁵

Thus it is clear that our Constitution makers were wise and adamant to provide, that children should receive distributive justice in free India.

LEGISLATIONS AND POLICIES REGARDING CHILD LABOUR IN INDIA

Legislation to control and regulate child labour in India has existed for several decades. The main concern of these legislations was prescribing minimum age limit for employment of children and regulation of working hours for children; and ensuring the health and safety of the child labourers by prohibiting the employment of children in hazardous work. There are number of child labour legislations prohibiting the employment of

⁸ M. P Jain, *Indian Constitutional Law*, at p. 1300, LexisNexis Butterworths Wadhwa, Nagpur, 6th Edn., 2010.

⁹ *Id* at 1547. Article 21A inserted by the Constitution (Eighty Sixth Amendment) Act, 2002 .

¹⁰ *Id* at 1712.

¹¹ *Id* at 1724

¹² *Id* at 1975

¹³ *Ibid*.

¹⁴ *Supra Note 8* at 1988.

¹⁵ *Id* at 2002.



children below 14 years and 15 years in certain specified employments. However, contrary to our international commitment and all proclamations in the country's Constitution, and despite all the legislative measures, child labour is a harsh reality.¹⁶ Due to lack of political will and in absence of realistic measures to tackle the problem the percentage of child labour in the total labour force of the country kept on increasing over the years.

The important laws relating to child labour are listed below:

1. The Children (Pledging of Labour) Act, 1933
2. The Employment of Children Act, 1938
3. Factories Act, 1948
4. The Minimum Wages Act, 1948
5. The Plantation of Labour Act, 1951
6. The Mines Act, 1952
7. The Merchant Shipping Act, 1958
8. The Motor Transport Workers Act, 1961
9. Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. Contract Labour (Regulations and Abolition) Act, 1970
11. Shops and Commercial Establishment Act, 1969
12. Radiation Protection Rules, 1971
13. The Child Labour (Prohibition and Regulation) Act, 1986¹⁷

Large numbers of legislations were enacted since 1881 which provides the legal protection to the working children. The Children (Pledging of Labour) Act, 1933 followed by the Employment of Children Act, 1938 was the first statutory enactment dealing with child labour which was repealed by the Child Labour Act, 1986. The Child Labour (Prohibition and Regulation) Act 1986 is an outcome of various recommendations made by a series of Commissions.¹⁸ This legislation was enacted to reform the legal measure, as the policy of both Prohibition and Regulation.

CRITICAL ANALYSIS OF CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

There are certain shortcomings in the Act of 1986. The Child Labour Act was passed with the object of achieving two contradicting goals, viz; prohibition and regulation of child labour which is not in conformity with Article 24 of Constitution and the Act is in favour of regulation rather than abolition of Child Labour.¹⁹ There is another major lacuna in the Act, i.e. the absence of any measures for rehabilitation of the child. The proviso annexed to Section 3 is abused by employing children in respect of families and work experience acquired by children. This proviso helps employers to pretense as family members of the children working in their premises and thus continued to exploit the children; this is how the

¹⁶ Available at: shodhganga.inflibnet.ac.in:8080/jspui/.../16/16_chapter%208.pdf (Visited on March 21, 2015)

¹⁷ Available at : <http://labour.gov.in/content/division/acts-and-rules.php> (Visited on March, 22, 2015).

¹⁸ The National Commission on Labour 1969; The Gurupadswamy Committee on Labour 1976 and Sanat Mehta Committee 1984

¹⁹ PP Jayanti, "Child Labour – A Socio –Legal Study" KUJLS 143 to 158 (1988).



employer escapes from prosecution.²⁰ Further, the age of the child has been differently defined in different laws. There is no specific criterion or scientific parameters for defining the age of the child. Thus, this Act lead to confusion and uncertainty.

Moreover, the definition of children given under Child Labour (Prohibition and Regulation) Act, 1986 is in contradiction with United Nations Convention on the Rights of the Child, 1989 and Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Article 24 of the Constitution indirectly permits the child labour and it provides for only partial ban on child labour.²¹ By simple reading of Article 24 it can be said that Constitution of India does not create an absolute bar to the employment of children below the age of 14 years. Their employment is prohibited only in factory or mine or in any other hazardous employment. Child below the age of fourteen years shall be employed to work in all establishments other than factory or mine or hazardous employment.

Various legislations and policies relating to child labour and child rights appear to work in isolation. There is no nexus between each other. It is to be noted that the right to education did not have direct bearing upon the child labour laws. The Right of Children to Free and Compulsory Education Act, 2009²² intended to provide free and compulsory education all the children of the age 6-14 years. But under Child Labour (Prohibition and Regulation) Act, 1986 laying down that children below fourteen years can work in non-hazardous occupations is a mockery in providing justice to the children.²³ Thus, it can be said that the child labour laws and policies itself are defective and they are violating the fundamental right to education. Thus, there is urgent need to amend the Act to make it in consonance with the Right to Education.²⁴ It is also important that the definition of child labour needs to include children working in the farm-lands.

Thus, it is observed that this Act falls short of making all child labour illegal, and fails to meet the ILO guideline concerning the minimum age of employment set at fifteen years of age. The International Labour Organization (ILO) launched the International Programme for Elimination of Child Labours in 1991 and India was the first to join the same in 1992. But still the problem persists due to poor implementation of the plans and programmes. Though policies are in place that could potentially reduce the problem of child labour, effective enforcement is a problem.

THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2006

The Child Labour (Prohibition and Regulation) Act, 1986 does not ban child labour per se, and leaves the millions of child labourers in the domestic and unorganized sectors,

²⁰ Section 3 proviso: provided that nothing in the section shall 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 Government.

