



A CRITICAL ANALYSIS OF RIGHTS OF CHILDREN WITH SPECIAL REFERENCE TO CHILD LABOUR

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INTRODUCTION

Children are considered as the greatest gift of God. They are future of any country and even mankind too. So it is our prime duty to protect them from every harm and evil. States also protects them by enacting several legislations, but indeed they are less privileged in any society. United Nations has taken due care to protect human rights of children all over the world but situations is not commendable as they are facing various problems. Considering it the researcher tried to focus on certain issues with the following Objectives:

1) To know the status of Children and Human Rights of Children in India, 2) To discuss the problems faced by children 3) To discuss the legal provisions & judicial pronouncements for protection of child labour, 4) To analyze the practice of child labour in India, & 5) To suggest the remedial measures for the protection of children's human rights in general and child labour in particular.

STATUS OF RIGHTS AND PROBLEMS OF CHILDREN

In the history of human rights, the rights of children are the most ratified. The Convention on the Rights of Child 1989, in Article 1 defines Child as "...a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." The United Nations Convention on the Rights of the Child (UNCRC) defines Child Rights as the minimum entitlements and freedoms that should be afforded to every citizen below the age of 18 regardless of race, national origin, colour, gender, language, religion, opinions, origin, wealth, birth status, disability, or other characteristics.

These rights encompass freedom of children and their civil rights, family environment, necessary healthcare and welfare, education, leisure and cultural activities and special protection measures. The UNCRC outlines the fundamental human rights that should be afforded to children in four broad classifications that suitably cover all civil, political, social, economic and cultural rights of every child:

Right to Survival

- a) Right to be born
- b) Right to minimum standards of food, shelter and clothing
- c) Right to live with dignity
- d) Right to health care, to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy

Right to Protection

- a) Right to be protected from all sorts of violence,
- b) Right to be protected from neglect,
- c) Right to be protected from physical and sexual abuse,
- d) Right to be protected from dangerous drugs

Right to Participation

- a) Right to freedom of opinion,
- b) Right to freedom of expression,
- c) Right to



freedom of association, d) Right to information, e) Right to participate in any decision making that involves him/her directly or indirectly

Right to Development

a) Right to education, b) Right to learn, c) Right to relax and play, d) Right to all forms of development – emotional, mental and physical

In spite of the various rights provided under UNCRC the children of the world are facing various problems. So far as the India is concerned we must have a look towards numbers in different fields. 'Children constitute over one-third of India's population of 1.21 billion people, which means India is home to 400 million children. Every sixth child in the world lives in India (Ministry of Statistics and Programme Implementation-MoSPI,2012).India has 10.12 million child labourers aged between 5 to 14 years (National Census 2011).An estimated 11.6 lakh children die every year within one year of their birth due to lack of immunization. (Ministry of Health and Family Welfare, Government of India).Vaccine preventable diseases (VPDs) are still responsible for over 5 lakh deaths annually in India. As per Coverage Evaluation Survey (CES-2009), Roughly 50% of all working children are girls (data from government reports). Out of the 400 million children in India, every second child is malnourished (National Family Health Survey III – NFHS, 2005-06)

In India the child sex ratio is at the lowest it has ever been with just 914 girls for every 1000 boys (Census, 2011).Maternal Mortality Ratio (MMR) in India continues to be high at 212 per 100,000 live births (Sample Registration System - SRS, 2011).Girls in India have 61% higher mortality than boys at age 1-4 years (National Family Health Survey III - NFHS).In India 22% babies are born with low birth weight (National Family Health Survey III - NFHS).

