



CRITICAL ANALYSIS OF LAWS AND POLICIES ON CHILD LABOUR

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ABSTRACT

Poverty, unemployment, illiteracy and population growth perpetuate child labour and child trafficking in India. In country's biggest cities like Delhi, Mumbai U.P. Bihar M.P. Rajasthan, Haryana, Tamil Nadu, Karnataka, and A.P. and to the heartland of Odessa and Jharkhand where children are illegally employed as bonded laborers. Recently in the last week of January 2015 during a massive search operation police have rescued 350 children including 10 girls who were forced to work with very low wages in hazardous Bangle making units in the old city of Hyderabad mostly from the districts of Gaya, Jehnabad, Nalanda, Nawada of Bihar State. It was reported that there are some unscrupulous agents who brought these children at the behest of Factory owners. It was also found some of these children who were rescued earlier again came back to work as bonded laborers due to their poverty and misery. Again these rescued children were sent back to their homes. Therefore, unless these children are rehabilitated properly mere prevention of child labour is of no use. This further amplifies ineffectiveness of legislative and executive mechanisms that were entrusted with these duties and their insensitivity. If the same offence is committed continuously reflects that there is nexus between contractors and politicians. Some of these children who were interviewed told the press that "they were working here as they have to send money to their homes to feed their family members." Like this menace of child labour and child trafficking is prevailing in all most all parts of the country. It is open secret that in India children are bought and sold like cattle. Though India is a constitutional democratic country who have so far not ratified the UN convention on Eliminating worst forms of Child Labour, though small countries like Eretria, Somalia Srilanka, Bangladesh have ratified it. These poor children who are supposed to be in schools, they were engaged in hazardous works at their tender age. Our constitution particularly Article 21A which guarantees right to education as fundamental right mandates that all children below 14 years of age must be provided free and compulsory Education. To implement this constitutional mandate Right to Education Act 2005 is enacted. However, due to apathy of implementing authorities this constitutional guarantee and legislative protection even after the decade of enacting Right to Education Act 2005 remains a dead letter. This paper deals with implementation of Child Labour (Prohibition and Regulation) Act 1986, Child Labour (Prevention and Regulation) Amendment Bill 2012, POCSO Act 2012, International conventions relating Child labour and steps taken by Govt. for eradicating Child labour etc.,

International conventions dealing with child labour: The Convention on Rights of the child (CRC) 1989 was the first legally binding International Convention to incorporate complete range of human rights for children to protect them against exploitation, neglect and abuse. The convention focuses mainly four type's rights i.e. civil, political, social, economic and cultural rights of every child. These rights include (a) The right to survival; (b) the right to protection (c) The right to development (d) The right to participation. Article 23 of the convention specifically provides that "All States should work to end such child labour practices and see how the conditions and circumstances of children in legitimate employment can be protected to provide



adequate opportunity for their healthy upbringing and development”. The convention defines a child as any one below the age of 18 years. Article 32 of the convention deals with the right to protection from economic exploitation and Article 28 deals with most important right i.e. right to education. India has ratified this convention with the reservation that age restriction will be implemented progressively. All countries have ratified the convention except two.

The International labour organization (ILO) developed two conventions specifically focusing child labour namely:

Convention No. 138 on the minimum age for Admission to Employment 1973 and Convention No.182 on the worst forms of child labour 1999. But unfortunately India has not ratified these two conventions although at the end of 2010, this convention had been ratified by 173 of the 183 member States of ILO. Under Factories Act 1948 child is defined as below 14 years of age. Why India has reservations to conform to International norms with respect to minimum age of child? Perhaps the government is thinking implantation is very difficult. Though India has not ratified the convention on worst forms of child labour according to a study conducted by the United States Department of labour Bureau of International Affairs in 2013, the Report observed that India made a moderate advancement in efforts to eliminate the worst forms of child labour. The Report highlights that the government continues to implement its National Child labour project, its project to assist bonded labourers through provision of loans and alternative livelihoods and also launched several social schemes that address many of the root causes of child labour. After the Nirbhaya incident government has passed The Criminal Law (Amendment) Act 2013, which protects children from sexual offences and children and adults from trafficking and forced labour and issued guidelines to each State on how to handle cases of child labour trafficking. The government has also launched the crime and criminal tracking and networking system which connected 1500 police stations. The Report also indicates some negative aspects namely children in India continue to engage in child labour in agriculture and in the worst forms of child labour in the manufacturing of a number of products in the informal economy. Basic legal protection of children remains weak. Child Labour (Prohibition and Regulation) Amendment Bill 2012 is yet to be passed. The Bill which seeks to amend The Child Labour Act 1986, prohibits employment of children below 14 years and prohibits adolescents (person who is between 14 and 18 years) in hazardous occupations.

Sectoral distribution: Data from the government’s 2009-2010 National sample survey indicate four-fifths of child workers reside in rural areas. Children who belong to scheduled castes or tribals are also more likely than other children to be engaged in child labour. The survey further pointed out that children engage in manufacturing of goods, many in the informal economy and increasingly home based production.