²¹ *Supra Note* 12.

²² The Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) received the Assent of the President on 26.8.2009 and came into force w.e.f. 1.4.2010 Sec. 2(c).

²³ Kavita Chowdhary "Rights Body Seeks Amendments To Ineffective Child Labour Act" Vol.XVI, New Delhi, p.221, 2009.

²⁴ *Ibid.*



outside its purview. On August 01, 2006, the Government imposed a ban on employment of children as domestic servants or servants in dhabas (road side eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centers.²⁵ Employing children in these categories would make the offender liable to prosecution, and may result in imprisonment upto two years or fine shall not be less than Rs. 10,000 but may extend to Rs.20,000.²⁶

Although these occupations are not capable of being classified as per se hazardous, there is a high risk that children may be subjected to physical violence, psychological traumas, and at times, even sexual abuse. Such incidents being committed in the close confines of the households or dhabas or restaurants, often go unnoticed and unreported. The children employed in road-side eateries and highway dhabas were the most vulnerable lot and were easy prey to sex and drug abuse as they come in contact with all kinds of unscrupulous people. This measure initiated by the Central Government was essential and it is expected to go a long way in improving the condition of helpless working children.

THE CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT BILL, 2012

The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 was introduced in the Rajya Sabha on December 4, 2012. The Bill seeks to amend the Child Labour (Prohibition and Regulation) Act, 1986, which prohibits the engagement of children in certain types of occupations and regulates the condition of work of children in other occupations.²⁷ In light of the Right of Children to Free and Compulsory Education Act, 2009, the Bill seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours.²⁸

This Bill added a new category of persons called ‘adolescent’. An adolescent means a person between 14 and 18 years of age. The Bill prohibits employment of adolescents in hazardous occupations as specified (mines, inflammable substance and hazardous processes). The central government may add or omit any hazardous occupation from the list included in the Bill. The Bill enhances the punishment for employing any child in an occupation. It also includes penalty for employing an adolescent in a hazardous occupation.²⁹

The government may confer powers on a District Magistrate to ensure that the provisions of the law are properly carried out. The Bill empowers the government to make periodic inspection of places at which employment of children and adolescents are prohibited.³⁰ Thus it is important that the Child Labour Bill should be tabled and passed as soon as possible by Parliament. This amendment to the Child Labour (Prohibition and Regulation) Act will lead to a total ban on all forms of child labour up to the age of 14 and ban on worst forms child labour involving hazardous work up to the age of 18 years.

²⁵ Press Information Bureau, Government of India, MLD/L.53 (Cpi-iw) 1.8.2006.

²⁶ Child Labour (Prohibition and Regulation) Act. 1986 , Sec. 2(ii).

²⁷ Available at : http://164.100.47.134/lsscommittee/Labour/15_Labour_40.pdf (Visited on March 22, 2015).

²⁸ *Supra Note 28.*

²⁹ *Ibid.*

³⁰ Available at: <http://www.prsindia.org/billtrack/the-child-labour-prohibition-and-regulation-amendment-act-2012-2553/> (Visited on March 23, 2015).



It is to be noted that the proposed amendments will synchronize with existing laws of the country that is with the Right to Education and Juvenile Justice Act. Complete ban on child labour up to the age of 14 will ensure that it can be matched with Right to Education Act (2009), and banning all worst forms of child labour upto the age of 18 can match with the existing law on Juvenile Justice.³¹

CONCLUSION

Child labour is an international evil therefore cumulative effort is required to wipe it out. The government of India on this front has also taken a few steps. But the major determinant of child labour is socio-economic conditions prevailing in the country like poverty. Another determinant is access to education. In some areas, education is not affordable, or is found to be inadequate. With no other alternatives, children spend their time working. Therefore, there is need to implemented the laws relating to child effectively in India.

However, from the analysis of the relevant statutory provisions of the Indian laws relating to child labour, it has become abundantly clear that the statutes vary as to the age limit of a child employed or permitted to work in various occupations. There is no law fixing minimum age for employment of children in agriculture. The Factories Act, 1948, fixes minimum age of 14 whereas the International Labour Organisation (ILO) Convention prescribes minimum age for any employment to be 15. In the case of plantations, the age of employment has been fixed at 12 years but in the case of non- industrial employment the minimum age varies from 12 to 14 years. Thus, Indian Laws relating to child labour are deficient from the international standards as laid down by the ILO. However, 179 countries have ratified the International Labour Organisation (ILO) convention to combat the worst forms of child labour. Unfortunately, India has not yet ratified this convention. Besides this, India has also not ratified convention on minimum age of admission to employment and work.

Inspite of plethora of legislative enactments and the pro-active role played by various agencies, child labour continues to be a major problem. A large number of children are exploited and deprived of what is due to them. It can be said that the carelessness on the part of the enforcement machinery relevant under specific laws is the major issue to be address and cured.

However, fortunately, the Indian Judiciary played a very significant role in promoting child welfare. It has taken the lead to save the child from exploitation and improve their conditions. Judicial mandate clearly demonstrates that right to education is necessary for the proper flowering of the children and their personality. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of our Constitution.

³¹ Available at : <http://www.prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-bill-2014-3362/> (Visited on March 23, 2015).



It is the need of the hour to expand the machinery for enforcing the various laws on child labour and set free the young ones from the evil of child labour. These children freed from child labour should be entitled for rehabilitation benefits under government schemes. There are plenty of child labour preventive laws but nothing can eradicate child labour unless there is awareness among parents and children, which will go a long way in saving the future of millions of working children in India. Thus, it is possible only if the government and the society would own it that this our responsibility to put an end to child labour in all its forms.