In India about 55% of Scheduled Castes and Scheduled Tribes children under 3 years of age are underweight compared to about 37% of children from the general population of 400 million children (National Family Health Survey III - NFHS).The Under-5 Mortality Rate (U5MR) in India is 88.1% for Schedule Caste and 95.7% for Schedule Tribe children, against the national average of 59.2% (National Family Health Survey III - NFHS)

In India 47 out of every 1000 live births do not complete their first year of life ((Sample Registration System - SRS, 2011).79% children of the 400 million in India (6-35 months) are anaemic (National Family Health Survey III - NFHS).56% adolescent girls (15-19 years) in India are anemic, as against 30% adolescent boys (National Family Health Survey III - NFHS)ⁱ

CHILD LABOUR

Child Labour is a matter of global concern and it is also exist in India. 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.

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.

Way back in 1979, Government formed the first committee called Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it. The Committee examined the problem in detail and made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children.

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted in 1986. The Act prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

In consonance with the above approach, a National Policy on Child Labour was formulated in 1987. The Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance. The Action Plan outlined in the Policy for tackling this problem is as follows:

- Legislative Action Plan for strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children.
- Focusing of General Developmental Programmes for Benefiting Child Labour - As poverty is the root cause of child labour, the action plan emphasizes the need to cover these children and their families also under various poverty alleviation and employment generation schemes of the Government.
- Project Based Plan of Action envisages starting of projects in areas of high concentration of child labour. Pursuant to this, in 1988, the National Child Labour Project (NCLP) Scheme was launched in 9 districts of high child labour endemicity in the country. The Scheme envisages running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/non-formal education along with vocational training, a stipend of Rs.150 per month, supplementary nutrition and regular health checkups so as to prepare them to join regular mainstream schools. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district.

Government has accordingly been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative



measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Since poverty is the root cause of this problem, and enforcement alone cannot help solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families.ⁱⁱ

International Programme for Elimination of Child Labour:

The International Programme on the Elimination of Child Labour is a global programme launched by the International Labour Organization in December, 1991. India was the first country to join it in 1992 when it signed a Memorandum of Understanding (MOU) with ILO. The MOU that expired on 31.12.1996 has thereafter been extended from time to time. The long-term objective of IPEC is to contribute to the effective abolition of child labour. Its immediate objectives are: i) Enhancement of the capability of ILO constituents and NGOs to design, implement and evaluate programmes for child labour; ii) To identify interventions at community and national levels which could serve as models for replication; and iii) Creation of awareness and social mobilization for securing elimination of child labour.

LEGAL PROVISIONS PROHIBITING AND REGULATING CHILD LABOUR:

The Child Labour is prohibited at International level by the efforts of ILO, for that purpose the ILO has passed certain Conventions. The State parties to the conventions are implementing it in their respecting States. Accordingly Indian Government through transformation adopted most of the Conventions for prohibiting Child Labour.

i) ILO Conventions for Elimination of Child Labour and Protection of Children and Young Personsⁱⁱⁱ -

1. **C005** - Minimum Age (Industry) Convention, 1919
2. **C006** - Night Work of Young Persons (Industry) Convention, 1919
3. **C010** - Minimum Age (Agriculture) Convention, 1921
4. **C015** - Minimum Age (Trimmers and Stokers) Convention, 1921
5. **C033** - Minimum Age (Non-Industrial Employment) Convention, 1932
6. **C059** - Minimum Age (Industry) Convention (Revised), 1937
7. **C060** - Minimum Age (Non-Industrial Employment) Convention (Revised), 1937
8. **C077** - Medical Examination of Young Persons (Industry) Convention, 1946
9. **C078** - Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946
10. **C079** - Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946
11. **C090** - Night Work of Young Persons (Industry) Convention (Revised), 1948
12. **C123** - Minimum Age (Underground Work) Convention, 1965
13. **C124** - Medical Examination of Young Persons (Underground Work) Convention, 1965
14. **C138** - Minimum Age Convention, 1973
15. **C182** - Worst Forms of Child Labour Convention, 1999

ii) Constitutional Provisions^{iv}

The Constitution of India contains the provisions relating to employment and welfare of children under chapters Fundamental Rights and Directive Principles of State Policy. Article 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.'