Constitutional provisions dealing with child labour:

Art.15 (3) of the constitution authorizes the state for the making any special provision for women and children. Art.21 No person shall be deprived of his life personal liberty except according to procedure established by law. Art.21 (A) The state shall provide free & Compulsory education to all children of the age of 6 to 14 years in such manners as state may by law determine. Art.23 Traffic in human beings and beggar and other forms of forced labour are prohibited and any contravention of this position shall be offence punishable in accordance with the law. Art.24. Provides 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. Art. 39(E) mandates that the state shall, in particular, direct its policy towards securing that the health strengths of the tender age of children are not forced by economic necessity to enter avocations unsuited to their age or strength. Art.45 makes a provision for early childhood care and education to children



below the age of six years this article provides that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years. Art. 51(k) Fundamental duties: further obligates 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.

LEGISLATIONS DEALING WITH CHILD LABOUR:

The Child Labour (Prohibition and Regulation Act, 1986:- There are number of Acts which prohibit employment of children below 14 years and 15 years in certain specified employments. However there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate working conditions of children in most of the employments where they are not prohibited from working and are working under exploitive conditions therefore, The Child labour (prohibition and Regulation) Act 1986 intends to (i) ban employment of children I.e. those who have not completed their fourteenth year, in specified occupations or processes; (ii) lay down a procedure to decide modifications to the schedule of banned occupations or processes; (III) regulate the conditions of work of children in employments where they are not prohibited from working; (iv) lay down enhanced penalties for employment of children in violation of provisions of this Act, and other Acts which forbid employment of children. (v) To obtain uniformity in the definition of child in related laws. The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 seeks to amend the Child Labour Act 1986, which prohibits the engagement of children in certain types of occupations and regulates the condition of work of children in other occupations. The Bill seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours. The Bill adds 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 Factories Act 1948 prescribes list of hazardous occupations prohibited for children. Mines Act 1952, prohibits employment of children below 16 years in any underground mines. Criminal law (Amendment) Act 2013 prohibits child trafficking. Bonded Labour System (Abolition) Act, 1976 and Juvenile Justice (Care and Protection) Act 2000 prohibits forced labour. The Right of Children to Free and compulsory Education Act 2005 entitles a child between 6 and 14 years free and compulsory education. There are several legislations which prohibit child labour hence government felt to enact a single legislation to deal with child labour consequently The Child labour (Prohibition and Regulation) Act, 1986 was enacted as mentioned earlier. Protection of Children from Sexual Offences Act, 2012(POCSO) was enacted to effectively address the heinous crimes of sexual abuse and sexual exploitation of children by prescribing stringent legal provisions and stricter punishments.

These pictures shows worst forms of child labour where children are engaged in hazardous activities:



State lags in implementing 25% quota under Right to education IIM Report: Implementation rate of reservation for poor under RTE Act is in Maharashtra 19% compared to M.P 88%, Rajasthan 69%, Delhi 92% Highest, Gujarat 42%, Karnataka 25%, States which fares



badly as compared to Maharashtra include Tamil Nadu, U.P., A.P which of lowest seats fill Rates i.e. 11%, 3%, 0.2% respectively.

SUGGESTIONS AND CONCLUSION

The Government has to take steps to Increase the minimum age for employment in hazardous occupations to meet international standards. Further to Ensure that relevant child labor laws and regulations apply equally to children working in the formal and informal sectors. Timely prosecute child labor cases against violators of the Child Labor Prohibition and Regulation Act and the Bonded Labor System Act. Disaggregate the data in the Ministry of Home Affairs Crime and Criminal Tracking and Networking System to include child trafficking violations. Assess the impact that existing programs may have on child labor. Poverty, unemployment, illiteracy & Population growth perpetuate child labour & Child trafficking. Nobel Peace winner Kailash Satyarthi gave up his job as an electrical engineer to dedicate himself to protecting and advancing child right for over three decades, freeing now 80,000/- child labourers and giving them new hope in life. Those children who were freed as child labourers must be sent to school. The Right to Education Act must be implemented strictly in spirit. Our education system should be reformed so as to insure that it produces employable graduates. Occupational training and skill development courses should be introduced to improve employment potentiality so that if children are ensured that they will get good employment after education parents will not encourage their children to send as child labour. There is another incident that came to light through investigation done by NDTV with help of an NGO working on child rights i.e. recently in Nalgonda district of Telangana where children particularly belonging to Bangara community were brought and sold like animals broker Kamli who is upa surpanch of the village admitted that she sold 20 such children and nothing will happen to them. Even Children in Sishu vihar maintained by State government were sold and there were no records to show how many children are admitted in that Sishu vihar. All these incidents are happening in spite of several regulatory mechanisms working for the welfare of children including District Child welfare department. Nobel laureate Kailash Satyarthi every day this trade involves 60 crores of rupees and every year 1 lakh children are missing and around 45% of them are not traced. Some of these children are exported to foreign countries. Therefore, all these regulatory mechanisms created under several Acts failed to live up to their duties hence child labour and child trafficking is prevalent in this country.

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