Article 39-Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing:

- a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- b) that the ownership and the control of the material resources of the community are so distributed, as best to subserve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- d) that there is equal pay for equal work for both men and women;
- e) 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; and
- f) that 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,

iii) Other Legislation dealing with prohibition of Child Labour:

- 1) The Factories Act,1948,
- 2) The Employment of Children (Amendment) Act,1951,
- 3) The Plantations Labour Act,1951,
- 4) The Mines Act,1952,
- 5) The Merchant Shipping Act,1958,
- 6) The Motor Transport Workers Act,1958,
- 7) The Apprentices Act,1961,
- 8) The Bidi and Cigar Workers (Conditions of Employment) Act,1966
- 9) The Employment of Children (Amendment)Act,1978,
- 10) The Child Labour (Prohibition and Regulation) Act,1986. etc

JUDICIAL APPROACH

MC Mehta v. state of Tamil Nadu^v the Supreme Court of India gave certain directions on the issue of elimination of child labour. The main features of judgment are as under: a) Survey for identification of working children; b) Withdrawal of children working in hazardous industry and ensuring their education in appropriate institutions; c) Contribution @ Rs.20,000/- per child to be paid by the offending employers of children to a welfare fund to be established for this purpose; d) Employment to one adult member of the family of the child so withdrawn from work and if that is not possible a contribution of Rs.5,000/- to the welfare fund to be made by the State Government; e) Financial assistance to the families of the children so withdrawn to be paid -out of the interest earnings on the corpus of Rs.20,000/25,000 deposited in the welfare fund as long as the child is actually sent to the schools; f) Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day and education for at least two hours is ensured. The entire expenditure on education is to be borne by the concerned employer. g) The implementation of the direction of the Hon'ble Supreme Court is being monitored by the Ministry of Labour and compliance of the directions have been reported in the form of Affidavits on 05.12.97, 21.12.1999, 04.12.2000, 04.07.2001 and 04-12-2003 to the Hon'ble Court on the basis of the information received from the State/UT Governments.



In *People's Union for Democratic Rights v. Union of India*,^{vi} the Supreme Court ruled that Article 24 is enforceable against everyone and by reason of its compulsive mandate no one can employ a child below 14 years in a hazardous employment.

The aforesaid view was reiterated in *Salal Hydro Project v. State of Jammu & Kashmir*,^{vii} where the Supreme Court held that construction work being hazardous employment, no children below the age of 14 can be employed in such work because of Constitutional prohibition contained in Article 24.

The court, in *Gaurav Jain v. Union of India*,^{viii} rightly protected the interest of the children of prostitutes. Children born to the prostitutes are most unwanted elements of our society. The court observed in this case that prostitutes do not want children. When children are born to them it is in spite of their desire not to rear children. If they are born to them, it is the interest of such children and of society at large that they should become part of it. It is pointed out that their separation from their mother and mingling up with others may make them meaningful part of the society. Their segregation from other school children, by putting them in separate hostels and schools, may create another class of such children. It will not be acceptable by the healthy society. Thus the court extended facilities for children born to prostitutes; otherwise these children are more susceptible to child labour.

CONCLUSION AND SUGGESTIONS

After discussing the various rights enshrined under the Convention on the Rights of Child, ILO Conventions, Constitutional Protection, Statutory rights and judicial pronouncements it can be said that every possible effort has been made for the prohibition and protection of Child labour. In spite of that there are number of children working in various field from restaurants to agriculture. In India though Article 21-A specifically inserted as fundamental right for free and compulsory education of children up to the age of 14 years but still reality is somewhat different. Due to poor economic family conditions children are being compelled to do work at different places. Though the State is taking every possible step for protection of rights of children but it will become futile unless the parents and guardian cooperate for the welfare of children. The person like Nobel Peace Prize Awardee Kailas Satyarthi cannot do everything for every child, what we require again is the spirited activist like him in every corner of the globe and particularly in India.

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